

## **STANDARD TERMS AND CONDITIONS FOR SERVICES SUPPLIED BY ASPIRACLOUD LIMITED**

### **1. Application**

- 1.1 These Terms and Conditions shall apply to the provision of Migration Services by the Provider to the Client under the Agreement.
- 1.2 In the event of conflict between these Terms and Conditions and any other terms and conditions (of the Client or otherwise), the former shall prevail unless expressly otherwise agreed by the Provider in writing.
- 1.3 The Agreement consists of the following documents (and any other document referred to in them) in the order of precedence in which they are listed:
  - 1.3.1 Specification of Services Schedule: Annex A
  - 1.3.2 Fees Schedule;
  - 1.3.3 Data Schedule;
  - 1.3.4 The Terms and Conditions set out in this document;

### **2. Definitions and Interpretation**

- 2.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

**“Agreement”**

means the agreement entered into by the Client and the Provider to which these Terms and Conditions apply, as further described in clause 1.3 above;

**“Business Day”**

means, any day (other than Saturday and Sunday) on which ordinary banks are open for their full range of normal business in the United Kingdom;

**“Commencement Date”**

means the commencement date for the Agreement as set out in the Specification of Services Schedule;

**“Confidential Information”**

means all business, technical, financial or other information of a Party to the Agreement;

**“Client”**

means **The Methodist Church In Great Britain**, a charity registered in the United Kingdom under number **1132208** and a Company limited by Guarantee under number **1132208** whose registered address is **Methodist Church House, 25 Tavistock Place, London WC1H 9SF**, to whom the provider will supply the Services;

**“Data Protection Legislation”**

means all applicable legislation in force from time to time in the United Kingdom applicable to data protection and privacy including, but not limited to, the UK GDPR (the retained EU law version of the General Data Protection Regulation ((EU) 2016/679), as it forms part of the law of England and Wales, Scotland, and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018); the Data Protection Act 2018 (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 as amended;

**“Provider”**

means **AspiraCloud Limited**, a company registered in the United Kingdom under number **07786279** whose registered office is at **1110 Eliot Court, Coventry Business Park, Herald Avenue, Coventry. CV5 6UB**;

**“Services”**

means the services to be provided by the Provider to the Client as set out and further described in the Specification of Services Schedule (including the Annexes);

**“Fees”**

means any and all sums payable by the Client to the Provider arising out of the performance of the Provider's obligations under the Agreement, as set out in the Fees Schedule;

**“Software”**

means any and all programs, applications, instructions, cloud services or similar that may from time to time be installed or accessible on the Client's computer systems; and

**“Working Hours”**

means the normal working hours of the Provider which are nominally 08:30 to 17:00.

2.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:

2.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;

2.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

2.2.3 “these Terms and Conditions” is a reference to these Terms and Conditions as amended or supplemented at the relevant time in accordance with clause 7.2;

2.2.4 a Schedule is a reference to the Schedules of the Agreement (as described in clause 1.3 above), and any other document referred to in them;

- 2.2.5 a Clause or paragraph is a reference to a Clause of these Terms and Conditions (other than the Schedules) or a paragraph of the relevant Schedule; and
- 2.2.6 a "Party" or the "Parties" refer to the parties to the Agreement.
- 2.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 2.4 Words imparting the singular number shall include the plural and vice versa.
- 2.5 References to any gender shall include any other gender.

### **3. Provider's Obligations**

- 3.1 With effect from the Commencement Date until any termination under Clause 8 the Provider shall, in consideration of the Fees being paid in accordance with the terms of payment, provide the Services expressly identified in the Specification of Services Schedule (including Annex A), or otherwise agreed under the Agreement (including these Terms and Conditions).
- 3.2 The Provider will use reasonable care and skill to perform the Services identified in the Specification of Services Schedule (including Annex A) or otherwise agreed under these Terms and Conditions.
- 3.3 The Provider will, subject to Clause 4, use all reasonable endeavours to maintain the functionality of any Software which may be installed or otherwise operative on the Client's Equipment and undertakes to re-install any Software which may have been corrupted or otherwise made unavailable due to hardware failure and to render such technical assistance as may be necessary to secure the satisfactory operation of the Equipment and Software.
- 3.4 Upon receipt of the Client's request for support or rectification of a defect, the Provider shall (subject to its then current commitments) use all reasonable endeavours to begin work on such support or defect not later than two working days thereafter and shall carry out all Services as specified in the Specification of Services Schedule (or any other document referred to in it) during Working Hours until all required work is completed to the reasonable satisfaction of the Client.
- 3.5 The Provider shall use all reasonable endeavours to complete its obligations under the Specification of Services Schedule (including the Annexes). The Parties agree that time is of the essence in the performance of these obligations.

### **4. Client's Obligations**

- 4.1 The Client shall:
  - 4.1.1 allow the Provider access to the Equipment and all relevant Software for investigation purposes;
  - 4.1.2 provide adequate working space and facilities for the Provider's staff; and
  - 4.1.3 co-operate with them in the diagnosis of any defect or malfunction in the Equipment or Software.
- 4.2 The Client shall allow the Provider the use of any Equipment, computer systems, peripherals or other hardware necessary to enable it to provide the Services and shall be responsible for procuring, installing and maintaining all communications media not supplied by the Provider.

- 4.3 Prior to the completion of the relevant phase of the Services (as set out in Annex A to the Specification of Services Schedule), the Client will not allow any changes or modifications to the Software to be made by any party other than those changes or modifications authorised by, and notified to, the Provider. If such changes or modifications are carried out without such authorisation and appropriate notification, the Provider reserves the right to submit a change request to the Client in accordance with the procedure set out in Annex A of the Specification of Services Schedule.
- 4.4 The Client will make freely available to the Provider all documentation associated with the Services, Equipment, working documents, original Software installation media, current data backups, Equipment and any other relevant hardware for the efficient maintenance of the Equipment and the Software.
- 4.5 The Client shall create regular data backups in such a manner as to minimise any potential data loss and to ensure that these are made available to the Provider as required during the provision of the Services.
- 4.6 The Client shall take all reasonable precautions to ensure the safety and health of the Provider's personnel while such personnel are at the Client's premises.

## **5. Price**

- 5.1 The Client agrees to pay the Fees in accordance with Clause 6 and the Fees Schedule.
- 5.2 The Provider shall be entitled to recover from the Client its reasonable incidental expenses for materials used and for third party goods and services supplied in connection with the provision of the Services as detailed in the Fees Schedule. The Migration Specification and Planning Document (Annex A to the Specification of Services Schedule) will clearly outline the detail of the project plan with specifically agreed milestones.
- 5.3 The Client shall pay the Provider for any additional services provided by the Provider that are not specified in the Specification of Services Schedule (provided that such services have been agreed in advance by the Parties) in accordance with the Provider's daily rate in effect at the time of the performance or such other rate as may be agreed in writing by the Parties. Any such charge for additional services shall be invoiced separately from any Fees due under the Fees Schedule.
- 5.4 All sums payable by either Party pursuant to these Terms and Conditions are exclusive of any value added or other similar tax, for which that Party shall be additionally liable.

## **6. Payment**

- 6.1 All payments required to be made pursuant to the Agreement by the Client shall be made within a maximum of 30 days of the date of the relevant VAT invoice issued in accordance with the Fees Schedule, without any set-off, withholding or deduction except such amount (if any) of tax as that Party is required to deduct or withhold by law. Where there is a valid dispute on an invoice payment may be withheld until said dispute is resolved by all Parties.
- 6.2 The time of payment shall be of the essence of these terms and conditions. If the Client fails to make any payment on the due date in respect of any sum due under these Terms and Conditions then the Provider shall have the right to charge the Client interest on any sum outstanding at the rate of 5% above the base rate of

HSBC Bank PLC from the due date for payment until the date on which the payment is received.

## **7. Variation and Amendments**

- 7.1 Subject to clause 7.2 below, no variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
- 7.2 If either Party wishes to vary any details of the Specification of Services Schedule (including its Annexes) it shall follow the relevant change control process set out in Annex A to the Specification of Services Schedule.

## **8. Termination**

- 8.1 Either Party may terminate the Agreement forthwith if:
  - 8.1.1 The other Party is in breach of any of its obligations hereunder;
  - 8.1.2 The other Party has entered into liquidation (other than for the purposes of a bona fide amalgamation or reconstruction) whether compulsory or voluntarily or compounds with its creditors generally or has an administrator, administrative receiver or receiver appointed over all or a substantial part of its undertaking or assets;
  - 8.1.3 The other Party has become bankrupt or shall be deemed unable to pay its debts by virtue of Section 123 of the Insolvency Act 1986;
  - 8.1.4 the other Party ceases or threatens to cease to carry on business; or
- 8.2 In the event of termination by the Provider under clause 8.1 the Provider shall retain any sums already paid to it by the Client without prejudice to any other rights that either party may have whether at law or otherwise.

## **9. Liability**

- 9.1 The Provider has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £2,000,000 per claim. The limits and exclusions in this clause reflect the insurance cover the Provider has been able to arrange and the Client may (at its discretion) make its own insurance arrangements.
- 9.2 References to liability in this clause 9 include every kind of liability arising under or in connection with the Agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 9.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 9.4 Nothing in this clause 9 shall limit the Client's payment obligations under the Agreement.
- 9.5 Nothing in the Agreement limits any liability which cannot legally be limited, including liability for:
  - a. death or personal injury caused by negligence;
  - b. fraud or fraudulent misrepresentation; and

- c. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 9.6 Except as provided above in clauses 9.3 and 9.5, the Provider's maximum liability to the Client under or in connection with the Agreement will be limited to £250,000.
- 9.7 Except as provided above in clauses 9.3, 9.4 and 9.5, the Client's maximum liability to the Provider under or in connection with the Agreement will be limited to £250,000.

## 10. Confidentiality

- 10.1 During the term of the Agreement and for a period of ten years after termination of the Agreement the following obligations shall apply to the Party disclosing Confidential Information ('the Disclosing Party') to the other Party ('the Receiving Party').
- 10.2 Subject to sub-Clause 10.3, the Receiving Party:
  - 10.2.1 may not use any Confidential Information of the Disclosing Party for any purpose other than the performance of its obligations under the Agreement;
  - 10.2.2 may not disclose any Confidential Information of the Disclosing Party to any person except with the prior written consent of the Disclosing Party; and
  - 10.2.3 shall make every effort to prevent the use or disclosure of the Confidential Information of the Disclosing Party.
- 10.3 The obligations of confidence referred to in the provisions of this Clause shall not apply to any Confidential Information of the Disclosing Party that:
  - 10.3.1 is in the possession of and is at the free disposal of the Receiving Party or is published or is otherwise in the public domain before its receipt by the Receiving Party;
  - 10.3.2 is or becomes publicly available on a non-confidential basis through no fault of the Receiving Party;
  - 10.3.3 is required to be disclosed by any applicable law or regulation;
  - 10.3.4 is received in good faith by the Receiving Party from a third party who, on reasonable enquiry by the Receiving Party claims to have no obligations of confidence to the Disclosing Party in respect of it and who imposes no obligations of confidence upon the Receiving Party.
- 10.4 Without prejudice to any other rights or remedies the Disclosing Party may have, the Receiving Party acknowledges and agrees that in the event of breach of this clause the Disclosing Party shall, without proof of special damage, be entitled to an injunction or other equitable remedy for any threatened or actual breach of the provisions of this clause in addition to any damages or other remedies to which it may be entitled.
- 10.5 The obligations of the Parties under the provisions of this clause shall survive the expiry or the termination of the Agreement for whatever reason.

## 11. Data Processing

- 11.1 In this Clause 11 and in the Agreement, “personal data”, “data subject”, “data controller”, “data processor”, and “personal data breach” shall have the meaning defined in Article 4 of the UK GDPR.
- 11.2 Both Parties shall comply with all applicable data protection requirements set out in the Data Protection Legislation. Neither this Clause 11 nor the Agreement shall relieve either Party of any obligations set out in the Data Protection Legislation and shall not remove or replace any of those obligations.
- 11.3 For the purposes of the Data Protection Legislation and for this Clause 11 and the Agreement, the Provider is the “Data Processor” and the Client is the “Data Controller”. The Data Schedule describes the subject matter, duration, nature and purpose of the processing and the personal data categories and data subject types in respect of which the Provider may process the personal data in connection with the Agreement.
- 11.4 The Data Controller shall ensure that it has in place all necessary consents and notices required to enable the lawful transfer of personal data to the Data Processor for the purposes described in these Terms and Conditions
- 11.5 The Data Processor shall, with respect to any personal data processed as part of the Services provided by it in relation to its performance of any of its obligations under the Agreement:
  - 11.5.1 Process the personal data only on the written instructions of the Data Controller unless the Data Processor is otherwise required to process such personal data by law. The Data Processor shall promptly notify the Data Controller of such processing unless prohibited from doing so by law.
  - 11.5.2 Ensure that it has in place suitable technical and organisational measures (as approved by the Data Controller) to protect the personal data from unauthorised or unlawful processing, accidental loss, damage or destruction. Such measures shall be proportionate to the potential harm resulting from such events, taking into account the current state of the art in technology and the cost of implementing those measures. Measures to be taken shall be agreed between the Data Controller and the Data Processor and set out in the Data Schedule to the Agreement.
  - 11.5.3 Ensure that any and all staff with access to the personal data (whether for processing purposes or otherwise) are contractually obliged to keep that personal data confidential; and
  - 11.5.4 Not transfer any personal data outside of the UK without the prior written consent of the Data Controller and only if the following conditions are satisfied:
    - 11.5.4.1 The Data Controller and/or the Data Processor has/have provided suitable safeguards for the transfer of personal data;
    - 11.5.4.2 Affected data subjects have enforceable rights and effective legal remedies;
    - 11.5.4.3 The Data Processor complies with its obligations under the Data Protection Legislation, providing an adequate level of protection to any and all personal data so transferred; and
    - 11.5.4.4 The Data Processor complies with all reasonable

instructions given in advance by the Data Controller with respect to the processing of the personal data.

- 11.5.5 Assist the Data Controller at the Data Controller's cost, in responding to any and all requests from data subjects and in ensuring its compliance with the Data Protection Legislation with respect to security, breach notifications, impact assessments, and consultations with supervisory authorities or regulators (including, but not limited to, the Information Commissioner's Office);
- 11.5.6 Notify the Data Controller within 36 hours of a personal data breach;
- 11.5.7 On the Data Controller's written instruction, delete (or otherwise dispose of) or return all personal data and any and all copies thereof to the Data Controller on termination of the Agreement unless it is required to retain any of the personal data by law; and
- 11.5.8 Maintain complete and accurate records of all processing activities and technical and organisational measures implemented necessary to demonstrate compliance with this Clause 11;

11.6 The Data Processor shall not sub-contract any of its obligations to a sub-contractor with respect to the processing of personal data under this Clause 11 without the prior written consent of the Data Controller (such consent not to be unreasonably withheld). In the event that the Data Processor appoints a sub-contractor, the Data Processor shall:

- 11.6.1 Enter into a written agreement with the sub-contractor, which shall impose upon the sub-contractor the same obligations as are imposed upon the Data Processor by this Clause 11 and which shall permit both the Data Processor and the Data Controller to enforce those obligations; and
- 11.6.2 Ensure that the sub-contractor complies fully with its obligations under that agreement and the Data Protection Legislation.

## **12. Force Majeure**

- 12.1 In this clause 12, Force Majeure means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under this Agreement. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war or governmental action. Inability to pay is not Force Majeure.
- 12.2 A party ("Affected Party") shall not be liable if delayed in or prevented from performing its obligations under this Agreement due to Force Majeure, provided that it:
  - 12.2.1 promptly notifies the other of the Force Majeure event and its expected duration; and
  - 12.2.2 uses reasonable endeavours to minimise the effects of that event.
- 12.3 The corresponding obligations of the other party will be suspended, and it's time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 12.4 If, due to Force Majeure, a party:



12.4.1 is unable to perform a material obligation; or  
12.4.2 is delayed in or prevented from performing its obligations for a continuous period of more than 21 days,  
the other party may terminate this Agreement on not less than one week's written notice.

### 13. **Waiver**

- 13.1 No waiver by the Provider or Client of any breach of these Terms and Conditions shall be considered as a waiver of any subsequent breach of the same or any other provision. A waiver of any term, provision or condition of these Terms and Conditions shall be effective only if given in writing and signed by the waiving party and then only in the instance and for the purpose for which any waiver is given.
- 13.2 No failure or delay on the part of any Party in exercising any right, power or privilege under these Terms and Conditions shall operate as a waiver of, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise of or the exercise of any other right, power or privilege.

### 14. **Severance**

If any provision of these Terms and Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and Conditions and the remainder of the provision in question shall not be affected thereby.

### 15. **Notices**

- 15.1 All notices under these Terms and Conditions shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 15.2 Notices shall be deemed to have been duly given:
- 15.2.1 when delivered, if delivered by courier or other messenger (including recorded delivery mail) during normal business hours of the recipient; or
  - 15.2.2 when sent, if transmitted by e-mail and a successful transmission report or return receipt is generated; or
  - 15.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
  - 15.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.
- in each case addressed to the most recent address or e-mail address notified to the other Party.
- 15.3 Service of any document for the purposes of any legal proceedings concerning or arising out of the Agreement shall be effected by either Party by causing such document to be delivered to the other Party at its registered or principal office, or to such other address as may be notified to one Party by the other Party in writing from time to time.

**16. Dispute Resolution (ADR and Arbitration)**

- 16.1 The parties shall attempt to resolve any dispute arising out of or relating to this Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.
- 16.2 If negotiations under do not resolve the matter within 21 days of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution ("ADR") procedure.
- 16.3 If the ADR procedure does not resolve the matter within 28 days of the initiation of that procedure, or if either party will not participate in the ADR procedure, the dispute may be referred to arbitration by either party.
- 16.4 The seat of the arbitration shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and Rules for Arbitration as agreed between the parties. In the event that the parties are unable to agree on the arbitrator(s) or the Rules for Arbitration, either party may, upon giving written notice to the other party, apply to the President or Deputy President for the time being of the Chartered Institute of Arbitrators for the appointment of an arbitrator or arbitrators and for any decision on rules that may be required.
- 16.5 Nothing in this Clause 16 shall prohibit either party or its affiliates from applying to a court for interim injunctive relief.
- 16.6 The parties hereby agree that the decision and outcome of the final method of dispute resolution under this Clause 16 shall be final and binding on both parties.

**17. Law and Jurisdiction**

- 17.1 The Agreement shall be governed by the laws of England and Wales.

## **Fees Schedule**

### **Office 365 Tenancies**

Each tenancy will be migrated to the central tenant and billed separately based on the following calculations.

Migrations will be calculated on a per user basis at £12 per user plus additional professional services, to include discovery, planning, DNS changes and content migration.

(Costs will be agreed once the scale is known)

SharePoint and Teams content on any of the source tenancies will require additional services if migration is required.

### **Additional Services**

Additional consultancy days will be charged at **£850.00** per day excluding expenses and VAT

### **Expenses:**

Additional site visits would attract standard travel and sustenance expenses, at cost. Each site visit will be capped at £150 of expenses, with an additional charge of £100 for additional concurrent days.

## **Payment Schedule**

### **Core Project**

50% of the Fees schedule is payable on engagement of the migration project.

The remaining 50% is payable on completion of the project in July 2024, subject to agreeing the final completion criteria.

### **Office 365 Tenancies**

Payment for each Office 365 tenant migration is due on completion of each individual tenant.