

MICology

MICONNECT MASTER LICENCE AND SERVICES AGREEMENT

TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In the Agreement, the following definitions shall apply:

Agreement	the agreement between MICology and the Client comprising the Contract Schedule, the SOW and these Terms and Conditions;
Authorised User	an employee or contractor of the Client, authorised by the Client to access and use MiConnect;
Business Day	any day (other than a Saturday or Sunday) on which banks are generally open in London for non-automated normal business;
Client Solution	the configuration, testing and implementation of MiConnect as carried out by MICology for the Client pursuant to clause 3;
Client Data	any materials or data uploaded to MiConnect by the Client and its Authorised Users in the course of their use of MiConnect;
Contract Schedule	the contract schedule of the MiConnect licence and services agreement entered into by the Client;
Documentation	the documentation made available to the Client by MICology from time to time (whether online or in hard copy) which sets out a description of, and user instructions for, MiConnect, including any supplementary documentation provided by MICology for the Client pursuant to clause 5.4;
Effective Date	means the date as stated in the Contract Schedule;
Go Live Date	means the date of acceptance or deemed acceptance by the Client of the Client Solution under clause 4.5;
Initial Term	the initial term of the Agreement as stated in the Contract Schedule;
Intellectual Property Rights	patents, trademarks, service marks, design rights (whether registrable or otherwise), applications for any of those rights, copyright (including all rights in software and any database rights), know-how, confidential



information, trade or business names and any similar rights or obligations whether registrable or not in any country;

MiConnect	MICology’s low code process management platform known as MiConnect;
Licence Fees	the licence fees payable for use of MiConnect, as further detailed in the Contract Schedule;
Professional Services	the development, configuration and implementation services to be provided by MICology to the Client in respect of the Client Solution, as described in the SoW or as otherwise agreed in writing from time to time between MICology and the Client, ;
Service Fees	the fees payable for the Services, as stated in the Contract Schedule or the relevant SOW or as otherwise provided for in these Terms and Conditions;
Services	(i) the Professional Services, (ii) the Support Services, and (iii) any training and other services to be provided by MICology under the Agreement;
Support Schedule	MICology’s standard Support Schedule set out in Schedule 2 at page 21 of these Terms and Conditions;
Support Services	the provision of the helpdesk and fault resolution services as set out in the Support Schedule;
SoW	the Statement of Work (if any) attached to the Contract Schedule.

1.2 Any of the foregoing definitions applies, as the context may require, to the singular or the plural form of the term used.

1.3 In these Terms and Conditions:

- 1.3.1 clause headings are inserted for ease of reference only and do not affect construction;
- 1.3.2 references to “writing” or cognate expressions includes a reference to email, fax or comparable means of communication;
- 1.3.3 words importing one gender shall be treated as importing any gender, words importing individuals shall be treated as importing bodies corporate, corporations, unincorporated associations and partnerships and vice-versa, words importing the singular shall be treated as importing the plural and vice-versa, and words importing whole shall be treated as including a reference to any part thereof; and
- 1.3.4 references to clauses are to the clauses of these Terms and Conditions.



2. COMMENCEMENT AND TERM

- 2.1 The Agreement will commence on the Effective Date and shall continue for the Initial Term and automatically thereafter for consecutive 12 month periods (a “**Renewal Term**”) unless or until terminated by either party giving at least three months’ notice in writing to the other to expire at the end of the Initial Term or any Renewal Term, subject to the termination provisions of clauses 23.1 and 23.2.

3. DEVELOPMENT OF THE CLIENT SOLUTION

- 3.1 In consideration of the Client’s payment of the Professional Services Fees as set out in the Contract Schedule, MICology shall carry out the Professional Services as set out in the SoW in accordance with MICology’s standard Professional Services Schedule at page 18 of these Terms and Conditions.
- 3.2 MICology shall use commercially reasonable endeavours to complete the development by the applicable dates set out in the SoW but any dates or timeframes, including any estimated Go Live Date, set out in the SOW, are estimates only and time shall not be of the essence in respect of MICology’s obligations under the Agreement. MICology shall promptly inform the Client in writing if any circumstance arises which may cause delay to the completion of the development and shall use commercially reasonable endeavours to mitigate against such delay.
- 3.3 MICology shall have no liability if it is delayed or prevented from carrying out or completing the development by any act or omission of the Client or any third party contracted by the Client. MICology shall be entitled to charge the Client for any additional reasonable costs or expenses it incurs as a result of such delays or being so prevented from carrying out or completing the services.
- 3.4 The Client is responsible for carrying out any due diligence as to the suitability of MICology’s staff prior to commencement of the Professional Services. If the Client has any concerns about the suitability of any of MICology’s staff, then these should be communicated to MICology before commencement of the Professional Services as MICology shall not be responsible for making any substitutions after commencement of the Professional Services.

4. USER ACCEPTANCE TESTS

- 4.1 The parties shall agree proposed acceptance criteria and test data for acceptance tests for the Client Solution (“**Acceptance Tests**”). These criteria and data shall be such as are reasonably required to show that Client Solution complies with the SoW.
- 4.2 MICology shall notify the Client when it has completed the configuration, testing and implementation of MiConnect and the Client Solution is ready for Acceptance Tests. The Client shall commence Acceptance Tests as soon as reasonably possible after such notification and shall permit MICology to observe all or any part of the testing. It is the Client’s responsibility rigorously to test the Client Solution to ensure that all use scenarios are tested, and any defects identified.
- 4.3 If the Client Solution fails in some material respect to pass the Acceptance Tests, the Client shall provide a written notice to this effect, giving details of such



failure. MICology shall remedy the defects and/or deficiencies and the relevant test(s) shall be repeated within a reasonable time.

- 4.4 If the Client Solution fails in some material respect to pass any repeated Acceptance Tests, then the Client may, by written notice to MICology, choose at its sole discretion:
 - 4.4.1 to fix a new date for carrying out further tests on the Client Solution. If the Client Solution fails in some material respect such further tests then the Client may request a repeat test under this clause;
 - 4.4.2 to permit installation or implementation of the Client Solution subject to such change of acceptance criteria, amendment of the SoW and/or reduction in the applicable Licence Fees as, after taking into account all the relevant circumstances, is reasonable and as may be agreed with MICology; or
 - 4.4.3 if MICology is unable to correct material defects within a period of three months from the commencement of Acceptance Tests, to reject the Client Solution as not being in conformity with the Agreement in which event the Client may terminate the Agreement and MICology shall refund to the Client any Service Fees paid by the Client in respect of the development of the Client Solution.
- 4.5 Acceptance of the Client Solution shall be deemed to have occurred on whichever is the earliest of:
 - 4.5.1 the signing by the Client of an acceptance certificate;
 - 4.5.2 the expiry of one month after MICology's notification to the Client under clause 4.2 that it has completed the configuration, testing and implementation of MiConnect and the Client Solution is ready for Acceptance Tests or (as the case may be) repeat Acceptance Tests, unless the Client has given any written notice under clause 4.3 or 4.4;
 - 4.5.3 the use of the Client Solution by the Client in the normal course of its business.

5. LICENCE

- 5.1 In consideration of the Client's payment of the Licence Fees in accordance with the Agreement, MICology grants to the Client, on and subject to the terms and conditions of the Agreement, with effect from the Go Live Date, for the Initial Term and any Renewal Terms, a non-exclusive, non-transferable licence, to install and use the machine executable (object code) version of any software which is provided to the Client by MICology for installation on the Client's own servers or the servers of the cloud service provider engaged by the Client to enable the Client to access and use MiConnect and the Client Solution.
- 5.2 In connection with the Client's use of MiConnect in accordance with the Agreement, the Client is also licensed to use the Documentation. The Client acknowledges that the Documentation relates to the generic version of MiConnect and does not contain any details relating to the Client Solution.



- 5.3 The Client shall procure that MICology is given access to the server(s) on which MiConnect is installed for the purpose of provision of the Professional Services and Support Services.
- 5.4 MICology shall provide the Client with a file that represents the Client Solution and, if so required and agreed in the SoW, appropriate supplementary documentation on the use of MiConnect as specifically developed for the Client.

6. HOSTING

- 6.1 The Client acknowledges that MICology is not the provider of the cloud or hosting services. MICology shall not have any responsibility or liability in respect of such cloud or hosting services, their performance or for any defect in or unavailability of such services.
- 6.2 It is the responsibility of the Client to ensure that it has a suitable internet service and that it has the hardware, telecommunications services and software necessary to access MiConnect over the internet as recommended by MICology from time to time. MICology takes no responsibility for the performance of any such hardware, telecommunications services, software or internet service, or for the performance or availability of the internet itself.

7. RESTRICTIONS

- 7.1 The Client is licensed to access and use MiConnect:
 - 7.1.1 Up to the maximum number of Authorised Users per month set out in the Contract Schedule;
 - 7.1.2 for the Client's own business purposes and not directly or indirectly for any other purpose.
- 7.2 The Client shall not permit any person other than an Authorised User to access and use MiConnect and the Client shall not, and shall procure that no Authorised User shall, save for the allocation of Authorised User accounts, license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit MiConnect or make MiConnect available to any third party in any way.
- 7.3 The Client is responsible for maintaining the confidentiality of its usernames and passwords and is fully responsible for all activities that occur under the Client's account.
- 7.4 The Client may only use MiConnect for lawful purposes and must not use MiConnect in any way that breaches any applicable local, national or international law or regulation or in any way that is unlawful or fraudulent or has any unlawful or fraudulent purpose or effect.
- 7.5 The Client warrants to and undertakes with MICology that it shall not, and shall procure that no Authorised User shall:
 - 7.5.1 copy or modify any part of or create any derivative works from, MiConnect, save that the Client may make a backup copy of MiConnect as necessary for the purposes of its lawful use;
 - 7.5.2 reverse compile, disassemble or engineer MiConnect (except as expressly permitted by law);



7.5.3 use or access MiConnect in order to build a product or service which is the same as or similar to MiConnect.

8. SUPPORT

8.1 In consideration of the Client's payment of the Licence Fees and the Service Fees in accordance with the Agreement, MICology shall with effect from the Go Live Date provide the Support Services as set out in the Support Schedule.

9. TRAINING

9.1 If MICology provides training other than that set out in the SoW such training shall be charged at MICology's then current charging rates.

9.2 The Client shall ensure that all Authorised Users are adequately trained in the proper use of MiConnect. For Support Services provided to Authorised Users with inadequate training MICology shall be entitled to charge a fee for such support at MICology's then current standard charging rates in force.

10. CHANGE CONTROL

10.1 If either party wishes to change the scope of the Professional Services (including Client requests for additional services), it shall submit details of the requested change to the other party in writing.

10.2 If either party requests a change to the scope or terms of the Professional Services, MICology shall, within a reasonable time, provide a written estimate to the Client of:

10.2.1 the likely time required to implement the change;

10.2.2 any variations to the Service Fees arising from the change; and

10.2.3 any other impact of the change on the terms of the Agreement.

10.3 The estimate shall remain open for acceptance for a period of 10 Business Days from the date of issue and shall lapse if not accepted by the Client in writing within that time. Where the estimate is accepted by the Client in writing, it shall take effect on the terms and conditions of the Agreement.

11. MICOLOGY WARRANTY

11.1 MICology warrants to the Client that:

11.1.1 MICology will perform the Services with reasonable care and skill and accordance with good industry practice

11.1.2 MiConnect will conform to all descriptions and specifications provided in writing to the Client by MICology, including the Documentation.

12. CLIENT UNDERTAKINGS

12.1 The Client shall:



- 12.1.1 co-operate with MICology on all matters relating to the Agreement and appoint a duly authorised person, who shall have the authority to commit the Client on all matters relating to the Agreement;
- 12.1.2 provide, in a timely manner, such information as MICology may reasonably request in order to provide the Services and ensure that all information that the Client provides is accurate in all material respects.

13. FEES

- 13.1 The Client shall pay to MICology the Licence Fees and the Service Fees in accordance with the fee rates set out in the Contract Schedule.
- 13.2 Licence Fees are calculated on the basis of the number of Authorised Users per month. If the Client wishes to increase the number of Authorised Users, then it shall pay to MICology the additional Licence Fees in advance, in accordance with the fee rates set out in the Contract Schedule.
- 13.3 On payment of the applicable Licence Fees, MICology shall provide an encrypted licence key to the Client. The Client shall not be able to access and use, or continue to access and use, MiConnect without a current encrypted licence key. This is automatic when using the MICology MiConnect Licensing Portal.
- 13.4 Service Fees for provision of Support Services are included in the Licence Fees for the Initial Term. Any support provided for issues outside the scope of the Support Schedule will be charged on a time and materials basis in accordance with MICology's then-current standard billing rates. Support for any such other issues must be booked in advance to ensure resource availability. Once the resource is booked, the Client must pay for the hours booked whether they are used or not.
- 13.5 For any Professional Services which the Client requests in addition to those set out in the SOW, and which MICology in its sole discretion provides, the Client shall pay the Service Fees calculated at MICology's then-current standard billing rates or as otherwise agreed in writing between MICology and the Client pursuant to the terms of clause 10.
- 13.6 Where Professional Services are provided on a time-and-materials basis:
 - 13.6.1 the Service Fees payable for the Professional Services shall be calculated in accordance with MICology's then current standard charging rates in force;
 - 13.6.2 MICology's standard daily fee rates are calculated on the basis of a seven-hour day worked between 9.00 am and 5.00 pm on weekdays (excluding weekends and public holidays);
 - 13.6.3 MICology shall ensure that the members of MICology's project team complete time sheets recording time spent on the project, and MICology shall use such time sheets to calculate the Service Fees covered by each invoice;
 - 13.6.4 MICology shall allow the Client to inspect such time records at all reasonable times on request; and



- 13.6.5 MICology shall invoice the Service Fees to the Client monthly in arrears for time, expenses and materials (together with VAT, where appropriate) for the month concerned, calculated as provided in this clause. Each invoice shall set out the time spent by each member of MICology's project team and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.
- 13.7 Where Professional Services are provided for a fixed price, the total price for the Professional Services shall be the amount set out in Contract Schedule. The total price shall be paid to MICology in instalments as set out in the Contract Schedule.
- 13.8 The Service Fees exclude the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably and properly incurred by members of MICology's team in connection with the Professional Services, and the cost of any materials or services reasonably and properly provided by third parties required by MICology for the supply of the Professional Services. Such expenses, materials and third-party services shall be invoiced by MICology at cost price.
- 13.9 The Licence Fees and Service Fees and all other amounts and fees stated or referred to in the Agreement are exclusive of value added tax, which where applicable shall be added to MICology's invoices at the prevailing rate from time to time.
- 13.10 MICology may increase the Licence Fees and Services Fees with effect from 1 January in each calendar year in line with the percentage increase in the Retail Prices Index (as published by the Office for National Statistics from time to time, or any official index replacing it) in the preceding calendar year.
- 13.11 The Client shall pay each invoice submitted by MICology within 15 days of the invoice date.
- 13.12 If the Client defaults in payment of any Licence Fees or Services Fees and such Licence Fees or Services Fees remain outstanding 30 days after the due date, then without prejudice to any other rights and remedies of MICology:
 - 13.12.1 MICology may suspend provision of the Services while the Licence Fees or Services Fees remain unpaid; and
 - 13.12.2 interest shall accrue on such due amounts at an annual rate equal to 4% above the base rate from time to time of the Bank of England, commencing on the due date and continuing until fully paid, whether before or after judgment. Interest due shall be compounded quarterly and payable on demand.

14. SUSPENSION OF MICONNECT

- 14.1 Without prejudice to any other remedy it may pursue MICology may suspend access to MiConnect (including by withholding or disabling the encrypted licence key):
 - 14.1.1 if the Client is in material breach of any term of the Agreement and such breach (being capable of remedy) has not been remedied within 14 days of the Client being given notice specifying such breach;



14.1.2 if any money is owed to MICology by the Client under an invoice raised in connection with the Agreement and remains unpaid for 14 days after it became due.

14.2 Should MICology invoke such suspension, it shall give the Client prior notice of the intended suspension (including the reasons for such suspension).

15. CONFIDENTIALITY

15.1 Each party will treat as confidential all information obtained from the other party under or in connection with the Agreement which is designated as confidential by the other party or which is by its nature clearly confidential.

15.2 The recipient party will not disclose such confidential information to any person (except only to those employees, agents, sub-contractors, suppliers and other representatives who need to know it) or use such confidential information for purposes other than in connection with the Agreement without the other party's prior written consent.

15.3 This clause will not extend to information that:

15.3.1 is or becomes publicly known other than through any act or omission of the receiving party;

15.3.2 was in the other party's lawful possession before the disclosure;

15.3.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

15.3.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or

15.3.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

15.4 Each party will ensure that all persons to whom it discloses any confidential information of the other party are aware, prior to disclosure, of the confidential nature of the information and that they owe a duty of confidence to the other party.

15.5 These obligations of confidentiality will survive any termination of the Agreement.

16. INTELLECTUAL PROPERTY

16.1 All Intellectual Property Rights in and to MiConnect and the Documentation shall be and remain vested in MICology.

16.2 All Intellectual Property Rights in and to Client Data shall as between the Client and MICology remain the Client's property.

16.3 MICology hereby assigns to the Client all Intellectual Property Rights (present and future) in and to the Client Solution specifically developed by MICology for the Client in the course of the Professional Services, subject to clauses 16.4 and 16.5.



- 16.4 The assignment under clause 16.3 excludes any software elements which form part of the generic functionality of MiConnect and any programming tools, know-how, skills and techniques acquired or used by MICology in the performance of the Professional Services, and all Intellectual Property Rights in and to them shall remain the sole property of MICology and MICology may continue to use them in any way it thinks fit.
- 16.5 The Client acknowledges and agrees that, where another client of MICology provides MICology with requirements which are functionally similar to the Client's requirements, nothing in the Agreement prevents MICology from developing and implementing for such client a configuration or software plug-in component which is functionally similar to the Client Solution. Furthermore, nothing in the Agreement prevents the Client or any other user of MiConnect from independently carrying out and implementing their own configuration which may be functionally similar to another user's configuration or the Client Solution.
- 16.6 Except for the rights specifically granted under the Agreement, nothing in the Agreement shall be construed as transferring any right of ownership over any Intellectual Property Rights to the Client or any Authorised User and all rights in MiConnect and Documentation not specifically granted in the Agreement are reserved by MICology.

17. INTELLECTUAL PROPERTY INDEMNITY

- 17.1 MICology shall defend the Client against any claim that the Client's use of MiConnect, the Documentation and the Client Solution infringes any Intellectual Property Right of any third party and shall indemnify the Client for any amounts awarded against the Client in judgment or settlement of any such claim, provided that:
 - 17.1.1 MICology is given prompt notice of any such claim;
 - 17.1.2 the Client provides reasonable co-operation to MICology in the defence and settlement of such claim, at MICology's expense; and
 - 17.1.3 MICology is given sole authority to defend or settle the claim.
- 17.2 In the defence or settlement of the claim, MICology may obtain for the Client the right to continue using the infringing element in MiConnect, the Documentation or the Client Solution, replace or modify the infringing element so that it becomes non-infringing or, if such remedies are not reasonably available, terminate the Agreement without liability to the Client.
- 17.3 MICology shall have no liability if the alleged infringement is based on:
 - 17.3.1 any Client Data;
 - 17.3.2 the Client's or any Authorised User's use of MiConnect in a manner contrary to the Agreement, the Documentation or any instructions given to the Client by MICology;
 - 17.3.3 the Client Solution in so far as specified by the Client;
 - 17.3.4 the Client Solution in so far as carried out by the Client;



- 17.3.5 the Client's use or any Authorised User's use of MiConnect, the Documentation and the Client Solution after notice of the alleged or actual infringement from MICology or any appropriate authority;
 - 17.3.6 changes or addition MiConnect MiConnect, the Documentation or the Client Solution by the Client or any third party; or
 - 17.3.7 combination, operation or use of MiConnect or the Client Solution with any third-party program or equipment.
- 17.4 This clause sets out the Client's sole and exclusive rights and remedies, and MICology's entire obligations and liability, for infringement of Intellectual Property Rights.
- 17.5 The Client shall indemnify and keep indemnified MICology against all liabilities, damages, costs, losses, claims, expenses, demands and proceedings arising from or incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights to the extent based on any of the matters in clause 17.3.

18. CLIENT DATA

- 18.1 The Client acknowledges and agrees that:
- 18.1.1 MICology is not responsible for Client Data and that the Client is responsible for the legality, reliability, integrity, accuracy, completeness and quality of Client Data;
 - 18.1.2 MICology does not purport to monitor, and accepts no responsibility for monitoring, Client Data under the Agreement;
 - 18.1.3 the Client is responsible for establishing and maintaining adequate security measures to safeguard Client Data from unauthorised access and copying.

19. DATA PROTECTION

- 19.1 While MICology may have technical access to Client Data (including personal data) held by Client within MiConnect for the purposes of provision of Support Services, MICology shall not perform any operation or set of operations on Client Data (including personal data) and as such the parties agree that, for the purposes of applicable data protection laws, MICology is not a processor on behalf of the Client in relation to any such personal data.
- 19.2 The Client acknowledges that:
- 19.2.1 details of the Client's name, address and payment record may be submitted to a credit reference agency;
 - 19.2.2 MICology processes, as controller, personal data relating to Authorised Users, and other employees and representatives of the Client that are collected and used by MICology in order to enable MICology to deliver, administer or manage the Services, the Client's account, and for MICology's own business purposes;



19.2.3 MICology also processes, as controller, personal data that MICology collects when the Client submits a request for Support Services, including information about hardware, software and other details related to the support incident, such as user authentication information, information about the condition of the service, and error-tracking files. MICology processes such data in order to respond to the request and solve the problem reported;

19.2.4 MICology also processes, as controller, the name, email address and other contact details of MICology's contacts at the Client to communicate with the Client information about MiConnect, the Services and any new products and services of MICology.

19.3 For further details regarding MICology's use of personal data, please see MICology's Privacy Policy which can be accessed at www.MICology.com/legal.

20. DISCLAIMER

20.1 While MICology shall use commercially reasonable endeavours to correct any errors in MiConnect in accordance with the Documentation, MICology does not warrant:

20.1.1 that the operation or use of MiConnect will be error-free or uninterrupted or that any defect will be corrected; or

20.1.2 that MiConnect, the Services, Documentation or the information or results obtained by the Client or Authorised Users through the use of MiConnect will meet the Client's (or any Authorised User's) requirements.

20.2 The Client warrants and represents to MICology that it has done all reasonable due diligence on MiConnect and takes sole responsibility for its suitability for the Client's intended purposes. Except as expressly and specifically provided in the Agreement the Client assumes sole responsibility for results obtained from the use of MiConnect by the Client and its Authorised Users.

20.3 MICology shall have no liability for any loss or damage resulting from:

20.3.1 any error or omission in any Client Data;

20.3.2 any Client Solution in so far as carried out by the Client;

20.3.3 MICology following any information or instructions provided by the Client;

20.3.4 any defect in or failure of any hosting service or cloud platform provided by a third party.

20.4 Save as expressly set out in the Agreement, to the maximum extent permitted by law, MICology disclaims any and all representations, conditions and warranties whether express or implied by statute or common law or otherwise that MiConnect, the Services or Documentation are or will be of satisfactory quality, fit for a particular purpose, provided with reasonable care and skill or non-infringing.



21. LIABILITY

21.1 Nothing in the Agreement shall be deemed to limit or exclude the liability of MICology for:

21.1.1 death or personal injury caused by its negligence;

21.1.2 fraud or fraudulent misrepresentation; or

21.1.3 any other liability that cannot by law be limited or excluded.

21.2 Subject to clause 21.1, MICology shall not in any event be liable whether in contract (including by way of indemnity), tort (including negligence), misrepresentation, restitution or otherwise under or in connection with the Agreement for:

21.2.1 any special, indirect or consequential loss or damage;

21.2.2 any direct or indirect loss of profit, turnover, business, revenue, contracts, goodwill, reputation, anticipated savings, management time or data; or

21.2.3 loss of data.

21.3 Subject to clause 21.1 MICology's total aggregate liability to the Client in any calendar year under or in connection with the Agreement whether in contract (including by way of indemnity), tort (including negligence), misrepresentation, restitution or otherwise will be limited to a sum equivalent to the total Licence Fees and Services Fees paid by the Client in the three (3) month period immediately before the date on which the cause of action first arose.

21.4 The Client acknowledges and agrees that the disclaimers, exclusions and limitations set out in the Agreement for the benefit of MICology are fair and reasonable having regard to the fees and charges payable by the Client under the Agreement. If the Client wishes to have increased liability protection, then additional fees will be payable.

21.5 The Client shall indemnify and hold MICology harmless from any claims (including third party claims), losses, damages, demands, costs, expenses (including legal costs and expenses) fines and any other liabilities whatsoever arising from:

21.5.1 any breach by the Client (including by any Authorised User) of the Agreement;

21.5.2 any access to or use of MiConnect by any Authorised User or any other person authorised by, or for whom, the Client is responsible.

22. BRANDING

22.1 MICology may use the MiConnect and 'Powered by MICology' branding in MiConnect. MICology may list the Client as a user of MiConnect in its advertising and marketing materials and on its website.



23. TERMINATION

- 23.1 Either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- 23.1.1 the other commits a material breach of any of its obligations under the Agreement which (if the breach is capable of remedy) it has failed to remedy within 30 days after the receipt of a notice in writing from the terminating party requiring the defaulting party to do so;
 - 23.1.2 a provisional liquidator is appointed to the other or the other goes into liquidation either compulsorily or (except for the purpose of reconstruction or amalgamation) voluntarily;
 - 23.1.3 a receiver is appointed in respect of the whole or any part of the assets of the other;
 - 23.1.4 an administration order is made in respect of the other; or
 - 23.1.5 the other enters into a voluntary arrangement or any other composition or compromise with the majority by value of its creditors.
- 23.2 MICology may terminate the Agreement by notice in writing to the Client having immediate effect if the Client:
- 23.2.1 defaults in payment of any MICology invoice and such invoice remains outstanding fourteen (14) days after MICology has issued a demand in writing for payment;
 - 23.2.2 infringes MICology's or its third-party licensor's Intellectual Property Rights.

24. CONSEQUENCES OF TERMINATION

- 24.1 On termination of the Agreement however arising:
- 24.1.1 MICology shall be entitled to receive from the Client all Licence Fees, Service Fees and any other fees and expenses accrued or incurred under the Agreement up to the date of termination;
 - 24.1.2 MICology may discontinue provision of the Services;
 - 24.1.3 the Client shall, and shall procure that all Authorised Users shall, cease all use of MiConnect and the Documentation and MICology may remotely disable the Client's and Authorised Users' access to MiConnect;
 - 24.1.4 the Client shall immediately uninstall MiConnect from all servers and destroy or return to MICology (at MICology's option) all copies including backup copies of MiConnect then in its possession, custody or control and, in the case of destruction, certify to MICology that it has done so.
- 24.2 Termination shall not affect or prejudice the accrued rights of the parties as at termination.



24.3 The provisions of clauses 15 (Confidentiality), 16 (Intellectual Property Rights), 20 (Disclaimer) and 21 (Liability) shall survive termination of the Agreement for any reason.

25. NON-SOLICITATION

25.1 Neither party shall directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other party any person employed or engaged by such other party in the provision of the Services or (in the case of the Client) in the receipt of the Services at any time during, or for a further period of 12 months after the termination of, the Agreement.

25.2 The Client expressly acknowledges that:

25.2.1 MICology employees and contractors are subject to a restriction during, and for a period of 12 months after the end of, their employment or engagement with MICology on working in any capacity (whether as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity) for any client of MICology with whom they had dealings during the last 12 months of their employment or engagement with MICology;

25.2.2 any attempt by the Client directly or indirectly to solicit or entice away any such employee or contractor would constitute an unlawful inducement to the employee or contractor to breach their contract with MICology.

25.3 If either party commits any breach of clause 25.1, the breaching party shall, on demand, pay to the claiming party a sum equal to one year's basic salary or the annual fee that was payable by the claiming party to that employee, worker or independent contractor, plus the recruitment costs incurred by the claiming party in replacing such person.

26. ASSIGNMENT AND SUBCONTRACTING

26.1 The Client shall not assign, transfer, mortgage, charge, declare a trust of, subcontract or deal in any other manner with any or all of its rights or obligations under the Agreement, without the prior written consent of MICology (such consent not to be unreasonably withheld or delayed).

26.2 MICology may without the Client's prior written consent:

26.2.1 assign or transfer the benefit of, and any of its rights under, the Agreement together with any cause of action arising in connection with any of them to its successor in title, to any of its group companies or to any purchaser or transferee from it or any of them; or

26.2.2 sub-contract any or all of its obligations under the Agreement so long as MICology remains responsible for the obligations performed by any such subcontractor to the same extent as if such obligations were performed by MICology.

26.3 Any attempted assignment, transfer or other dealing in violation of this clause 25 will be void and without effect.



27. MODIFICATIONS TO THESE TERMS AND CONDITIONS

27.1 MICology may modify these Terms and Conditions (including MICology's standard Professional Services Schedule and Support Schedule at Schedules 1 and 2 respectively) at any time by posting a revised version on its website. It is the Client's responsibility to check MICology's website for modifications to these Terms and Conditions and the Standard Support Schedule. By continuing to use MiConnect after the effective date of any modifications, the Client shall be deemed to have agreed to the modified terms. In the case of any material changes, MICology shall give the Client not less than 30 days' advance notice in accordance with clause 29.

28. FORCE MAJEURE

28.1 MICology shall have no liability to the Client under the Agreement if it is prevented from or delayed in performing its obligations under the Agreement, or from carrying on its business, by any act, event, omission or accident beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of MICology or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, act of terrorism, pandemic, epidemic, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

29. NOTICES

29.1 Any notice or other communication given to a party under or in connection with the Agreement shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.

29.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 29.1; 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

29.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

30. MISCELLANEOUS

30.1 Subject to clause 27, no amendment or variation of the Agreement shall be effective unless it is in writing, refers to the Agreement and is duly signed or executed by a duly authorised representative of each of the parties.

30.2 If any provision or part of any provision of the Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, then the provision or part shall be severed and the remainder of the provision and all other provisions



of the Agreement shall remain valid and in full force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision will apply with whatever modification is necessary to give effect to the commercial intention of the parties.

- 30.3 MICology is an independent contractor. Nothing in the Agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 30.4 No delay in exercising or failure to exercise by any party of any of its rights under or in connection with the Agreement shall operate as a waiver or release of that right. Rather, any such waiver or release must be specifically granted in writing signed by the party granting it.
- 30.5 The Agreement represents the entire agreement between the parties in relation to the subject matter of the Agreement and supersedes any previous agreement whether written or oral between all or any of the parties in relation to that subject matter. Accordingly, all other conditions, representations and warranties which would otherwise be implied (by law or otherwise) shall not form part of the Agreement.
- 30.6 Each party acknowledges that in entering into the Agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in the Agreement.
- 30.7 Except as otherwise expressly provided in the Agreement, none of the terms and conditions of the Agreement shall be enforceable by any person who is not a party to it, and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply in relation to the Agreement.
- 30.8 The Agreement may be executed in any number of counterparts and by the parties on different counterparts. Each counterpart shall constitute an original of the Agreement, but all the counterparts shall together constitute one and the same agreement. Transmission of an executed counterpart of the Agreement (not just a signature page) by email (in PDF format) shall take effect as the transmission of an executed "wet-ink" counterpart of this agreement.

31. LAW AND JURISDICTION

- 31.1 The Agreement, and any non-contractual rights or obligations arising out of or in connection with it or its subject matter, shall be governed by and construed in accordance with English law.
- 31.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to hear and determine or otherwise settle all and any claims, proceedings, suits or action (including arbitration) arising out of or in connection with the Agreement or its subject matter.



Schedule 1 - Professional Services

1. PROFESSIONAL SERVICES

1.1 MICology shall carry out the development, configuration and integration services set out in the Statement of Work (SoW) and shall use all reasonable endeavours to complete such services by the applicable date set out in the SoW.

1.2 Client Configuration may include any or all of the following elements:

1.2.1 Data: the data model documented to describe the structure of the Client Data;

1.2.2 Workflow: the documented process stages and requirements that describe the work that is carried out to progress the process from stage to stage;

1.2.3 Documents: the document templates and the requirements that describe how documents are linked to the client process;

1.2.4 Financial Data: the financial data model documented to describe the structure of the client ledgers and financial transactions;

1.2.5 Reporting: the reporting templates and requirements that describe the management information;

1.2.6 Client and Supplier Interactions: the requirements that describe the different self-service points that provide the ability for third parties to interact with the system and take part in the process;

1.2.7 The configuration code outputted by MiConnect to meet the requirements described by the above.

1.3 MICology shall promptly inform the Client in writing if any circumstance arises which may cause delay to the completion of the services and MICology shall use all reasonable endeavours to mitigate against such delay.

1.4 Without prejudice to its obligations in clause 1.2, MICology shall have no liability if it is delayed or prevented from carrying out or completing the services by any act or omission of the Client or any third party contracted by the Client. MICology shall be entitled to charge the Client for any additional reasonable costs or expenses it incurs as a result of such delays or being so prevented from carrying out or completing the services.

2. CONFIGURATION FEES

2.1 Configuration services are not included as part of the Support Services and the Client shall pay MICology separate Service Fees for Professional Services provided for or in connection with the configuration of the Client's system on a time and materials basis in accordance with MICology's standard billing rates as in force from time to time. MICology's standard billing rates are set out in the pricing policy www.MICology.com/pricing.



3. CLIENT PLUG-IN - GLOBAL

- 3.1 MICology shall develop the Client Plug-In in accordance with the SoW or as agreed from time to time by the parties pursuant to clause 8.1.
- 3.2 Before installing or implementing any Client Plug-In, the parties shall agree proposed acceptance criteria and test data for acceptance tests for the Client Plug-In ("Acceptance Tests"). These criteria and data shall be such as are reasonably required to show that Client Plug-In complies with the SoW.
- 3.3 If the Client Plug-In fails to pass the Acceptance Tests, the Client shall provide a written notice to this effect, giving details of such failure. MICology shall remedy the defects and/or deficiencies and the relevant test(s) shall be repeated within a reasonable time.
- 3.4 If the Client Plug-In fails in some material respect to pass any repeated Acceptance Tests, then the Client may, by written notice to MICology, choose at its sole discretion:
 - 3.4.1 to fix a new date for carrying out further tests on the Client Plug-In. If the Client Plug-In fails such further tests then the Client may request a repeat test under this clause 3.4.1;
 - 3.4.2 to permit installation or implementation of the Client Plug-In subject to such change of acceptance criteria, amendment of the SoW and/or reduction in the applicable Service Fees as, after taking into account all the relevant circumstances, is reasonable; or
 - 3.4.3 if MICology is unable to correct material defects within a period of three months from the commencement of Acceptance Tests, to reject the Client Plug-In as not being in conformity with the agreement in which event MICology shall refund to the Client any Service Fees paid by the Client in respect of the development of the Client Plug-In.
- 3.5 Acceptance of Client Plug-In shall be deemed to have occurred on whichever is the earliest of:
 - 3.5.1 the signing by the Client of an acceptance certificate;
 - 3.5.2 the expiry of five days after the completion of all the Acceptance Tests, unless the Client has given any written notice under clause 3.3;
 - 3.5.3 the use of the Client Plug-In by the Client in the normal course of its business.

4. TRAINING

- 4.1 MICology will provide training in the use of MiConnect as set out in the SoW.
- 4.2 If MICology provides training other than that set out in the SoW such training shall be charged at MICology's then current charging rates.
- 4.3 The Client shall ensure that all Authorised Users are adequately trained in the proper use of MiConnect. For Support Services provided to Authorised Users with inadequate training MICology shall be entitled to charge a fee for such support at MICology's then current standard charging rates in force.



5. SERVICE FEES

- 5.1 Where Professional Services are provided on a time-and-materials basis:
- 5.1.1 the Service Fees payable for the Professional Services shall be calculated in accordance with MICology's then current standard charging rates in force;
 - 5.1.2 MICology's standard daily fee rates are calculated on the basis of a seven-hour day worked between 9.00 am and 5.00 pm on weekdays (excluding weekends and public holidays);
 - 5.1.3 MICology shall ensure that the members of MICology's project team complete time sheets recording time spent on the project, and MICology shall use such time sheets to calculate the Service Fees covered by each invoice;
 - 5.1.4 MICology shall allow the Client to inspect such time records at all reasonable times on request; and
 - 5.1.5 MICology shall invoice the Service Fees to the Client monthly in arrears for time, expenses and materials (together with VAT, where appropriate) for the month concerned, calculated as provided in this clause. Each invoice shall set out the time spent by each member of MICology's project team and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.
- 5.2 Where Professional Services are provided for a fixed price, the total price for the Professional Services shall be the amount set out in SoW. The total price shall be paid to MICology in instalments as set out in the SoW.
- 5.3 The Service Fees excludes:
- 5.3.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably and properly incurred by members of MICology's team in connection with the Professional Services, and the cost of any materials or services reasonably and properly provided by third parties required by MICology for the supply of the Professional Services. Such expenses, materials and third-party services shall be invoiced by MICology at cost price; and
 - 5.3.2 VAT, which MICology shall add to its invoices at the appropriate rate.
- 5.4 The Client shall pay each invoice submitted by MICology within 15 days of the invoice date.

Schedule 2 - Support Services

MICology shall provide the Support Services in accordance with the terms of this Support Schedule subject to payment by the Client of the Services Fees (as applicable).

6. DEFINITIONS

6.1 In this Schedule, the following terms have the following meanings:

"Category 0 (Complete Failure)"	means a Fault which completely prevents any use of MiConnect by all Authorised Users;
"Category 1 (Urgent)"	means a Fault which completely prevents the performance of an essential part of MiConnect;
"Category 2 (High)"	means a Fault which is not a Category 0 or Category 1 Fault but which imposes serious limitations or restrictions on the performance of an important part of MiConnect;
"Category 3 (Medium)"	means a Fault which is not a Category 0, Category 1 or Category 2 Fault but which prevents the faultless performance of an important or regularly used part of MiConnect;
"Category 4 (Low)"	means a Fault which is not a Category 0, Category 1, Category 2 or Category 3 Fault, but which is of a relatively minor or intermittent nature and does not significantly affect the performance of MiConnect;
"Category 5 (Standard Release)"	means a Fault which is not a Category 0, Category 1, Category 2, Category 3 or Category 4 Fault, and which is of a very minor or intermittent nature and does not significantly affect the performance of MiConnect;
"Fault"	an error, fault or defect in MiConnect where MiConnect is not working materially in conformance with the Documentation;
"Normal Working Hours"	means the hours of 9.00 to 17.00 Monday to Friday, excluding bank and public holidays in England.

7. HELP DESK

7.1 MICology shall provide qualified personnel during Normal Working Hours to provide telephone advice, consultation and assistance to the Client and Authorised Users in relation to the use of MiConnect and the reporting of Faults.



7.2 The Client shall ensure an appropriate number of employees are trained to deal with the day to day support of MiConnect. Where the Client trained employees are unable to resolve the problem they shall communicate this to MICology via email at technical.support@MICology.com.

8. FAULT REPORTING PROCEDURE

8.1 All Faults shall be reported by email, one Fault per email. MICology engineers shall acknowledge receipt within 1 hour for category 1-5. Acknowledgement shall be made by telephone for category 0 Faults.

8.2 In the event of a Fault on the solution coming to the attention of the Client it shall:

8.2.1 Make reasonable preliminary unilateral assessment of the category (0-5) of the Fault in question;

8.2.2 Report such Fault (and its category) to MICology as soon as reasonably practicable;

8.2.3 Ensure that the Fault is reproducible on more than one machine. A Fault will be common to all machines. If it can only be produced on one machine then the problem exists in the configuration of the individual workstation, support for which is not covered by the Agreement; and

8.2.4 Provide full information concerning the Fault in writing, including but not limited to the following:

(a) Full text of any message(s) displayed;

(b) All the steps required reproducing the Fault;

(c) Computer hardware;

(d) Exact time(s) of Fault manifestation(s); and

(e) Details of any data being accessed at the time of the Fault (for example, any record reference that could identify the data being accessed).

8.3 In the event of a Fault on MiConnect coming to the attention of MICology, MICology shall:

8.3.1 Log the report of such Fault upon discovery of such Fault;

8.3.2 Where possible agree with the Client the category and the nature of any such Fault; and

8.3.3 Provide telephone and/or email assistance to the Client in relation to such Fault and if appropriate attempt to remedy such Fault.



9. REMEDY

9.1 Upon a Fault being reported to MICology, MICology shall where possible suggest an immediate remedy for the Fault, failing which MICology shall assign an internal log number to the Fault and use commercially reasonable endeavours to:

9.1.1 Remedy the Fault if possible; or

9.1.2 Implement a temporary solution for circumventing a Fault (workaround) until a permanent remedy becomes possible within the following target periods calculated from the time when the Fault first came to the attention of MICology:

Category	Temporary solution or workaround	Remedy
0 (Complete Failure)	4 Hours	16 Hours
1 (Urgent)	8 Hours	32 Hours
2 (High)	8 Hours	7 Days
3 (Medium)	2 Days	30 Days
4 (Low)	30 Days	60 Days
5 (Standard Release)	30 Days	90 Days

9.2 Hours refers to Normal Working Hours save that for Category 0, 1 and 2 Faults reported during Normal Working Hours, MICology shall continue working on the temporary solution even after Normal Working Hours.

9.3 Any additional support provided to Authorised Users outside of category 0-5 will be provided on a time and materials basis at MICology’s then current standard charging rates in force.

9.4 Enhancement requests will be considered but will not necessarily be included in future releases of MiConnect.

10. EXCLUSIONS

10.1 Support for all issues other than a “Fault” (including deployments, supporting client deployments, supporting configuration, and managing third party integrations) will be charged on a time and materials basis at MICology’s then current charging rates. Support for any such other issues must be booked in advance to ensure resource availability. Once the resource is booked, the hours would need to be paid for whether they are used or not.

10.2 The Support Services relate to MiConnect and not to any development or configuration of MiConnect carried out for the Client in implementing the Client Solution. Any maintenance and support for the Client Solution where the development or configuration of MiConnect carried out for the Client is the issue following acceptance of the Client Solution will be provided on a time and materials basis at MICology’s then current charging rates.

10.3 Maintenance and support services are excluded from the Support Services to the extent that they are necessitated by:



- 10.3.1 any error, act or omission of any Authorised User or the Client's agents or employees;
 - 10.3.2 Force majeure (as defined in clause 25);
 - 10.3.3 unauthorised acts of third parties;
 - 10.3.4 failure or interruption of any electrical power, telephone or communication line or like cause;
 - 10.3.5 faults in computer hardware belonging to or under the control of the Client, operating software or any other software used in conjunction with MiConnect;
 - 10.3.6 failure due to configuration on incorrectly installed workstations; and
 - 10.3.7 any other cause external to MiConnect, except ordinary use.
- 10.4 MICology may, at its discretion and the Client's request, provide maintenance and support services to the Client that would otherwise be excluded under this Support Schedule on a time and materials basis at MICology's then current charging rates.