

## Terms and Conditions for the Supply of Customer Services

### 1. MCP Services

MCP provides data communications services within the United Kingdom. By contacting MCP, customers offer to take MCP services in accordance with the terms and conditions specified below, which offer shall be accepted by MCP, and thus a contract formed, once MCP provisions the customer on its network for use of service.

### 2. Definitions

In this agreement, unless the context requires otherwise, the following terms shall have the following meanings:

**Agreement** means the agreement between you and us for the provision of the Services, the terms and conditions of which are set out herein.

**Capital charges** means the price quoted to you for connecting the premises to the Destin8 Network.

**Charges** means unit, entry and transaction charges, subscription, line and modem charges and any other charges set out in the Schedule of Charges.

**Customer Equipment** modems, cables, terminals and other devices, used by you to access the Services.

**Data Protection Legislation** means (i) the Date Protection Act 2018, and (ii) unless and until it is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) (GDPR) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (iii) any successor legislation to GDPR or the Data Protection Act 2018.

**Date of installation** means the date we activate Destin8 access at the Premises.

**Destin8** Destin8 has come to describe both (a) Destin8 as a service relating to the movement and control of goods including access to a Customs entry processing facility and also (b) the software itself which is the source of such service. In the Agreement (unless the context otherwise indicates) the term Destin8 is used in the sense of an on-line Service only. The term Destin8 may be designated by us from time to time to include services which may at the date hereof be services offered by MCP additionally and/or separately from Destin8 as it stands at the live date.

**Destin8 Network** means the data communications infrastructure to and from which data is exchanged.

**Live Date** means the date on which we provide the Services and give you access to Destin8 at the Premises for the first time.

**'MCP', we' and 'us'** means Maritime Cargo Processing Plc, its sub-contractors, agents or any other third party to whom this agreement is assigned or transferred from time to time.

**Premises** means your premises where we activate Destin8 access.

**Quarter** means a calendar quarter of 3 months.

**Schedule of Charges** means our price list containing definitions, notes and tariffs for the unit, entry, transaction, data communications services and apparatus provided by us as amended from time to time.

**Services** means the supply of the Destin8 system, other designated on-line services, e-mail, EDIFACT messages, other message based communications and Destin8 network service provided by means of owned or leased data circuits connecting the premises to our network centre which will provide you with Destin8 facilities, details of which are listed in our Schedule of Charges.

**Subscription charges** means all Charges detailed in the Schedule of Charges for which you are to pay quarterly in advance.

**'you' or 'the Customer'** means the customer which is entering into this agreement.

### 3. Acceptance and Term

Acceptance of your order for the Services shall occur on the earlier of the Date of Installation and the date of appointment for an installation survey at the Premises. On acceptance of your order, you shall be bound by the terms and conditions set out in this agreement and shall continue in effect until terminated as set out below. We may vary these terms and conditions (for example when new services are introduced) upon thirty (30) days' notice to the Customer.

### 4. Use of Customer Equipment

4.1 We shall try to make the Destin8 Network and the Services available to you on the Customer Equipment by the date we have indicated to you, but time is not of the essence and we will not be liable to you if we fail to do so.

4.2 You will indemnify us in respect of any claim for consequential loss, damage or injury of any kind whatsoever occasioned by or arising from damage to Destin8 or any physical means of access to it caused directly or indirectly by the Customer Equipment or by your use of Destin8.

4.3 You will not connect the Customer Equipment to Destin8 without the prior consent of MCP.

4.4 You will in any event comply with all quality assurance testing requirements laid down from time to time by us in respect of any Customer Equipment or other equipment you wish to interface with Destin8 and shall (if demanded) pay the hourly rate set out in the Schedule of Charges for that testing.

### 5. Provision and Use of Services

5.1 the Services will be implemented by us as soon as reasonably practicable after the Date of Installation. The minimum period for providing the service is 12 months from the acceptance date subject to any rights we or you may have under this agreement concerning suspension or termination of the system or any service or facility provided under this agreement.

5.2 We reserve the right to require you to modify or replace any part of the Customer Equipment used to facilitate the provision of the Services.

5.3 We may at our sole discretion:

5.3.1 In an emergency suspend the Services temporarily in order to provide or safeguard Services; or

5.3.2 Temporarily suspend the Services for emergency or preventive repair, maintenance or improvement of Destin8 or any of our data communication systems.

- 5.4 Before doing anything described in clause 5.3 above we shall give you as much advance notice of any planned or unplanned suspension as is reasonably practicable in the circumstances, including such details as are available concerning the estimated timing and duration of such suspension. We shall restore the service or services as soon as is practicable after any planned or temporary suspension.
- 5.5 You acknowledge that the service or services cannot be provided fault free and that compensation for any faults or suspensions which arise will be dealt with solely in accordance with Clause 5.6.
- 5.6 We will allow a rebate of a proportionate part on a time basis of the Subscription Charge for breakdowns. Any rebate will be credited to your account with us and will be allowed only where there is an unplanned or unauthorised total loss of Destin8 itself for a period exceeding 24 hours (made up of periods of larger than 30 minutes) in any period of four weeks commencing on a Sunday/Monday of any week.
- 5.7 Without prejudice to the generality of clause 5.5 we undertake that save as otherwise provided by this Agreement Destin8 shall be available to you from the live date 23 hours a day on every day excluding Christmas Day, that Destin8 shall be designed in such a manner as to protect your data against unauthorised access by other parties and that we will take all reasonable measures to safeguard against loss of input made by you to Destin8.
- 5.8 You will:
- 5.8.1 Observe all instructions (including instructions as to system maintenance) given by us as to the usage of Destin8 whether in person, in writing, or via Destin8 itself.
- 5.8.2 Accept that failure to observe such instructions will entitle us to suspend your connection to Destin8 and to levy a reconnection fee and/or to carry out such work and levy charges on you at the hourly rate set out in the Schedule of Charges.
- 5.8.3 Warrant, as a fundamental matter, that any person or employee who is allowed access to Destin8 is competent and has received the necessary training in the use of Destin8. In the event that MCP gives notice that it has operational reasons to believe that any person or employee does not meet these criteria, you will immediately withdraw such person or employee from using Destin8 until such time as we are satisfied that such person or employee has reached such level of competence.
- 5.8.4 Only use the service or services in accordance with our instructions all as may be amended from time to time.
- 5.8.5 Not yourself, or allow anybody else to, use the service or services for the purpose of sending any message or communication which is offensive, abusive, indecent, obscene, menacing, fraudulent or illegal or which does, or is intended to, cause annoyance, inconvenience or worry or which is or might be defamatory or intended to be a hoax message to any other company, service or body.
- 5.8.6 Indemnify us against any liability which may arise out of your failure to comply with the terms of clause 4.2, or this clause 5.8 and if you are in breach thereof we may suspend your service or services without notice and may not restore it unless we are convinced that no further breaches will occur. Such right to suspend the service or services is without prejudice to any rights we have to terminate this agreement. In addition, it is our policy to share information with other service operators in respect of breaches of clause 5.8.5 and we reserve the right to inform other service operators of the names of any of our customers found to be in breach of that clause.
- 5.9 We shall have complete discretion without reference to you to change the location of the computer or other equipment on which Destin8 (or any part thereof) is hosted at any time.
- 6. Access and Identity**
- 6.1 You will (unless otherwise agreed) be entitled to use the identity provided by MCP for access to Destin8 from the Premises agreed with us.
- 6.2 Additional identities may be made available by MCP at the price published in the Schedule of Charges.
- 6.3 You must change your password at frequent but irregular intervals of not less than three months or whenever requested by MCP.
- 6.4 We will give you reasonable notice (being not less than 180 days) of any changes to the physical means of access to Destin8 which may impose on you the requirement for any extra equipment.
- 6.5 You will not in any event seek to assign or transfer or share with or permit to be shared with any other individual, partnerships or body corporate the right of access to Destin8 (whether or not for reward). This does not apply to any reasonable back-up arrangements in place.
- 7. Charges, Payment & VAT**
- 7.1 The charges are set out in the Schedule of Charges and any changes will be notified to you in accordance with clause 8 prior to such changes coming into effect.
- 7.2 At the time of your application you are required to pay the capital charges and the first year's rental charges in advance plus VAT on the charges mentioned. We will include in your subsequent invoice the subscription charges up to and including the next quarter. Thereafter we will send you an invoice at the end of each quarter for subscription and rental charges payable in respect of the following quarter.
- 7.3 At the end of each calendar month we will send you an invoice for entry, transaction and other service charges incurred during that month.
- 7.4 All sums due to us under this agreement shall be payable within 28 days of the invoice date. Payment of all amounts due shall be made by you in full without any deductions whatsoever by direct debit, BACS or such other method as we may specify or agree to from time to time.
- 7.5 In the event that charges are not paid when due we may levy interest at a rate of 2% per annum above the base lending rate of Barclays Bank plc as set from time to time from the date when the charges should have been paid until the date of actual payment, whether before or after judgement. Interest shall continue to accrue notwithstanding termination of this agreement for any reason whatsoever.
- 7.6 All sums due to us under this agreement unless otherwise stated, are exclusive of Value Added Tax ("VAT"). Any VAT payable will be set out in each invoice and will be paid by you to us at the same time as you pay the charges.
- 7.7 In instances where you have indicated that VAT should not be charged on supplies made as you do not believe you have a business or a fixed establishment in the UK, the following terms form part of these Terms & Conditions for the Supply of Customer Services for any supplies to you. Your approval of these terms will be implied through requests for future supplies.
- 7.7.1 we require that you undertake to indemnify, and to keep indemnified, us against VAT demanded should VAT have been determined to have been due on supplies made.
- 7.7.2 we shall inform, or shall procure to inform, you in writing of any claim or enquiry raised by HM Revenue & Customs for additional VAT relating to these supplies or supplies which the precedent could be extended to these supplies as soon as possible and before resolution of any enquiry has been reached and where liability under this indemnity might become enforced.
- 7.7.3 we shall then take such action and give such information and assistance as you may reasonably request in writing to avoid, dispute, resist, mitigate, compromise or defend any HM Revenue & Customs claim and to appeal against any judgment given in respect thereof including (without limitation) applying to challenge so far as legally possible the payment of any VAT.
- 7.7.4 should you appoint advisors to challenge the VAT treatment, all correspondence with the tax authorities will be conducted with full approval from us and you shall not

make any settlement or compromise of the HM Revenue & Customs claim or agree to any matter in the conduct of such proceedings which may affect the amount of the liability without our prior approval. Subject that such approval not to be unreasonably withheld or delayed and provided always that, in the event of us refusing approval of such settlement or compromise, you shall have no liability in respect of any such claims in excess of the figure at which you could have settled or compromised the relevant HM Revenue & Customs VAT claim.

7.7.5 you shall be liable for any costs incurred since the proposed date of settlement or compromise; and indemnify and secure us to our reasonable satisfaction in respect of all costs, charges and expenses reasonably and properly incurred by us as a consequence of any actions taken at your request.

7.8 We may set off any amounts standing to your credit either under this agreement or any other agreement you have with us, against any amounts owing to us under either this agreement or any other agreement you may have with us.

## **8. Credit Limits and Deposits**

8.1 Failure to observe the stipulated credit terms as set out in the Schedule of Charges may lead to disconnection without notice.

8.2 Alternatively or in addition, we may at any time require payment from you of a deposit as a security for the payment of future charges. We may hold the deposit until we are assured that security for payment of future charges is in our opinion no longer necessary. At such time we shall repay the deposit held, or the balance thereof, where part of it has been used towards the payment of charges due. We reserve the right to use all or part of the deposit in or towards payment of any charges which you are liable to pay.

8.3 Notwithstanding repayment of any deposit held, we may at any time thereafter require payment from you of a further deposit as security for the payment of any further charges which may become payable by you.

8.4 We may impose a charge of £15.00 (or such other sum as we may from time to time reasonably determine) to cover our costs in the event that your payment (whether by cheque, direct debit or other means) is not honoured by your bank or other financial institution.

## **9. Maintenance**

9.1 If the Equipment becomes faulty you must immediately tell us by contacting our Technical Helpdesk on 01394 604915 (or any other number specified from time to time). We shall use all reasonable endeavours to correct the fault by repairing or, at our option, replacing all or part of the Equipment.

## **10. Limitation of Liability**

10.1 Our liability to you for death or personal injury caused by any negligent act or omission of ours or that of our sub-contractors or agents acting in the course of their employment or any liability that cannot be excluded as a matter of law, shall not be limited.

10.2 Otherwise in acknowledgement of the fact that we are providing an electronically sensitive service we shall not be liable to you in contract, tort, negligence or otherwise for any loss of business, contracts, profits, or anticipated savings or for any other special, indirect or consequential loss whatsoever, even if such loss was reasonably foreseeable or we have been advised of the possibility of you incurring the same.

10.3 Other than in respect of clause 10.1 our maximum aggregate liability in contract, tort, negligence or otherwise arising out of, or in connection with, this agreement shall be limited in respect of any one event or a series of two or more connected events to an amount equal to twice the annual Charges incurred during the year prior to the event in question, in respect of all claims under this agreement.

10.4 Other than in respect of clause 10.1 we shall have no liability to you in any respect unless you shall have served notice of the same on us within three months of the date you became aware of the circumstances giving rise to any such claim or

the date when you ought reasonably to have become so aware.

10.5 Each provision of this clause limiting or excluding liability operates separately and shall survive independently of the other provisions.

## **11. Termination**

11.1 We may cancel this agreement by notifying you in accordance with clause 14. Such notice will be no less than 3 months expiring at any time save in the event of breach by you of these terms and conditions when we may give short or immediate notice to determine this agreement either instead of or as well as suspending your access to the service under clause 12.

11.2 You may terminate this agreement by giving three months' notice expiring at any time on or after the first anniversary of the Live Date. If you give notice you must pay all charges up to the expiry of the notice period. On or after the expiry of the notice period we will at our option remove any equipment belonging to us from the Premises to which you will give us access.

11.3 Either party may terminate this agreement if the other party is presented a bankruptcy or winding up petition or if the other party is unable to pay its debts as they fall due or have a resolution passed for its winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction where the resulting entity takes over all of its assets or liabilities) or a court of competent jurisdiction makes an order to that effect or it becomes subject to any administration or enter into any voluntary arrangement with its creditors to cease to carry on business or have a receiver or administrative receiver appointed or are in a position whereby a Court is entitled to appoint a receiver or administrative receiver.

11.4 We may terminate this agreement if:

11.4.1 you do not pay the Charges within the stipulated credit terms.

11.4.2 you fail to comply with any applicable training and/or instruction in respect of the use of the Services.

11.5 Upon any termination by us pursuant to clauses 11.3 and 11.4 you shall pay us any outstanding charges, cease to use the service or services and provide access to us for the purposes of removing the equipment.

## **12. Suspension of Services**

12.1 We may at our discretion elect to suspend the Services at any time in the event that:

12.1.1 we are entitled to terminate this agreement for any reason;

12.1.2 we are required to comply with an order, instruction, or request of government, an emergency service or other competent administrative authority;

12.1.3 we have reasonable ground to suspect fraud or attempted fraud or other criminal activity in connection with the Services either by you or by anyone with or without your knowledge or approval;

12.1.4 we have reasonable grounds to suspect that any of the information given by you to us in respect of your application for the Services is inaccurate or untrue;

12.1.5 any Charge is overdue.

12.2 Where possible we will warn or notify you of any such suspension. The rights set out in clause 12.1 are without prejudice to any of our rights to terminate this agreement in accordance with clause 11.

## **13. Variation**

13.1 We may from time to time by giving you at least 14 days' written notice: -

13.1.1 vary the Schedule of Charges by amending any of the charges by a percentage point up to that equivalent to the

percentage increase (if any) shown by the General Index of Retail Prices (all items) ('RPI') issued by the Office of National Statistics (or any other Government department or other agency or organisation upon which duties in connection with the compilation and maintenance of such index shall have devolved), levy charges for new functionality or introducing new charges; and/or

- 13.1.2 vary the Schedule of Charges by amending any of the charges by more than a percentage equivalent to the percentage increase in the RPI;
- 13.1.3 vary any of the terms and conditions of this agreement, or introduce new terms and conditions (together or alone a 'variation').
- 13.2 Subject to clause 13.3, if you consider any variation pursuant to clauses 13.1.2 and 13.1.3 to be unreasonable, you may terminate this agreement by giving us at least 3 months' notice if the initial written 12-month period has expired.
- 13.3 You may not terminate this agreement if a variation made pursuant to clause 13.1.3 is made for a valid reason. For the purposes hereof a valid reason is a variation required by legislation, the requirements of any governmental or regulatory body or, if required in our reasonable opinion, a variation to prevent any immoral, illegal or improper use of the service or services and equipment under this agreement.

#### 14. Notices

- 14.1 Any notice, invoice or other document which we may give under this agreement shall be deemed to have been given or left at or sent by post, local unsolicited message (LUM), e-mail or facsimile transmission to an address notified by you to us in writing as an address to which notices, invoices or other documents may be sent, or your usual or last known place of abode or business or in the case of a limited company, its registered office.
- 14.2 Our address for the service of any notice under this agreement shall be such address as is shown on your last invoice. If any notice is given via the LUM facility, then this shall be sent to your Destin8 output device as advised on joining the service or services or subsequently amended.
- 14.3 Any such communication as referred to in clause 14.1 shall be deemed to have been made to the other party 4 days from the date of posting (if by letter) and if by LUM, e-mail or facsimile transmission on the day of such transmission.

#### 15. Data Protection

- 15.1 MCP and you will each comply with all applicable requirements of the Data Protection Legislation. This clause 15.1 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 15.2 MCP and you each acknowledge that for the purposes of the Data Protection Legislation, you are the data controller and MCP is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation). Schedule 1 (Part A) sets out the scope, nature and purpose of processing by MCP, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation, Personal Data) and categories of Data Subject.
- 15.3 Without prejudice to the generality of clause 15.1, you will ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to MCP for the duration and purposes of this Agreement.
- 15.4 Without prejudice to the generality of clause 15.1, we shall, in relation to any Personal Data processed in connection with the performance by us of our obligations under this agreement:

- (a) process that Personal Data only on your written instructions unless we are required by the laws of any member of the European Union or by the laws of the European Union applicable to us to process Personal Data (Applicable Laws). Where we are

relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, we shall promptly notify you of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit us from so notifying you;

- (b) ensure that we have in place appropriate technical and organisational measures, reviewed and approved by you, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of our systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by us);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- (d) not transfer any Personal Data outside of the European Economic Area unless we have obtained your prior written consent and the following conditions are fulfilled;
  - (i) you or we have provided appropriate safeguards in relation to the transfer;
  - (ii) the data subject has enforceable rights and effective legal remedies;
  - (iii) we comply with our obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) we comply with reasonable instructions notified to us in advance by you with respect to the processing of the Personal Data;
- (e) assist you, at your cost, in responding to any request from a Data Subject and in ensuring compliance with your obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify you without undue delay on becoming aware of a Personal Data breach;
- (g) at your written direction, delete or return Personal Data and copies thereof to you on termination of the Agreement unless required by Applicable Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate our compliance with this clause 15.4 and allow for audits by you or your designated auditor.

- 15.5 You consent to us appointing those entities listed in Schedule 1 (Part B) or such other entities as we shall otherwise notify to you from time to time as third-party processors of Personal Data under this Agreement. We confirm that we have entered or (as the case may be) enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 15.5. As between you and us, we will remain fully liable for all acts or omissions of any third-party processor appointed by us pursuant to this clause 15.5.

#### 16. Waiver

Failure by us to exercise or enforce any right under this agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement of any right on a later occasion.

## 17. Assignment

- 17.1 You are not allowed to assign or transfer this agreement without our prior written permission.
- 17.2 We may assign this agreement or sub-contract any of our obligations to a third party either in whole or in part.

## 18. Force Majeure

Neither party shall be held in breach of its obligations hereunder (except in relation to the obligation to make payments) nor liable to the other for any loss or damage which may be suffered by the other party due to any cause beyond its reasonable control including without limitation any act of God, failure, interruption or shortage of power supplies, any development, flood, drought, lightning, fire, strike, lockout, trade dispute or labour disturbance, act or omission of Government, highways authorities, other telecommunications operators or competent authority, war, military operations, riot or infectious or contagious disease.

## 19. Bribery and Corruption

MCP represents and warrants that it and its directors, employees, officers and sub-contractors shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Regulations") and shall not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 and further represents and warrants that it shall have and shall maintain in place its own policies and procedures, including "adequate procedures" under the Bribery Act 2010, to ensure compliance with the Relevant Regulations.

## 20. General

- 20.1 This agreement represents the entire understanding between the parties in relation to subject matter hereof and supersedes all agreements and representations made by either party, whether oral or written.
- 20.2 Nothing in these terms and conditions shall create or vest in you any right, title or interest in the service or services, other than the right to use same under these terms and conditions.
- 20.3 All expressions used in these terms and conditions denoting the singular include the plural and vice versa. The headings are for ease of use only and shall not affect the construction or interpretation of these terms and conditions.
- 20.4 No variation of this agreement shall be valid unless it is agreed in writing by us.
- 20.5 If any clause or provision of this agreement is held partially or wholly invalid or unenforceable, the validity or enforceability of the remaining clauses or provisions shall not be affected.
- 20.6 This agreement shall be governed by and construed in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English Courts.
- 20.7 MCP shall be entitled to offer to other End-Users or to any of them including (but not limited to) HM Customs and Excise and other government agencies a right of access to Destin8 on terms different from those applicable (whether in amount or structure) to those payable by the End-User.

## SCHEDULE 1

### Part A

#### Scope of processing to be undertaken

The processing to be undertaken shall be limited to that which is necessary in order to facilitate your use of Destin8

#### Nature of processing to be undertaken

The processing shall comprise the storage and transfer of Personal Data via the Destin8 system and the Services

#### Purpose of processing

The processing shall be undertaken to enable the efficient communication of information via the Destin8 system and the Services

#### Duration of the processing

The processing shall continue for the duration of the agreement

#### Types of personal data

Names, contact details, employer details, job role details

#### Categories of data subject

1. Employees
2. Customers
3. Suppliers

### Part B

Felixstowe Dock & Railway Company

**Maritime Cargo Processing plc**  
The Chapel  
Maybush Lane  
Felixstowe  
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