

FAIRSAIL MASTER PROFESSIONAL SERVICES AGREEMENT (MPSA) – REPLACED ON 14/06/2017

FAIRSAIL MASTER PROFESSIONAL SERVICES AGREEMENT

BY SIGNING A WORK ORDER AS PART OF THE ORDERING PROCESS, YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS GOVERNING FAIRSAIL'S SERVICES. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY.

It is hereby agreed that:

1. DEFINITIONS

1.1 In this Agreement, unless the context otherwise requires:

"Agreement" shall mean this document and any documentation expressly incorporated herein by reference;

"Deliverables" means all documents, products and materials developed by Fairsail or its representatives in relation to the Services in any form;

"Discovery Document" means the document produced by Fairsail, and approved by the Customer, as the output from the discovery workshop at the start of an implementation project which sets out the detail of the requirements for the implementation project as agreed between Fairsail and the Customer.

"Intellectual Property Rights" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world;

"Services" means the services to be provided by Fairsail under this Agreement, as set out in a Work Order; and

"Work Order" means the document agreed between the parties and setting out the Services to be provided, the estimated timetable for provision of such Services, the charges payable by the Customer, and any other obligations on the parties each such Work Order to be incorporated into and to become a part of this Agreement (in the event of any conflict between the terms of this Agreement and the terms of any such Work Order, the terms of the Work Order shall prevail).

1.2 Clause headings shall not affect the interpretation of this Agreement.

1.3 A person includes an individual, corporate or unincorporated body (whether or not having a separate legal personality).

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6 A reference to a statute or statutory provision is a reference to it as it is in force from time to time.

1.7 A reference to writing or written shall not include faxes and may include e-mail, other than in the case of notices relating to breach or termination of this Agreement.

1.8 Where the words include(s), including or in particular are used in this Agreement, they are deemed to have the words "without limitation" following them.

1.9 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule.

2. COMMENCEMENT AND DURATION

2.1 This Agreement shall commence on the Effective Date and continue unless and until terminated in accordance with clause 7.

2.2 Fairsail shall provide the Services to the Customer subject to an agreed Work Order and on the terms and conditions of this Agreement.

2.3 A Work Order shall be agreed in the following manner:

2.3.1 the Customer shall provide Fairsail with a request for a Work Order, setting out the requirements and specifications of the services which it is requesting, including a description of the work to be done, any desired delivery date or timetable, any Deliverables, and such other information as Fairsail may request to allow it to prepare a draft Work Order;

2.3.2 Fairsail shall, as soon as reasonably practicable, provide the Customer with a draft Work Order; and

2.3.3 Fairsail and the Customer shall discuss and agree the draft Work Order and when it has been agreed, they shall both sign a copy of it and it shall become a Schedule to and subject to this Agreement.

2.4 Once a Work Order has been agreed and signed, it cannot be amended except in accordance with clause 10.

3. CUSTOMER RESPONSIBILITIES

3.1 The Customer shall:

3.1.1 co-operate with Fairsail in all matters relating to the Services;

3.1.2 provide, for Fairsail and its representatives, in a timely manner and at no charge, access to the Customer's premises, office accommodation, equipment, data and other facilities as required by Fairsail for performance of the Services;

3.1.3 provide, in a timely manner, any information, documentation, equipment or other materials as Fairsail may require, and ensure that it is accurate in all material respects;

3.1.4 inform Fairsail of all health and safety rules, regulations and procedures and any other reasonable security requirements that apply at the Customer's premises;

3.1.5 ensure that the Customer's equipment is in good working order and suitable for the purposes for which it is used and conforms to all relevant standards or requirements for the territory in which the Services are performed; and

3.1.6 obtain and maintain all necessary consents and licenses, including any licenses necessary for integrating Fairsail with third-party software operated by the Customer, and comply with all relevant legislation in relation to the Services.

3.2 If Fairsail's performance of its obligations under this Agreement is prevented or delayed by an act or omission of the Customer, Fairsail shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.

3.3 The Customer shall be liable to pay to Fairsail, on demand, all reasonable costs, charges or losses sustained or incurred by Fairsail that arise from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this Agreement, subject to Fairsail confirming such costs, charges and losses to the Customer in writing.

3.4 The Customer shall not, without the prior written consent of Fairsail, at any time from the Effective Date to expiry of 6 months after the termination of this Agreement, attempt to solicit or entice away from Fairsail or employ or attempt to employ any person who is, or has been, engaged in the provision of the Services. Any consent given by Fairsail pursuant to this clause shall be subject to the Customer paying a sum equivalent to 50% of the then current annual remuneration of that employee, consultant or subcontractor.

4. FAIRSAIL'S OBLIGATIONS

4.1 Fairsail shall use all reasonable endeavours to provide the Services, and to deliver the Deliverables to the Customer, in accordance with a Work Order in all material respects. It shall endeavour to do so in accordance with any delivery date or timetable set out in a Work Order, but any such dates shall be estimates only and time for performance by Fairsail shall not be of the essence of this Agreement.

4.2 Fairsail warrants that the Services will conform substantially to any description or specification of such Services provided by it to the Customer as part of a Work Order or Discovery Document and will be performed with reasonable skill and care. It is the responsibility of the Customer to ensure that their requirements are accurately reflected in that agreed specification.

4.3 The Customer must notify Fairsail of any failure of the Services to comply with this Agreement within 30 days of completion of those Services. On receiving such notification, Fairsail may (at its sole discretion) re-perform the Services or remedy any defect within a reasonable period of time, or refund the charges paid by the Customer for that part of the Services which is deficient.

4.4 Other than as set out in this Agreement, all conditions, representations and warranties, whether express, implied, statutory or otherwise, are excluded to the full extent permissible by law.

4.5 Fairsail warrants that it has and will maintain all necessary licenses, consents, and permissions necessary for the performance of its obligations under this Agreement.

5. INTELLECTUAL PROPERTY RIGHTS

5.1 Fairsail alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the Deliverables and any other Fairsail materials used or provided in the course of providing the Services. Fairsail licenses all such rights to the Customer on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services.

5.2 The Customer acknowledges that, where Fairsail does not own any materials used in performing the Services, including content that the Customer wishes to upload and third party software operated by the Customer, the Customer's use of rights in those materials is conditional on obtaining a written license (or sub-license) from the relevant licensor or licensors.

6. CHARGES AND PAYMENT

6.1 Unless expressly specified otherwise in a Work Order, Services shall be provided on a time and materials basis at the rates set out in each Work Order. Any estimate of cost, effort or timescale shall be non-binding guidance for the Customer only and may be exceeded subject to prior agreement with the Customer.

6.2 Fairsail shall provide timesheets to the Customer at the end of each week for the Services provided during that week. The Customer shall sign these timesheets to acknowledge that the relevant Services have been delivered and may be charged for.

6.3 Fairsail shall be entitled to charge for its hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom it engages in connection with the Services. Such expenses shall be invoiced by Fairsail and payable in accordance with clause 4.

6.4 All charges and expenses due will be invoiced monthly and payable within 14 days from the date of the invoice.

6.5 Fairsail's charges and expenses are exclusive of all taxes, levies, or duties imposed by taxing authorities, and the Customer shall be responsible for payment of all such taxes, levies, or duties in addition.

6.6 In addition to any other rights it may have, Fairsail reserves the right to suspend provision of any Services if the Customer fails to pay any invoice within 30 days of receiving notice that payment is overdue. Interest of 4% above the base rate of the Bank of England shall be payable on any overdue balance.

6.7 The parties agree that Fairsail may review and increase its standard rates at any time. Fairsail shall give the Customer written notice of any such increase 3 months before the proposed date of the increase. If the Customer does not accept the increase, it may terminate the Agreement in accordance with clause 7.1.

6.8 All sums payable to Fairsail shall become due immediately on termination of this Agreement.

6.9 All amounts due under this Agreement shall be paid in full without set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7. TERM & TERMINATION

7.1 This Agreement commences on the Effective Date and shall continue unless and until terminated by either party giving at least 90 days written notice to the other.

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

7.2.1 the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if remediable) fails to remedy that breach within 45 days of being notified in writing to do so;

7.2.2 an order is made or a resolution is passed for the winding up of the other party, a provisional liquidator is appointed in respect of the other party, an administration order is made in respect of the other, a receiver is appointed in respect of the other or all or any of its assets, or the other is unable to pay any of its debts within the meaning of Section 123 of the Insolvency Act 1986, or any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the aforementioned events; or

7.2.3 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

7.3 Fairsail may terminate this Agreement with immediate effect by giving written notice to the Customer if:

7.3.1 there is a change of control of the Customer which results in the Customer being controlled by a competitor of Fairsail; or

7.3.2 the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment.

7.4 On termination of this Agreement pursuant to clause 1, any outstanding Work Orders shall be completed prior to such termination where possible or the Agreement shall be deemed to continue in relation to such Work Order until the Services are completed. Notwithstanding the foregoing, the parties may mutually agree to terminate a Work Order, in which case the Customer shall pay Fairsail for its time and material costs and expenses up to the date of termination.

7.5 On termination of this Agreement pursuant to clauses 2 or 7.3, any outstanding Work Orders shall also terminate and the Customer shall pay Fairsail for its time and material costs and expenses up to the date of termination.

7.6 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

8. LIMITATION OF LIABILITY

8.1 Subject to clause 3 below neither party shall be liable to the other for any:

a) loss of data, revenue, business, or profits; or

b) any other indirect, punitive, special, exemplary, incidental or consequential damages or losses,

(in each case whether direct or indirect and howsoever arising) in any way arising out of or in connection with this Agreement (whether arising from any breach of contract or tort (including

negligence)), even if such loss was reasonably foreseeable or if one party had advised the other of the possibility of such loss.

8.2 Subject to clause 3 either party's aggregate liability under this Agreement shall not exceed the value of the charges and expenses paid or payable from the Customer in the twelve (12) month period immediately preceding the event giving rise to such claim.

8.3 Nothing in this Agreement shall be construed so as to limit or exclude the liability of:

- a) either party arising for death or personal injury caused by its negligence; or
- b) either party arising for fraud or fraudulent misrepresentation.

9. NOTICE

9.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes.

9.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by e-mail shall be deemed to have been received at the time of transmission.

10. AMENDMENT

10.1 Any amendment of this Agreement or any Work Order must be agreed in writing and signed by duly authorized representatives of both parties. Fairsail reserves the right to modify the terms and conditions of this Agreement at any time, effective upon posting of an updated version of this Agreement at <http://go.sagepeople.com/fairsail-commercial-agreements>. You are responsible for regularly reviewing this Agreement. Continued receipt of Fairsail Services after any such changes shall constitute your consent to such changes.

11. ASSIGNMENT

11.1 This Agreement may not be assigned by the Customer without the prior written approval of Fairsail but may be assigned without the Customer's consent by Fairsail to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger.

12. FORCE MAJEURE

12.1 Neither party shall be liable in respect of any breach of this Agreement due to any cause beyond its reasonable control including but not limited to act of God, inclement weather, flood, lightning, fire, industrial action, any act or omission of government or any other competent authority, war, military

operations, riot or the act or omission of any party for whom Fairsail or Customer (as appropriate) is not responsible.

13. CONFIDENTIALITY

Definition of Confidential Information. As used herein, “**Confidential Information**” means all confidential information of a party (“**Disclosing Party**”) disclosed to the other party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, which shall include the existence and terms of this Agreement (including pricing and other terms reflected in all Work Orders hereunder), the Services, Deliverables, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.

13.1 Confidentiality. The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party’s prior written permission.

13.2 Protection. Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own confidential information of like kind (but in no event using less than reasonable care).

13.3 Compelled Disclosure. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure.

13.4 Remedies. If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of confidentiality protections hereunder, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

14. RELATIONSHIP TO ONLINE SERVICE

The Services provided under this Agreement may be in support of the Customer’s right to access and use, under a separate Agreement, to Fairsail’s online, Web-based applications. Such separate Agreement shall govern all use by the Customer of such online, Web-based applications provided by Fairsail. Neither this Agreement nor any Work Order hereunder grants the Customer any license or rights to use such online, Web-based applications provided by Fairsail. In addition, except for the Services described in Work Orders hereunder, the Customer agrees that its purchase of Services under this Agreement is not contingent upon the delivery of any future functionality or features in Fairsail’s

online, Web-based applications, nor is it dependent upon any oral or written public comments made by Fairsail with respect to future functionality or features.

15. GENERAL

15.1 This Agreement 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 law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim.

15.2 This Agreement, together with any applicable Work Order, comprises the entire agreement between the Customer and Fairsail and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein. No text or information set forth on any other purchase order, pre-printed form or document (other than a Work Order, if applicable) shall add to or vary the terms and conditions of this Agreement.

15.3 If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect.

15.4 The failure of Fairsail to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Fairsail in writing.

15.5 This Agreement does not confer any rights on any third party, whether pursuant to the Contracts (Rights of Third Parties) Act 1999, or otherwise.

15.6 No joint venture, partnership, employment, or agency relationship exists between the Customer and Fairsail as a result of this agreement or use of the Service.