

Merlin Terms and Conditions

1. Definitions

1.1 The following definitions apply in these Terms and Conditions:

"API": MWI's application program interface that enables software products and solutions provided by Third Parties to access the Customer Data and communicate with the Software.

"Applicable Data Protection Law": the meaning as specified in Schedule 1.

"Commencement Date": the date set forth in the Quotation.

"Confidential Information": information that is proprietary or confidential to either party or identified as Confidential Information in clause 12.

"Contract": the contract between MWI and the Customer for the Software Licence, the supply of equipment or consumables, and/or the provision of Services, comprising the Quotation and these Terms and Conditions.

"Customer": the customer identified on the Quotation.

"Customer Data": the data inputted into the information fields of the Software by the Customer, by Licensed Users, or by MWI on the Customer's behalf.

"Deliverable": a defined level of functionality or other pre-set milestone within a particular phase of the Services, to be more particularly described in the Quotation.

"Fees": the fees and charges payable to MWI including the Licence Fees and Professional Services Fees , as described in the relevant Quotation.

"Hosting Services": the services that MWI may provide to allow Licensed Users to access and use the Software, to be provided in accordance with Schedule 3 (Hosting Services Policy).

"Installation Date": the date that the Software is installed in the hosting environment or on customer premises as set out in the Quotation.

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

"Licence Fees": the fees and charges payable to MWI in respect of the Software Licence, as set out in the relevant Quotation.

"Licensed Users": those employees, agents and personnel of the Customer who are entitled to use the Software under this Contract.

"Maintenance and Support": any error corrections, updates and upgrades that MWI may provide or perform with respect to the Software and Hosting Services, to be provided in accordance with Schedule 2 (Maintenance and Support Policy). Maintenance and Support does not include training, which is available upon request subject to a separate charge. If the Software

is installed on a Customer server then MWI shall provide any error corrections, updates and upgrades for installation by MWI.

"**MWI**": Vetspace Limited (company number SC116043) whose registered office is at Caledonian Exchange, 19a Canning Street, Edinburgh, EH3 8HE.

"**MWI Suppliers**": MWI's own third party suppliers and service providers used in connection with the Software Licence and/or Services, including (without limitation) Third Parties.

"**Professional Services Fees**": the fees and charges payable in respect of the provision of the Services, as set out in the relevant Quotation.

"**Quotation**": the quotation on MWI's standard form (as updated from time to time) setting out details of the Software Licence, the supply of equipment or consumables, and/or the provision of Services.

"**Services**": any services outlined in the Quotation, which may include (without limitation) providing access to the API to relevant Third Parties, Hosting Services, Maintenance and Support, or professional services such as training, installation, upgrading and configuration.

"**Software**": MWI's proprietary Merlin software that automates many of the routine practice management tasks in a veterinary clinic, as described in more detail in the Software Specification.

"**Software Licence**": the licence granted by MWI to Customer for the use of Software in accordance with the provisions of clause 3.

"**Software Specification**": the functionality and performance specifications for the Software, as described in the manual accessible through the Software platform, as updated from time to time.

"**Standard Usage Patterns**": the average usage by Customer over the previous 3 months of use of the Services and/or Software.

"**Terms and Conditions**": these terms and conditions (including the Schedules to these terms and conditions) as amended from time to time in accordance with clause 17.9.

"**Third Parties**": the third parties with which the Customer has contracted to facilitate the third parties' access to Customer Data through the API, and "**Third Party**" shall be interpreted accordingly.

"**Virus**": any thing or device (including without limitation any software, code, file or program) which may: (i) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; (ii) prevent, impair or otherwise adversely affect access to or the operation of any program or data, including (without limitation) the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); (iii) or adversely affect the user experience, including (without limitation) worms, Trojan horses, viruses and other similar things or devices.

2. **Basis of Contract**

2.1 The Quotation constitutes an offer by Customer for the Software Licence and/or the supply of the Services in accordance with these Terms and Conditions.

2.2 The Quotation shall only be deemed to be accepted when MWI issues written acceptance of the Quotation or begins performing Services pursuant to the Quotation, at which point and on which date the Contract shall come into existence.

2.3 These Terms and Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 If there is an inconsistency between any of the provisions in these Terms and Conditions and the Quotation, the provisions in these Terms and Conditions shall prevail.

3. **Software Licence**

3.1 In consideration of the Licence Fees paid and payable in the future by Customer to MWI, MWI hereby grants to Customer for the term of the Contract a non-exclusive, non-transferable licence to allow Licensed Users to access and use the Software for its own internal business purposes only in accordance with the provisions of this Contract.

3.2 It is a condition of the Software Licence that at all times the Customer pays all Licence Fees. Without prejudice to MWI's other rights and remedies, failure to pay any Licence Fees shall entitle MWI to terminate the Contract and the Software Licence immediately without notice.

3.3 In relation to the Software:

- (a) Customer may not use the Software other than as specified in clause 3.1 without the prior written consent of MWI, and Customer acknowledges that additional fees may be payable on any change of use approved by MWI;
- (b) Customer shall not store, distribute or transmit any Virus, or any material through the hosting services or Software that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;
- (c) the rights provided under clause 3.1 are granted to Customer only, and shall not be considered granted to any subsidiary or holding company of Customer;
- (d) Customer shall use best endeavours to prevent any unauthorised access to, or use of, the Software and notify MWI promptly of any such unauthorised access or use.
- (e) Customer shall not:
 - (i) attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Software;
 - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human- perceivable form all or any part of the Software;
 - (iii) access all or any part of the Software or Hosting Services in order to build a product or service which could compete with the Software and/or the Services;
 - (iv) use the Software or Hosting Services to provide services to third parties;
 - (v) transfer, temporarily or permanently, any of its rights under this Contract, or
 - (vi) attempt to obtain, or assist third parties in obtaining, access to the Software.

4. **Hosting Services, Maintenance and Support**

4.1 If the Software is installed on Customer's server, Customer is solely responsible for ensuring that the server meets the minimum required specifications as determined by MWI from time to time.

- 4.2 If the Software is offered as a cloud service, Customer is solely responsible for ensuring that its web browser meets the minimum required specification as determined by MWI from time to time.
- 4.3 MWI shall perform any Maintenance and Support and Hosting Services to the extent included in the Quotation. In providing the Maintenance and Support, MWI shall use reasonable endeavours to abide by the Maintenance and Support Policy contained in Schedule 2. In providing the Hosting Services, MWI shall use reasonable endeavours to abide by the Hosting Services Policy contained in Schedule 3.
- 4.4 In relation to Licensed Users:
- (a) Customer's access shall be limited to the number of Licensed Users set forth in the Quotation, such users all being employees, agents or personnel of the Customer who shall use the Software solely for Customer's internal business needs;
 - (b) Customer shall maintain a written list of Licensed Users of the Software, and Customer shall provide such list to MWI as may be reasonably requested by MWI from time to time;
 - (c) Customer shall ensure that each Licensed User keeps a secure password for their use of the Software;
 - (d) MWI may audit the Customer's use of the Software (including without limitation regarding the username for each Licensed User) at any time; and
 - (e) if an audit carried out under clause 4.4(d) reveals that passwords have been provided to individuals who are not Licensed Users or reveals any other unauthorized use, without prejudice to MWI's other rights, Customer shall promptly disable such passwords and shall not issue any new passwords to such individuals (if applicable) and Customer shall be obligated to pay MWI for any unauthorized use.

5. **Customer Data**

- 5.1 Customer shall own all rights, title and interest in and to all Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of Customer Data.
- 5.2 If installed on-premise, Customer is responsible for maintaining all back-ups of their data. If hosted by MWI, MWI shall follow its standard back up and archiving procedures for Customer Data. In the event of any loss or damage to Customer Data, Customer's sole and exclusive remedy shall be for MWI to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by MWI. MWI shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub- contracted by MWI to perform services related to Customer Data maintenance and back- up).
- 5.3 If MWI processes any personal data on Customer's behalf when performing its obligations under this Contract, the terms and conditions in Schedule 1 shall apply.

6. **API**

- 6.1 In consideration of the Professional Services Fees paid and payable in the future by Customer and/or the relevant Third Party (as set out in the relevant Quotation) to MWI, and subject to MWI and the Customer entering into a relevant Quotation in respect of the Customer's use of the API in order to access software products or services provided by Third Parties, MWI grants to Customer a non-exclusive, non-transferable licence for the duration of the Contract to use the API to access the Software, to access any products or services provided by Third Parties, and to enable such Third Parties to access Customer Data to the extent authorised by Customer.

- 6.2 Where the relevant Quotation specifies that some or all of the Professional Services Fees are to be paid by a Third Party, Customer acknowledges and agrees that MWI may suspend all or part of Customer's use of the API and/or the software product or solution provided by the relevant Third Party until payment has been made in full by the relevant Third Party.
- 6.3 The Customer acknowledges and agrees that, on entering into a Quotation with MWI in respect of the Customer's use of the API in order to access software products or services provided by a Third Party, MWI shall enable such Third Party to access the Customer Data through the API. Consequently, before entering into such Quotation and permitting such Third Party to access the Customer Data, Customer shall:
- (a) enter into an agreement directly with the applicable Third Party that sets out the terms and conditions of the Third Party's access, possession, storage, handling, use, copying, processing, modification, editing and/or transfer of such Customer Data ("**Third Party Agreement**"); and
 - (b) notify MWI via email that a Third Party Agreement has been entered into between the Customer and applicable Third Party.
- 6.4 The Customer shall ensure that the Third Party Agreement contains provisions which comply with Applicable Data Protection Law.
- 6.5 Customer acknowledges and agrees that the applicable Third Party's access to and use of Customer Data will be governed solely by the Third Party Agreement and that MWI is not responsible for monitoring, controlling, restricting or regulating the Third Party's access to and use of Customer Data. Customer releases and discharges MWI, its affiliates and its and their officers, directors and employees, of and from any and all liabilities, damages, costs, losses, claims, actions, demands and judgments which arise out of or in connection with: (i) the Third Party's access to and use of Customer Data; and (ii) the services provided by the Third Party to Customer.
- 6.6 Subject to clause 14.3, MWI shall not be liable to Customer for any claims, actions, proceedings, losses, damages, expenses and costs incurred or suffered by Customer arising directly or indirectly from any act, error or omission of a Third Party.
- 6.7 Customer shall notify MWI's customer support team immediately if any Third Party Agreement is terminated or expires. Upon receipt of such notification, MWI shall use reasonable endeavours to terminate the Third Party's access to Customer Data.
- 6.8 Customer shall at all times comply with:
- (a) all applicable laws in connection with Customer's use of the API and the Customer Data;
 - (b) any minimum hardware configuration, software, programming and security requirements as notified to the Customer by MWI; and
 - (c) other rules, protocols or requirements related to Customer's access or use of the API that are specified in advance by MWI from time to time.
- 6.9 MWI shall have sole control and discretion over the development, functionality and operation of the API.
- 6.10 MWI retains the right, in its sole and absolute discretion, to modify, revise, improve, update, replace or further develop the API, including (without limitation) the format of the Customer Data and the means of access to the API or the Customer Data, and nothing in this Contract shall restrict MWI's ability to do so. MWI shall use reasonable endeavours to notify Customer in advance of any such modification that may materially impact Customer's use of the API or the Customer Data.

- 6.11 Customer shall promptly notify MWI if it discovers any problems, glitches or defects with the API.
- 6.12 MWI does not represent or warrant: (i) as to the satisfactory quality or fitness of the API for any particular purpose; (ii) that the supply of Customer Data or Customer's use of the API shall be free from interruption or errors, or completely secure; or (iii) that the API shall run on or be compatible with Customer's systems.
- 6.13 Customer acknowledges that the API and the Services may enable or assist it to access the products and services of, website content of, correspond with, Third Parties via Third Party websites and that it does so solely at its own risk. MWI makes no representation, warranty or commitment, and shall have no liability or obligation whatsoever, in relation to the content or use of, or correspondence with, any such Third Party website, or any transactions completed, and any contract entered into by Customer with any such Third Party. Any contract entered into and any transaction completed via any Third Party website is between Customer and the relevant Third Party, and not MWI. MWI recommends that Customer refers to the Third Party's terms and conditions and privacy policy prior to using the relevant Third Party website. MWI does not endorse or approve any Third Party website nor the content of any of the Third Party websites made available via API or the Services.

7. **MWI's obligations**

- 7.1 Subject to clause 7.3, MWI agrees that the Services shall be performed substantially in accordance with the Software Specification and with reasonable skill and care. The foregoing shall not apply to the extent of any non-conformance which is caused by use of the Software contrary to MWI's instructions, or modification or alteration of the Software by any party other than MWI or MWI's duly authorised contractors or agents. If the Software does not perform substantially in accordance with the Software Specification, MWI shall, at its expense, use reasonable endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of this clause 7.1. Notwithstanding the foregoing, MWI does not warrant that the Customer's use of the Software and the Services shall be uninterrupted or error-free.
- 7.2 This Contract shall not prevent MWI from entering into similar contracts with third parties, or from independently developing, using, selling or licensing materials, products or services which are similar to those provided under this Contract.
- 7.3 Customer acknowledges that elements of the Services (including the Hosting Services) are provided by MWI Suppliers. Customer may be required to adhere to MWI Suppliers' terms and conditions in order to receive those relevant Services. Those elements of the Services that are provided by MWI Suppliers shall be subject to warranties as set out in the relevant MWI Suppliers' terms and conditions and MWI does not give any warranty in relation to those elements of the Services that are provided by MWI Suppliers. MWI shall not be liable to Customer in respect of any breach of this Agreement including the Maintenance and Support Policy and the Hosting Services Policy to the extent that such breach is directly or indirectly caused by: (i) a failure of Customer to comply with the MWI Suppliers' terms and conditions; and/or (ii) any act or omission of the relevant MWI Supplier.

8. **Customer's obligations**

- 8.1 Customer shall:
- (a) provide MWI with:
 - (i) all necessary co-operation in relation to this Contract; and
 - (ii) all necessary access to such information as may be required by MWI in order to render the Services, including (without limitation) Customer Data, security

access information and software interfaces to the Customer's other business applications;

- (b) comply with all applicable laws and regulations with respect to its activities under this Contract;
- (c) carry out all other Customer responsibilities set out in this Contract or in the Quotation in a timely and efficient manner. In the event of any delays in Customer's provision of such assistance as agreed by the parties, MWI may adjust any timetable or delivery schedule set out in this Contract as MWI deems necessary; and
- (d) notify MWI as soon as it becomes aware of any unauthorized use of the Software by any person.

8.2 Customer acknowledges that the Professional Services Fees have been calculated on the basis of the Customer's Standard Usage Patterns. If, in the reasonable opinion of MWI, Customer uses an excessive amount of data transfer (bandwidth) and/or excessive storage capacity in any single month than MWI may, at its discretion:

- (a) limit or "throttle" Customer's bandwidth or capacity; and/or
- (b) charge Customer the reasonable costs as a result of that excessive usage (such charges to be paid in accordance with clause 9 below).

9. Charges and payment

9.1 Customer shall pay the Fees as set forth in the Quotation in advance on a monthly basis by direct debit for the duration of this Contract.

9.2 On an annual basis within the term (if the term on the Quotation is more than 12 months), MWI may adjust the Fees set out in any Quotation by the greater of: (i) the percentage increase in the Consumer Prices Index during the previous 12 months; and (ii) 5%. MWI shall give Customer not less than one month's prior notice of any proposed increase and such notice may be by email, notwithstanding any other provision of the Contract to the contrary. The adjusted price of the Fees shall be deemed to apply with effect from the relevant anniversary of the Commencement Date.

9.3 In addition to its rights under clause 9.2, MWI may by giving written notice to Customer increase the Fees set out in any Quotation by an amount equal to any increase in costs incurred by MWI due to MWI Suppliers increasing their costs.

9.4 The Fees (including any fees for additional services) shall be invoiced as incurred and each invoice is due and payable 14 days after the invoice date.

9.5 All amounts and fees stated or referred to in this Contract are exclusive of any taxes, including Value Added Tax, which shall be added to MWI's invoice(s) at the appropriate rate.

9.6 Customer understands and agrees that all amounts owed and payments are non-cancellable and non-refundable.

9.7 If MWI has not received payment within 5 days after the due date, and without prejudice to any other rights and remedies of MWI:

- (a) MWI shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of the Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

10. **Change Orders**

10.1 If Customer requests a change to the Software or Services (whether to increase the number of Licensed Users or otherwise), MWI has no obligation to agree to the change unless and until the parties have agreed in writing the necessary variations to the Fees, the Quotation and any other relevant terms of this Contract to take account of the change.

11. **Intellectual property rights**

11.1 Customer agrees that MWI and/or its licensors own all Intellectual Property Rights in the Software, API, and the Services and Customer shall have no rights in or to the Software or API other than the right to use them in accordance with the terms of this Contract. This Contract does not grant the Customer any rights to, or in, Intellectual Property Rights in respect of the Software, API, Services or any related documentation.

11.2 MWI confirms that it has all the rights in relation to the Software that are necessary to grant all the rights it purports to grant under the terms of this Contract.

12. **Confidentiality**

12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Contract. The parties acknowledge and agree that any pricing terms hereunder constitute MWI's Confidential Information.

12.2 A party's Confidential Information shall not include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party; or
- (b) was in the other party's lawful possession before the disclosure; or
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
- (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

12.3 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Contract.

12.4 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Contract.

12.5 Customer acknowledges that the Software, the results of any performance tests of the Software and the Services constitute MWI's Confidential Information.

12.6 MWI acknowledges that the Customer Data is the Confidential Information of Customer.

12.7 No party shall make, or permit any person to make, any public announcement concerning this Contract (except as provided in clause 17.1) without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

12.8 This clause 12 shall survive termination of this Contract, however arising.

13. Warranty and Indemnity

- 13.1 For the period of 90 days after the Installation Date, MWI warrants that the Software shall substantially conform to the Software Specification. MWI may update the Software Specification from time to time, provided such changes shall not materially reduce the Software's functionality, unless such changes are required by applicable law.
- 13.2 The warranty in clause 13.1 shall be subject to the Customer complying with its obligations under the Contract and to there having been no alterations made to the Software by any person other than as authorised by MWI. MWI shall have no liability or obligation under the warranty other than to use reasonable endeavours to remedy errors and defects in the Software by the provision of materials and services within a reasonable time and without charge to Customer.
- 13.3 Customer acknowledges that the Software has not been written to meet Customer's individual requirements and that the Software is a standard product. Accordingly, it is Customer's responsibility to rely on its own skill and judgement to ensure that the facilities and functions of the Software meet its requirements.
- 13.4 MWI excludes all other representations and warranties regarding the Software, including without limitation express or implied warranties of fitness for purpose.
- 13.5 MWI is not responsible for any delays, delivery failures, or other loss or damage suffered by Customer resulting from the transfer of data over communications networks and facilities, including (without limitation) the internet. Customer acknowledges that the Software and Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 13.6 MWI is not responsible for any defects in equipment or consumables provided by MWI which have been manufactured by a third party.
- 13.7 Customer shall defend, indemnify and hold harmless MWI against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with Customer's use of the Software or any Services, provided that MWI provides reasonable co-operation to Customer in the defence and settlement of such claim, at the Customer's expense.

14. Limitation of liability

- 14.1 This clause 14 sets out the entire financial liability of MWI (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:
- (a) arising under or in connection with this Contract;
 - (b) in respect of any use made by Customer of the Services, the Software, or equipment or consumables provided by MWI; and
 - (c) in respect of any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Contract.
- 14.2 Except as expressly and specifically provided in this Contract:
- (a) Customer assumes sole responsibility for results obtained from the use of the Software, the equipment, consumables, and the Services by Customer, and for conclusions drawn from such use. MWI shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to MWI in connection with the Services, or any actions taken by MWI at Customer's direction; and

- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Contract.

14.3 Nothing in this Contract shall be deemed to limit or exclude the liability of MWI:

- (a) for death or personal injury caused by MWI's negligence;
- (b) for fraud or fraudulent misrepresentation; or
- (c) any other liability which cannot be excluded or limited by law.

14.4 Subject to clause 14.3:

- (a) MWI shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent), restitution or otherwise for any:
 - (i) loss of profits;
 - (ii) loss of business;
 - (iii) depletion of goodwill;
 - (iv) loss or corruption of data or information;
 - (v) pure economic loss; and
 - (vi) special, indirect or consequential loss costs, damages, charges or expenseshowever arising under this Contract; and
- (b) MWI's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the lesser of: (i) the amount of the Licence Fees paid by Customer to MWI during the 12 months preceding the date on which the claim arose; and (ii) £20,000.

15. **Term and Termination**

15.1 This Contract shall commence on the Commencement Date and shall continue so long as any Quotations between MWI and Customer are outstanding, unless otherwise terminated as provided in this clause 15.

15.2 Without affecting any other right or remedy available to it, either party may terminate this Contract on giving not less than 3 months' written notice to the other party.

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

- (a) the other party commits a material breach of any term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 10 days after being notified in writing to do so;
- (b) the other party repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;

- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
 - (d) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 15.4 Without affecting any other right or remedy available to it, MWI may terminate this Contract and the Software Licence:
- (a) pursuant to clause 3.2;
 - (b) if Customer fails to pay any amount due under this Contract on the due date for payment and remains in default not less than 10 days after being notified in writing to make such payment;
 - (c) if Customer fails to pay the annual Professional Services Fees for Maintenance and Support within 10 days of a reminder from MWI that such Professional Services Fee is overdue; and/or
 - (d) if MWI ceases to offer the Software and/or Services to customers.
- 15.5 On termination of this Contract for any reason:
- (a) all licences granted under this Contract shall immediately terminate;
 - (b) Customer shall cease all activities authorised by this Contract;
 - (c) each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party;
 - (d) MWI may destroy or otherwise dispose of any of the Customer Data in its possession unless the Customer has purchased separate read-only licences from MWI or MWI has received, prior to termination of the Contract, a written request from the Customer for MWI to deliver to the Customer the most recent back-up of the Customer Data, which the Customer shall pay for at MWI's then-current rates. MWI shall use reasonable endeavours to deliver the back-up to the Customer within 30 days of its receipt of such written request, provided that the Customer has, at that time, paid all Fees outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by MWI in returning or disposing of Customer Data;
 - (e) any outstanding Fees owed to MWI by Customer shall immediately be payable in full, including any annual Fees payable on a monthly basis by Customer;
 - (f) Customer shall delete any copies of the Software in its possession and certify to MWI that it has deleted any and all copies of the Software;
 - (g) any provision of this Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Contract shall remain in full force and effect; and
 - (h) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including (without limitation) the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination shall not be affected or prejudiced.

16. Force majeure

16.1 Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of MWI or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, epidemic, pandemic, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non- performance continues for 6 months, the party not affected may terminate this Contract by giving 30 days' written notice to the other party.

17. General

17.1 Notwithstanding any provision in this Contract to the contrary, Customer agrees that MWI may include Customer's name, URL link and image on client lists (including MWI's public-facing website and/or social media and other marketing media from time to time).

17.2 MWI may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

17.3 Customer shall not:

- (a) sub-licence, assign or novate the benefit or burden of the Software Licence in whole or in part;
- (b) allow the Software to become the subject of any charge, lien or encumbrance; and/or
- (c) deal in any other manner with any or all of its rights and obligations under this Contract, without the prior written consent of MWI, such consent may be withheld in MWI's sole discretion.

17.4 Any notice required to be given to a party in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business. Any notice shall be deemed to have been received: (a) if delivered personally, at the time the notice is left at the proper address; and (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second business day after posting.

17.5 No failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the 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.

17.6 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, the parties agree that the remaining provisions of this Contract shall not be affected by such determination, that the provision in question must be replaced by the lawful provision that most nearly embodies the original intention of the parties and that this Contract shall in any event otherwise remain valid and enforceable.

17.7 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

- 17.8 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 17.9 Except as set out in this Contract, any variation, including (without limitation) the introduction of any additional terms and conditions to the Contract shall only be binding when agreed in writing and signed by both parties.
- 17.10 The Contract constitutes the entire agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract. Nothing in this clause shall limit or exclude any liability for fraud.
- 17.11 This Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one Contract.
- 17.12 A person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 17.13 This Contract, 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, the laws of England and Wales. The parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales in respect of any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).
- 17.14 Modern Slavery Act Disclosure Statement. A current copy of AmerisourceBergen's UK Modern Slavery Act Disclosure Statement is available on Vet Space's website (<https://www.mwiah.co.uk/-/media/assets/mwiah-uk/pdf/modern-slavery-act-transparency-statement-mwi.pdf>).

Schedule 1

Data Processing Addendum to Terms and Conditions

This Data Processing Addendum ("Addendum") is made by and between MWI and Customer (each a "**Party**" and together the "**Parties**").

Background

- (A) For the purposes of this Addendum, MWI is a processor in relation to the data processing carried out on behalf of Customer in relation to the Software Licence and Services provided by MWI to Customer.
- (B) The purpose of this Addendum is to set out the data protection terms that shall apply to the provision of the Software Licence and Services to ensure that the data protection rights and freedoms of individuals remain protected in accordance with Applicable Privacy Law(s).

1. Data Protection

1.1 Definitions

In this Addendum, the following terms shall have the following meanings:

"controller", "processor", "data subject", "personal data", "processing" (and **"process"**) and **"special categories of personal data"** shall have the meanings given in the DPA.

"Applicable Data Protection Law" shall mean any applicable laws and regulations in any relevant jurisdiction relating to the use or processing of personal data including: (i) EU Regulation 2016/679 ("**GDPR**"); (ii) GDPR as it forms part of the law of England and Wales by virtue of section 3 of the European Union (Withdrawal) Act 2018 (the "**UK GDPR**"); (iii) any laws or regulations ratifying, implementing, adopting, supplementing or replacing the GDPR; (iv) in the UK, the Data Protection Act 2018 ("**DPA**"); and (v) any laws and regulations implementing or made pursuant to EU Directive 2002/58/EC (as amended by 2009/136/EC); and (vi) in the UK, the Privacy and Electronic Communications (EC Directive) Regulations 2003; in each case, as updated, amended or replaced from time to time.

1.2 Relationship of the parties

Customer (the controller) appoints MWI as a processor to process the personal data, which processing shall be in respect of the types of personal data, categories of data subjects, nature and purposes and duration described in the Annex A, attached hereto and incorporated herein (the "**Data**") for the purposes described in the Contract and/or Annex A (the "**Permitted Purpose**"). Each party shall comply with the obligations that apply to it under Applicable Data Protection Law.

1.3 Instructions

- (a) Customer shall ensure that any instructions it issues to the Data Processor shall comply with Applicable Data Protection Law.
- (b) Customer shall have sole responsibility for the accuracy, quality and legality of the Data and the means by which it acquired the Data shall establish the legal basis for processing under Applicable Data Protection Law, including (without limitation) providing all notices and obtaining all consents as may be required under Applicable Data Protection Law in order for MWI to process the Data as otherwise contemplated by this Contract.

- (c) MWI shall process the Data only in accordance with the terms of this Contract and Customer's written instructions from time to time provided such instructions are lawful, and only for the term of the Contract.
- (d) Customer agrees that MWI may store Customer's name and other information obtained during the sales and support process in a computerised directory for internal use only.

1.4 ***International transfers***

MWI shall not transfer the Data outside of the United Kingdom or the European Economic Area without the prior written consent of Customer (such consent not to be unreasonably withheld or delayed), unless the transfer is permitted by Applicable Data Protection Law.

1.5 ***Confidentiality of processing***

MWI shall ensure that any person it authorises to process the Data (an "**Authorised Person**") shall protect the Data in accordance with MWI's confidentiality obligations under the Contract.

1.6 ***Security***

Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, MWI shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk to protect the Data: (i) from accidental or unlawful destruction; and (ii) loss, alteration, unauthorised disclosure of, or access to the Data (a "**Security Incident**").

1.7 ***Sub-processing***

Customer consents to MWI engaging third party sub-processors to process the Data for the Permitted Purpose provided that: (i) MWI imposes data protection terms on any sub-processor it appoints that require it to protect the Data to the standard required by Applicable Data Protection Law; and (ii) MWI remains liable for any failure of its subcontractor to comply with Applicable Data Protection Law. Customer may object to MWI's appointment or replacement of a sub-processor prior to its appointment or replacement, provided such objection is based on reasonable grounds relating to the sub-processor's ability to comply with Applicable Data Protection Law. Where Customer does object in accordance with this paragraph, without prejudice to any other right or remedy it may have MWI may terminate this Contract with immediate effect by giving written notice to Customer.

1.8 ***Cooperation and data subjects' rights***

MWI shall provide reasonable and timely assistance to Customer (at Customer's expense) to enable Customer to respond to: (i) any request from a data subject to exercise any of its rights under Applicable Data Protection Law (including its rights of access, correction, objection, erasure and data portability, as applicable); and (ii) any other correspondence, inquiry or complaint received from a data subject, regulator or other third party in connection with the processing of the Data. In the event that any such request, correspondence, inquiry or complaint is made directly to MWI, MWI shall promptly inform Customer providing full details of the same.

1.9 ***Data Protection Impact Assessment***

MWI shall provide Customer with reasonable cooperation (at Customer's expense) to enable Customer to conduct any data protection impact assessment that it is required to undertake under Applicable Data Protection Law.

1.10 ***Security incidents***

If it becomes aware of a confirmed Security Incident whilst the Data is within MWI's or its subcontractors' or affiliates' possession or control, MWI shall inform Customer without undue

delay and shall provide reasonable information and cooperation to Customer so that Customer can fulfil any data breach reporting obligations it may have under (and in accordance with the timescales required by) Applicable Data Protection Law. MWI shall further take such reasonably necessary measures and actions to mitigate the effects of the Security Incident and shall keep Customer informed of all material developments in connection with the Security Incident.

1.11 ***Deletion or return of Data***

Upon termination or expiry of the Contract, MWI shall (at Customer's election) take commercially reasonable steps to destroy or return to Customer all Data in its possession or control. This requirement shall not apply to the extent that MWI is required by applicable law to retain some or all of the Data, or to Data it has archived on back-up systems, which Data MWI shall securely isolate and protect from any further processing except to the extent required by applicable law.

1.12 ***Audit***

MWI shall, upon reasonable notice (no less than 30 days) and not more than once a year (unless there is a material Security Incident), allow its procedures and documentation to be inspected or audited by Customer (or its designee) during MWI's business hours in order to ascertain compliance with the obligations set forth in this Data Processing Addendum. For the avoidance of doubt, the scope of such audit shall be limited to documents and records allowing the verification of MWI's compliance with the obligations set forth in this Data Processing Addendum and shall not include financial documents or records of MWI or any documents or records concerning other customers of MWI. MWI may require Customer or its designee to execute a confidentiality agreement acceptable to MWI prior to any audit. Any audit must not unreasonably interfere with MWI's business activities and nothing in this paragraph shall require MWI to breach any duties of confidentiality owed to any of its clients, employees or third party providers. All audits carried out pursuant to this paragraph shall be at Customer's sole cost and expense.

Annex A

Data Processing Description

This Annex A forms part of the Contract and describes the processing that MWI shall perform on behalf of Customer.

Subject matter of processing

The subject matter of the Contract as it involves processing personal data.

Nature and purpose of processing

MWI is providing the Software Licence and Services to Customer.

Categories of personal data

The name, address, phone number and other contact information of Customer and Customer's customers.

Categories of data subjects

Customer's employees and customers.

Duration

The term of this Contract.

Sub-processors

Microsoft

Schedule 2

Maintenance and Support Policy

Definition

The "**support items**" referred to below relate to the "**Merlin**" Practice Management Software, provided to Customer as a cloud delivered service.

1. MWI shall provide Maintenance and Support during Normal Business Hours. "**Normal Business Hours**" or "**Working Hours**" are defined as 8:00am – 5:30pm GMT, Monday through Friday, excluding public holidays in the UK. For emergency support outside of Normal Business Hours, MWI shall provide a link through to a support engineer. Support engineers are currently available: Monday through Friday from 5:30pm – 8:00pm GMT, on Saturday from 8:00am, - 8:00pm GMT, on Sunday from 9:00am – 1:30pm GMT; and bank holidays 9:00am to 1:30pm. Support calls outside of Normal Business Hours may, at MWI's discretion, be charged according to MWI's standard scale of charges, from time to time.
2. If the Customer at any time discovers any fault with the supported items, it shall as soon as reasonably practicable notify MWI of the same.
3. MWI shall use reasonable endeavours to attempt to correct the fault within the category time scales referred to below using reasonable care and skill. In no event shall MWI be required to work outside of Normal Business Hours.

3.1 **Category A**

A fault which makes the support items (or any part thereof) unusable and which has a material effect upon the functionality, accuracy or performance of any function upon which the Customer relies for the efficient conduct of the relevant part of its business. MWI shall use reasonable endeavours to respond within thirty (30) minutes and attempt to fix the fault within four (4) Working Hours or as soon as possible thereafter.

3.2 **Category B**

A fault which is not Category A or Category C, i.e. faults that can easily be worked round which do not have a material effect upon the functionality, accuracy or performance of any function upon which the Customer relies for the efficient conduct of the relevant part of its business. MWI shall use reasonable endeavours to respond to the notification within two (2) Working Hours and attempt to fix the fault within 20 business days of notification or as soon as possible thereafter.

3.3 **Category C**

A minor cosmetic fault which does not affect the accuracy or performance of the supported items or questions about the setting up or use of the system. MWI shall use reasonable endeavours to respond to the notification within four (4) Working Hours and shall attempt to fix the fault within 6 months of notification or as soon as possible thereafter.

4. The Customer acknowledges that MWI may provide a temporary, practical work around solution (as opposed to a permanent fix) for a fault; if MWI does provide a temporary work-around solution, it shall use reasonable endeavours to provide a permanent fix as soon as possible thereafter.
5. Following a software fault correction being completed, MWI shall make available in a future release to the Customer's cloud account the corrected version of the object code for the software, including documentation specifying the nature of the correction and providing instructions for the proper use of the corrected version of the software.

6. In the event that MWI fails to abide by the terms of this Maintenance and Support Services Policy, the parties agree that the Customer's sole and exclusive remedy shall be MWI's performance of an attempt to fix the problem.

Schedule 3

Hosting Services Policy

MWI provides the Merlin Practice Management Software as a hosted service to its customers in a private cloud known as vetspace.cloud, which is currently located within the jurisdiction of the United Kingdom of Great Britain and Northern Ireland. Each customer instance of Merlin on the vetspace.cloud platform is securely accessed via a web browser to its own URL to which this policy is related. MWI may modify this policy from time to time by posting an amended policy to MWI site at www.mwiah.co.uk (and any successor or related locations designated by MWI).

1. Service Availability

- 1.1 The Software is only made unavailable for planned maintenance and upgrade windows of downtime or unplanned maintenance or downtime, otherwise it is "**always on**" or "**in-service**", described as "**uptime**". MWI shall endeavour to communicate any "out of service" planned maintenance outside of Normal Business Hours. Very occasionally emergency maintenance needs to occur; in such event, MWI shall endeavour to provide as much notice as is reasonably possible.
- 1.2 MWI shall endeavour to provide uptime at a level of 99.5% uptime measured over a monthly period (the "**Uptime Standard**"). If MWI does not meet this level of uptime, and so long as the Customer's account with MWI is current, the Customer shall be eligible to receive the credits described below. The Customer agrees that these credits are the Customer's exclusive remedy (and MWI's sole liability) with respect to MWI's inability to meet this level of uptime. MWI explicitly disclaims all other remedies, whether in law or equity.
- 1.3 The following constitute permissible downtime and are not included in any uptime calculation:
 - (a) Service unavailability caused by scheduled maintenance of the platform used to provide the applicable service (MWI shall endeavour to provide 7 days' advance notice of service-affecting scheduled maintenance); or
 - (b) Service unavailability caused by events outside of the direct control of MWI or its subcontractor(s), including without limitation, any force majeure event, the failure or unavailability of the Customer's systems, the Internet, the failure of any other technology or equipment used to connect to or access the service, and any fault or failure of an MWI Supplier who MWI uses to provide the Hosting Services.
 - (c) In addition, MWI shall endeavour to meet the following recovery objectives:
 - (i) *RTO* - or Recovery Time Objective, is the target time to recover IT and business activities. MWI's RTO objective is 2 hours.
 - (ii) *RPO* - or Recovery Point Objective, is to minimize any data loss. RPO is determined by looking at the time between data backups and the amount of data that could be lost in between backups. MWI's RPO objective is 30 minutes.

The vetspace.cloud is hosted in a specialist third party data centre. There is a great deal of redundancy built into the configuration at the data centre, but where catastrophic hardware failure does occur, replacement hardware is usually available within four (4) hours.

2. Service Credits

- 2.1 Credits are issued as a financial reimbursement if MWI does not meet the Uptime Standard for a particular month of the term. Upon approval of a claim, MWI shall provide the applicable remedy set forth below:

Monthly Uptime Percentage	Service Credit
<99.5% but >= 99.2%	5% of the monthly Professional Services Fees
<99.2% but >= 99.0%	10% of the monthly Professional Services Fees
<99.0% but >= 98.7%	15% of the monthly Professional Services Fees
<98.7%	20% of the monthly Professional Services Fees

2.2 Any credit shall be applied on request to Professional Services Fees due from the Customer for the service and shall not be paid to the Customer as a refund. All claims for credit are subject to review and verification by MWI, and all credits shall be based on MWI's measurement of its performance of the service and shall be final.

2.3 To receive a service credit for MWI's failure to meet the Uptime Standard in a particular calendar month, the Customer must submit a claim via the customer support portal within 30 days of the end of the month during which MWI did not meet the Uptime Standard, and include the following information:

- (a) the Customer's name and account number;
- (b) the name of the service to which the claim relates;
- (c) the name, email address, and telephone number of the Customer's designated contact; and
- (d) information supporting each claim, including date, time, and a description of the incident and affected service, all of which must fall within the calendar month for which the Customer is submitting a claim.

3. **Back Up Services**

The Merlin SQL Database for Customer is typically backed up as follows:

- (a) a transaction backup every 15 minutes;
- (b) a differential backup after 12 hours (half day roll up of transactions);
- (c) a full backup once per day;
- (d) an off site backup once per day; and
- (e) seven days SQL backup retention.

4. **Data Security**

Connections to Merlin Practice Management Software over the provided URL from the end user are protected by HTTPS peer to peer encryption.