



## General Terms and Conditions

### British Virgin Islands

#### Part A - Terms for all Services

##### 1. Definitions

In these Terms the following definitions apply:

- (a) **Affiliates:** any specified person or entity, any other person or entity directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person or entity. For the purpose of this definition, “control”, when used with respect of any specified person or entity means the power to direct or cause the direction of the management or policies of such person or entity, whether through ownership of voting securities or by contract or otherwise. The terms “controlling” and “control” have meaning correlative to the foregoing;
- (b) **Agreement:** any written or verbal agreement, pursuant to which Services are rendered;
- (c) **Applicable Law:** any law, regulation, rule, requirement, practice and guidelines of any government, regulatory authority or self-regulating organization or any self imposed rule that applies to the provision of the Services;
- (d) **Claim:** any and all claims (contractual or otherwise), threatened claims, suits, taxes, penalties, charges, fines, liabilities, losses, damages, amounts paid in settlement, costs and expenses including but not limited to reasonable attorneys’ fees incurred in connection with any actual or threatened proceedings, suffered, incurred or expended, directly or indirectly, all in the widest sense;
- (e) **Client Entity:** the individual, legal entity, association or partnership (whether or not having separate legal personality) receiving the Services;
- (f) **Confidential Information:** all non-public information which relates to the operations or business of a party whether disclosed by a party or by a third party and which (i) is designated or marked as confidential or (ii) given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential;
- (g) **Data:** as defined in clause 11.1;
- (h) **Expenses:** as defined in clause 6.2;
- (i) **Fees:** as defined in clause 6.1;
- (j) **Funds:** as defined in clause 19;
- (k) **Know your client file:** as defined in clause 4.2;
- (l) **Services:** any services rendered by CTL;
- (m) **Terms:** these general terms and conditions;
- (n) **CTL:** Commonwealth Trust Limited, legal entity party to the Agreement;

- (o) **TMF Group:** all companies ultimately beneficially owned by TMF Orange Holding B.V. excluding any holding companies above TMF Orange Holding B.V.; and

- (p) **TMF:** TMF (B.V.I.) Ltd.

##### 2. Applicability

2.1. These Terms apply to:

- (a) all Agreements;
  - (b) all agreements arising from and/or in relation to the Agreements; and
  - (c) all offers, proposals and quotations made by a CTL company or representative to the Client Entity.
- 2.2. Any general terms and conditions of the Client Entity, and/or of any entity related to the Client Entity, are rejected explicitly.
- 2.3. Each affiliate, director, officer and/or employee of CTL involved in the performance of the Services, may at all times rely upon the provisions of these Terms for his/her/its own benefit as third party beneficiary.

##### 3. Amendments to the Terms

- 3.1. CTL has the right to amend these Terms. The amended Terms will become effective and take precedent over all other previously notified general terms and conditions within 1 (one) month after the date such amendment is notified (the “Amendment Notification Date”). This right to unilaterally amend these Terms will not affect the scope of Services and the Fee schedule of the Agreement. The Client Entity shall have the right to terminate the Agreement in case of disagreement with the new Terms within 30 (thirty) calendar days of the Amendment Notification Date. The Client Entity shall provide a prior written notice of termination within the 30 (thirty) calendar days after the Amendment Notification Date. Upon receipt of such termination notice, the amended Terms shall not become effective and the Agreement shall terminate after the notification period of 30 (thirty) calendar days has elapsed.
- 3.2. Any amendment to the Agreement (including but not limited to the Services and Fees) shall be agreed in writing by the relevant parties to the Agreement. If such an amendment is agreed in respect of an Agreement, such amendment shall only apply to that particular Agreement.

##### 4. Obligations and responsibilities of the Client Entity

- 4.1. The Client Entity is responsible for determining that the scope of the Services is appropriate for its needs.

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- 4.2. The Client Entity is responsible for providing and updating, in a timely manner, all information, assistance and facilities that CTL may require to render the Services. The Client Entity shall provide information that is true, accurate and not misleading. CTL may use the information and data furnished by the Client Entity or others instructed by the Client Entity without audit or verification.
- 4.3. The Client Entity shall ensure the collection, retention and dissemination of information for the purposes of the Services complies with Applicable Law.
- 4.4. The Client Entity shall procure that CTL is provided from time to time with any information relating to the Client Entity, the nature of its business, its ultimate beneficial owner(s), the origins of the funds used within the relevant structure of which it is part, and more generally any other information which it may hold and which CTL is or may be required by Applicable Law to collect, update and maintain (the "Know your client file"), as well as all information required to enable CTL to determine the volume and nature of the transactions entered into by the Client Entity. CTL may use the information and data furnished by the Client Entity or others and rely on its accuracy, completeness and lawfulness.
- 4.5. The Client Entity represents it is not and will not be engaged, directly or indirectly, in gambling or gaming, arms or sex related business or any illegal activities including but not limited to money laundering, terrorism financing and tax fraud.

## 5. Obligations and responsibilities of CTL

- 5.1. CTL shall discharge its duties in good faith and with due professional care, and in accordance with Applicable Law. CTL shall not do or omit to do anything which it considers to be in conflict with Applicable Law.
- 5.2. CTL shall determine in what manner and by which person(s) the Services shall be performed.
- 5.3. CTL may at any time without notifying the Client Entity make any changes to the Services which are necessary to comply with Applicable Law, or which it considers necessary and do not materially affect the nature or quality of the Services.
- 5.4. All dates for delivery of the Services given by CTL or specified by the Client Entity are intended for planning and estimating purposes only and are not contractually binding.
- 5.5. Although CTL may need to review sections of draft agreements or (notarial) deeds prepared by the Client Entity's legal advisers, CTL does not provide any legal, tax, investment, exchange control or other advice and none of the communications of CTL may be regarded as advice.
- 5.6. CTL shall be entitled to retain any other entity or TMF Group Affiliate and/or any sub-contractor to perform part or all of the Services on behalf of CTL, without prior consent of the Client Entity. Notwithstanding any such engagement, CTL shall remain fully responsible for the fulfilment of any of its obligations under this Agreement.

5.7. CTL has no responsibility to:

- (a) monitor events occurring after the date of completion of the Services; or
- (b) to update any deliverable under the Agreement unless explicitly agreed otherwise in writing.

5.8. The Services are performed solely for the benefit of the Client Entity. Third parties cannot derive any rights from the Services.

5.9. CTL shall be authorised to destroy any documents it has of the Client Entity after expiry of the relevant statute of limitations applicable for the retention of any such document.

## 6. Fees and Expenses

- 6.1. The Client Entity shall pay all amounts due to CTL for the Services rendered as set out in the Agreement (the "Fees").
- 6.2. In addition to the Fees, the Client Entity shall reimburse CTL for any and all expenses incurred in the performance of its duties under the Agreement, including but not limited to office expenses and disbursements (the "Expenses"). The office expenses amount to 6% of the Fees plus a handling fee, as set out in the Fee schedule.
- 6.3. All Fees and Expenses are exclusive of VAT, sales tax or the equivalent thereof.
- 6.4. CTL may charge additional fees for the provision of Services where the volume of work required to be carried out by CTL is greater than expected, for example, as a result of CTL having to deal with unexpected situations or outstanding queries, Client Entity's (lack of) instructions, regulatory authorities requesting information from the Client Entity, failure or delay in providing information, inaccuracy of any material, or otherwise.
- 6.5. Fees for Services not included in the Agreement or as meant in clause 6.4 will be charged on a time spent basis at the prevailing hourly rate commensurate with the work undertaken and the seniority of the person doing the work.
- 6.6. The Fees and Expenses will be automatically adjusted annually in case of inflation. CTL is entitled to increase the Fees and/or Expenses (i) annually in case of inflation up to 5% per year; (ii) quarterly in case of inflation between 5% and 10% per year; and (iii) monthly in case of inflation of more than 10% per year. The inflation percentage used for this clause is the percentage as set out in the United States Consumer Price Index. The Fees and/or Expenses will be increased with this percentage. The adjustments shall take effect 1 (one) month after notice of adjustment has been given to the Client Entity.
- 6.7. Any Fees and/or Expenses which are invoiced by CTL under the Agreement are to be paid within 14 (fourteen) calendar days after the relevant invoice date. If the Fees and/or Expenses are not paid within this payment term, the Client Entity shall be in default without a notice of default being required and CTL will be entitled to charge a late payment interest of 1% per month up to a maximum as authorised under Applicable Law. Late payment interest will accrue as per the first day when payment becomes overdue.

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- 6.8. All costs incurred by CTL to collect any amounts outstanding either in connection with legal proceedings conducted or otherwise shall be borne and paid by the Client Entity. A fee equal to the time spent by CTL on an hourly rate basis will be charged to the Client Entity for each notice of default, reminder notice or request for payment of an overdue invoice.
- 6.9. CTL is entitled to suspend or cease the provision of the Services with immediate effect whenever any Fees and/or Expenses due to CTL are not paid within 60 (sixty) calendar days from the relevant invoice date.
- 6.10. If the Client Entity withdraws its request to provide Services prior to the signing of an Agreement, but CTL has already spent time preparing for the provision of Services, CTL may charge all time spent at the prevailing hourly rate.
- 6.11. In the event the Agreement is terminated during the course of a calendar year, any fixed Fees paid upfront for that year will not be reimbursed.

## 7. Liability

- 7.1. Nothing in these Terms shall exclude or restrict any liabilities which cannot lawfully be limited or excluded save to the extent permitted by mandatory Applicable Law.
- 7.2. Neither CTL nor any of its Affiliates, directors, officers or employees is liable for damages incurred by the Client Entity due to a breach of the Agreement if CTL is able to cure the breach within 30 (thirty) calendar days from the date notice is given by the Client Entity in respect of such breach with no subsisting material damage to the Client Entity.
- 7.3. In no event shall CTL or any of its Affiliates, directors, officers or employees be liable for any loss of use, contracts, data, goodwill, revenues or profits (whether or not deemed to constitute direct losses) or any consequential, special, indirect, incidental, punitive or exemplary loss, damage or expense.
- 7.4. Except as provided in clause 7.1, the maximum liability of each of (i) CTL and the CTL Affiliates and (ii) the Client Entity under this Agreement shall in aggregate per calendar year, whether in contract, tort (including negligence), breach of statutory duty or otherwise, not exceed the total amount of Fees paid or payable for the Services over the period of 12 (twelve) months immediately preceding the Claim, or the annualized amount if the engagement has been for a shorter period of time, subject to a maximum liability of USD 50,000 (fifty thousand dollars).
- 7.5. All Claims made by the Client Entity against CTL or any of its Affiliates, directors, officers or employees shall expire 18 (eighteen) months after the moment that the Client Entity is aware, or could reasonably have been aware, of the event or incident that has led to the Claim.
- 7.6. CTL shall not be liable towards the Client Entity for previous activities conducted or services rendered by third parties solely engaged by the Client Entity. The Client Entity shall indemnify and hold CTL harmless from and against any and all Claims in this respect.

## 8. Indemnity

During and after termination of the Agreement, the Client Entity agrees to indemnify and hold CTL and any of its Affiliates, directors, officers and employees harmless from and against any and all Claims from third parties relating to or arising from the provision of or the failure to provide the Services, except in the event of gross negligence, deliberate recklessness, wilful misconduct or fraud on the part of CTL or any of its directors.

## 9. Force Majeure

No party, nor any of its Affiliates, shall be liable for any delays or non-performance directly or indirectly resulting from a Force Majeure Event prevented from performing its obligations where a party is delayed or a Force Majeure Event, that Party shall promptly notify the other as soon as possible in writing with reasonable details of the Force Majeure Event, its affect or the relevant obligations and its estimated duration. The affected Party shall use reasonable endeavours to mitigate the effect of the Force Majeure Event upon the performance of the affected obligations and shall keep the other party informed on its progress in doing so and the ongoing impact of the Force Majeure Event. Where the Client Entity is unable to perform its obligations, CTL may increase the Fees to the extent necessary to reflect any increased costs incurred as performing the Services. If the Client Entity does not or is not able to pay the Fees when due as a result of a Force Majeure Event, the CTL will not be obliged to render the Services.

## 10. Confidentiality

- 10.1. CTL shall not disclose any Confidential Information relating to the Client Entity to any third party, except as and only to the extent that:
  - (a) such disclosure is reasonably necessary or desirable for the proper performance of its duties;
  - (b) such disclosure is reasonably necessary or desirable to enable the entity which is part of the TMF Group and/or the sub-contractor to perform part or all of the Services on behalf of CTL;
  - (c) such disclosure is required under Applicable Law;
  - (d) such disclosure is required upon the order of any court or other governmental, tax, supervising or regulatory body; or
  - (e) such information is within, or falls within the public domain through no fault of CTL.
- 10.2. The Client Entity agrees to reimburse any costs that CTL may incur in complying with any such disclosure requirement relating to the Client Entity or the Services if requested in accordance with clause 10.1(c), not involving any substantive claim or proceedings against CTL.
- 10.3. CTL may under Applicable Law be required to report and disclose unusual transactions it becomes aware of in respect of the Client Entity. CTL is not liable in respect of any damages resulting from or relating to such reporting or disclosure.

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## 11. Use of Data

- 11.1. The Client Entity acknowledges and agrees that CTL will be entitled to process personal data of directors, officers and employees of the Client Entity, its Affiliates and to the extent applicable, of its customers (the "Data Subjects"), as well as the information included in the Know your client file (the "Data"), including but not limited to transmission of the Data to, from and within the CTL Group worldwide and to, from and within subcontractors engaged by CTL to perform part or all of the Services on behalf of CTL thereby allowing worldwide access to the Data to designated staff members of CTL and the TMF Group and/or to subcontractors with a need to know, in the opinion of CTL. The processing and the world wide transmission shall comply with Applicable Law which includes among others the binding corporate rules of CTL on international data transfers.
- 11.2. The Data may be obtained either from the Client Entity or from other (public) sources, whether or not prior, on or after the date of establishing a relationship with the Client Entity.
- 11.3. The Data will be used only for the purposes of communication with the Client Entity (including but not limited to direct marketing), management of the relationship with the Client Entity, performance of the Services and conducting compliance procedures imposed on CTL by Applicable Law.
- 11.4. The Data will not be sold or licensed to third parties.
- 11.5. The Client Entity acknowledges and agrees that CTL will be entitled to engage third parties (processors) to process the Data.
- 11.6. The Client Entity confirms its understanding of the processing of Data and, as far as required hereby, unambiguously grants consent to the processing of the Data as set out above. The Client Entity represents and warrants that the consent of the Data Subject for such processing has been obtained in so far as necessary.
- 11.7. Upon first request, a copy of the binding corporate rules of CTL on international data transfers will be made available to the Client Entity. The binding corporate rules entail amongst others the rights of the person to whom the data relate, to be informed about the data processed, the right to correct, supplement, delete or block data and the procedure to enforce rights under the binding corporate rules.

## 12. Termination

- 12.1. The Agreement can be terminated by any party to the Agreement at any time by giving 3 (three) months prior notice in writing.
- 12.2. Each party to the Agreement may terminate the Agreement if another party to the Agreement committed a material breach, provided that a prior written notice of such material breach has been given and the material breach has not been remedied by the breaching party within 30 (thirty) calendar days of the giving of such notice. The inability of a Client Entity to meet its payment obligations arising out of the Agreement shall always be considered a material breach.

- 12.3. To the extent possible under Applicable Law, each party to the Agreement may terminate the Agreement with immediate effect in the event that:
  - (a) a request for a moratorium or bankruptcy or insolvency proceedings of any nature relating to a party to the Agreement has been filed;
  - (b) a party to the Agreement has been declared insolvent or bankrupt;
  - (c) the assets of another party to the Agreement are subject to attachment of material substance; or
  - (d) the circumstances are such that CTL cannot reasonably be expected to continue to provide the Services to the Client Entity, including but not limited to suspicion of fraudulent or criminal activities of the Client Entity or any of its Affiliates.
- 12.4. In case of termination of the Agreement and subject to payment to CTL of all outstanding Fees and Expenses, including but not limited to the costs for time spent for assembling and handover of all corporate documents and financial records of the Client Entity, CTL shall, if so requested, return the corporate documents and financial records relating to the Client Entity, which are in CTL's possession, to the Client Entity. As long as Fees and Expenses remain outstanding, CTL has a lien on any such corporate documents and financial records.
- 12.5. Any clause of these Terms which expressly or impliedly has an effect after the termination, rescission or expiration of the Agreement will continue to be enforceable notwithstanding termination, rescission or expiration. In the event that CTL also provides domicile to the Client Entity, the Client Entity shall change its business address as soon as possible after the notice of termination of the Agreement has been given, though no later than the date of termination. CTL is entitled to take appropriate measures in the event that such change of domicile is not effected within 30 (thirty) calendar days after CTL has sent a written notice, including registering the Client Entity with the applicable register at an address to be decided by CTL at its sole discretion. In case of termination of the Agreement, the Client Entity irrevocably authorises CTL, and as far as necessary, gives a power of attorney to CTL, to register a new business address for the Client Entity. CTL is not liable for any damages that may result from the change of domicile of the Client Entity.

## 13. Non-solicitation

- 13.1. Neither party nor any of its Affiliates, shall during the term of the Agreement and for a period of 12 (twelve) months thereafter, solicit or employ directly or indirectly any employee of another party to the Agreement, other than with the prior written consent of such party. Any party acting in breach of this clause will forfeit a penalty of USD 50,000 (fifty thousand dollars) for each event and each employee thus employed.

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13.2. Clause 13.1 shall not prohibit any party from employing any person through the use of an independent employment agency (as long as not specifically directed to solicit the foregoing persons) or through advertisements in publications or other general solicitations for employment not directed at the foregoing persons.

## 14. Use of electronic communication

- 14.1. Although CTL aims to maintain high IT security standards, CTL shall not be liable for the incorrect or incomplete transmission of the information contained in e-mail communications or for any delay in reception of e-mail.
- 14.2. The Client Entity acknowledges that internet is inherently insecure and that data can become corrupted, communications are not always delivered promptly (or at all) and that other methods of communication may be appropriate. The Client Entity accepts full responsibility for the possible negative consequences of the use of e-mail and internet as a means of communication, as well as for the retrieval of data.
- 14.3. The Client Entity acknowledges that electronic communications can be prone to contamination by viruses. Each party will be responsible for protecting its own systems and interests and, to the fullest extent permitted by Applicable Law, will not be responsible to the other party on any basis (whether in contract, statute, tort, negligence or otherwise) for any loss, damage or omission in any way arising from the use of or access by CTL to internet or networks, applications, electronic data or other systems.
- 14.4. CTL may rely upon written requests, instruments or documents of any kind, which appear to have been signed (in either original, facsimile or scan copy) endorsed or prepared by the Client Entity. CTL reserves the right to refuse to accept any instructions by facsimile or e-mail if CTL has any reasonable doubt about the validity or authenticity of such instructions. If a request from the Client Entity is rendered to CTL by telephone, facsimile or e-mail, CTL is not liable in connection with a misunderstanding or transmission error resulting from this method of communication, including any mistake by CTL on the identity of the Client Entity.

## 15. Notices

Except as otherwise required by Applicable Law, all announcements, notices and other communications pursuant to the Agreement shall be delivered to the addresses mentioned in the Agreement (or such other address as a party has communicated to the other party or parties in accordance with this clause) by registered post, courier, facsimile, or e-mail.

## 16. Assignment

- 16.1. Subject to clause 16.2 and 16.3, none of the rights or obligations created by the Agreement shall be assignable to a third party by any of the parties without the prior written consent of the other party or parties.

16.2. CTL shall be entitled to assign any rights and/or obligations resulting from any Agreement to any other entity which is part of the TMF Group, whether a direct or indirect parent, subsidiary or affiliate, or other, provided that this does not jeopardize the provision of the Services in any way.

16.3. CTL is entitled to transfer or assign its receivables resulting from any Agreement inter alia for collection, factoring or security purposes.

## 17. Intellectual property

- 17.1. CTL retains all rights to the intellectual property which CTL, its Affiliates, directors, officers and/or employees have developed or provided in the performance of the Services. The Client Entity shall only have the right to use such intellectual property as expressly granted in this Agreement or by Applicable Law. Any right of use shall be non-exclusive, for the term of the Agreement and non-transferable.
- 17.2. If any documents or information are provided by the Client Entity to CTL, the Client Entity shall ensure that such documents or information shall not infringe any intellectual property rights or other legal rights of any third party. The Client Entity shall indemnify CTL in this respect against any Claim of a third party.

## 18. Severability

If any part of these Terms shall be held to be illegal, invalid, void or unenforceable, in whole or in part, under Applicable Law, such provision or part shall be deemed not to form part of these Terms and the legality, validity and enforceability of the remainder of these Terms shall not be affected. Parties agree to replace such part of these Terms with a legal, valid and enforceable provision which provision will approach the original intention of the parties as much as possible.

## 19. Third party account

Where funds belonging to the Client Entity are held in a CTL third party account on a temporary basis to make payments on behalf of the Client Entity including, but not limited to local expenses or adviser costs (the "Funds"):

- (a) the Funds will be held to the order of the Client Entity and will be administered as such;
- (b) subject to the appropriate invoices or other proof of a payment obligation of the Client Entity being submitted to CTL, CTL is authorised to make the respective payments out of the Funds held on the Client Entity's behalf;
- (c) the Funds will bear no interest. Any costs related to the Funds and transfers thereof will be for the Client Entity's account and settled from the Funds;
- (d) the Funds, or as the case may be, the remaining balance thereof, are repayable to the Client Entity upon request; and
- (e) CTL has the right to return the (remaining balance of the) Funds to the Client Entity at any time by bank transfer or cheque and any costs associated which such return shall be for the account of the Client Entity.