

Minerva Business Systems Limited Terms and Conditions

These Terms & Conditions apply and are incorporated into any Subscription and Services Agreement between Minerva Business Systems Limited ("Minerva") and the Client whereby Minerva has granted the Client a sub-licence of the Software (as defined below). The Subscription and Services Agreement is subject to these Terms and Conditions and Minerva reserves the right to change these Terms and Conditions at any time. Any changes will be posted on www.minervabs.net.

Recitals

- a) Pursuant to the Head Licence (as defined below), Minerva is entitled to sub-licence the Software to the Client.
- b) The Client wishes to Use the Software, supported by Minerva.
- c) The Minerva has agreed to sub-licence to the Client the Software and support the Software in terms of the Subscription and Services Agreement.

1. Definitions And Interpretation

1.1. In this Agreement, the words and expressions listed below shall have the following meanings:

"Agreement"	means these Terms & Conditions and the Subscription and Services Agreement executed by, or for and on behalf of, the parties, subject to any amendments, modifications and variations made in accordance with this Agreement or which may be subsequently agreed in writing between the parties;
"Anniversary"	means the date following one year after the Commencement Date and each subsequent anniversary of that date;
"Authorised User"	means an officer or employee of the Client who has been authorised to access the Software in accordance with the agreement
"Client"	means the person named as such in the Subscription and Services Agreement.
"Commencement Date"	means the date as set out in any Subscription and Services Agreement
"Data"	means and includes, any information provided by the Client or its agents which concerns the Client's employees' personal details, benefits payable to the employees and all other human resource related material all of which can be displayed utilising the Software;
"Employee Banding Category"	shall have the meaning given to it in the Subscription and Services Agreement and "Employee Banding Categories" shall be construed accordingly;
"Employees"	means any employee, director, agent, contractor or sub-contractor employed or used by the Client;
"Head Licence"	means the non-exclusive licence to use and sub-licence the Software granted by AMA Software Limited to Minerva on or around 14 th March 2008;
"Intellectual Property"	means any copyright, copyright material, design, emblem, model, patent, registered design, service mark, trademark, trade name or any other intellectual property and any application for the registration or other legal protection or recognition of the same in any country of the World;
"Licence"	means the sub-licence to Use the Software during the Licence Period pursuant to this Agreement;
"Licence Fee"	means that amount calculated in terms of the Subscription and Services Costs as

specified in Subscription and Services Agreement

- “Licence Period” means the period specified in the Subscription and Services Agreement or as extended in accordance with Clause 4.7 of these Terms and Conditions;
- “Manuals” means the instruction manuals, user guides and other documentation which Minerva considers necessary for the Client to Use the Software which may be provided to the Client in either hard copy or electronic format or be made available to the Client on-line, all of which may be updated from time to time at Minerva’s discretion;
- “Minerva” means Minerva Business Systems Limited, a private limited company, incorporated under the Companies Acts in Scotland, registered number SC243836 and having its registered office at Unit 3, Gateway Business Park, Beancross Road, Grangemouth, FK3 8WX;
- “Working Hours” means between 09:00 and 17:00 UK time each Working Day;
- “Working Day” means any day between Monday and Friday (inclusive) which is not a public or statutory holiday in Scotland;
- “Services” means the services detailed in the Subscription and Services Agreement;
- “Software” means the software licensed to the Client known as Minerva Human Resources and/or used to provide the services.
- “Subscription and Services Agreement” means the document detailing the services to be provided by Minerva to the Client and or the amounts payable for the use of the Software and/or other services.
- “Terms and Conditions” means these terms and conditions;
- “Nominated Administrator” shall have the meaning given to it in Clause 7.7 of these Terms and Conditions;
- “Use” means the utilisation of the Software by inputting and processing data and carrying out computations, simulations and functions using the Software and carrying out any other tasks by the Client or its Employees which can be achieved by use of the object code of the Software in accordance with the Manuals but shall not include any direct use, study, analysis or back-engineering of the source code for the Software without the prior written consent of Minerva;
- 1.2. Words importing the singular shall also include the plural and vice versa.
- 1.3. Words importing a particular gender shall be deemed to include all genders.
- 1.4. References to a "person" include any natural person, any legal person, body or organisation incorporated or unincorporated or any other person, body or organisation whatsoever, as the context may require.
- 1.5. References to a "party" or the "parties" are references to the parties to this Agreement unless the context requires otherwise;
- 1.6. References to any statute, or to any statutory provision, including any regulation, statutory instrument, or other subordinate legislation derived from such statutory sources, shall include references to any statute or other statutory provision which amends, extends, consolidates or replaces the original statutory reference or which subsequently affects any such revised statutory reference.
- 1.7. References to any Clause, Sub-clause, Schedule or Part of a Schedule are references to such terms and other subdivisions contained in this Agreement, unless otherwise specified.
- 1.8. The index and headings in this Agreement are for convenience only and shall not affect the construction of this Agreement.

- 1.9. Where there is a reference to a time of day, it shall be construed as the time in the United Kingdom expressed in terms of the twenty-four hour clock, unless otherwise specified.
- the Client for any expenses incurred and all invoices are payable within 30 days of the date of invoice.

2. Grant Of Licence

- 2.1. Minerva grants to the Client a non-exclusive, non-transferable Licence to Use the Software (accessible via www.mhr.minervabs.net) for the Licence Period subject to these Terms and Conditions and the Subscription and Services Agreement. Nothing in this Agreement shall operate to prevent Minerva from making use of know-how acquired, principles learned or developed or experience gained during the performance of this Agreement on future contracts with third parties or the Client
- 4.3. All fees referred to in the Agreement or quoted by Minerva are exclusive of Value Added Tax or any other tax.
- 4.4. In the event of late payment or non-payment of fees due to Minerva in terms of the Agreement, Minerva may issue the Client with a written notice stating that if payment is not made within 7 (seven) days of the date of the notice then Minerva shall have the right to suspend the Client's access to the Software until such time as the fees specified in the notice are paid.
- 4.5. The Client shall not be entitled by reason of any set-off, counter-claim, abatement or other similar deduction to withhold payment of any amount due to Minerva.

3. Personnel

- 3.1. Each party is responsible for the supervision, direction and control of their respective personnel. Minerva reserves the right to determine the appointment and assignment of its given personnel and may subcontract or any part of its obligations under the Agreement to a subcontractor as selected by Minerva.
- 3.2. Minerva shall perform the Services using such persons, as it considers suitably qualified. Minerva shall use reasonable endeavours to maintain continuity of personnel throughout the Licence Period but Minerva reserves the right to vary personnel at any time at its sole discretion.
- 4.6. Interest shall be chargeable on any amounts overdue to Minerva at the rate of four percent per annum above the base rate from time to time of the Bank of Scotland from the due date for payment until receipt by Minerva in full of the outstanding amount whether or not after judgement and without prejudice to any other right or remedy of Minerva including the recovery of costs incurred in pursuing the outstanding debt.
- 4.7. At the end of the Licence Period (and any subsequent anniversary thereof) this Agreement will be automatically renewed for a further period of 12 months unless terminated by either party giving not less than three months' written notice prior to the expiry of the Licence Period (or any Anniversary of the end of the Licence Period in the case of renewal in terms of this Clause 4.7).

4. Licence Fee

- 4.1. The Client shall pay all fees due to Minerva as detailed in and in accordance with the Subscription and Services Agreement. In the event that Minerva invoices the Client for any payment for whatever reason, the Client shall make payment within 30 days of the date of invoice. All amounts due are payable in UK pounds sterling.
- 4.2. Any travel and out of pocket expenses incurred by Minerva or the Client in relation to the provision of the Services shall be borne by the Client. Minerva shall invoice
- 4.8. Minerva may vary any recurring charges subject to the applicable Employee Banding Category and give the Client at least thirty (30) days written notice of any increase in charges.
- 4.9. At the end of March, June, September and December in any year during the Licence Period (or extension of the Licence Period in terms of Clause 4.7) Minerva will review the number of the Client's active employees and set the monthly subscription for the next quarter accordingly. A full list of Employee

Banding Categories is available from Minerva on request

- 4.10. Notwithstanding the provisions of this Clause, Minerva may from time to time require the Client to pay additional fees for making substantial amendments to the Software and, in particular, Minerva shall be entitled to make an additional charge for any update of the Software to take account of the specific requests or requirements of the Client.

5. Client's Undertakings

The Client undertakes:

- 5.1 not to copy, back-engineer, decompile, disassemble, alter, modify, combine with any other software programs or otherwise translate the Software, other than for normal Use by the Client, nor to allow the same to be done by, or to communicate the same to, any third party without Minerva's prior written consent;
- 5.2 to supervise and control the Use of the Software in accordance with the terms of this Agreement;
- 5.3 to include the copyright notice of Minerva on all and any copies of the Software, whether in whole or in part, in any form, including partial copies or modifications of the Software and further undertakes not to remove or in any way obscure Minerva's proprietary marks contained in the Software;
- 5.4 not to provide or otherwise make available the Software in whole or in part, including but not limited to, program listings, object and source program listings, object code and source code, in any form to any person other than the Client's Employees without prior written consent from Minerva;
- 5.5 to ensure that computations or other calculations or data derived from the Software are suitable for the Client's purposes and, where there is any uncertainty, to contact Minerva before using the Software for any purpose;
- 5.6 not to adapt, vary or modify the Software without Minerva's prior written consent and where any alteration, variation or modification is made without such consent to notify Minerva immediately, in writing, of the

changes made to the Software;

- 5.7 to notify Minerva immediately when the Client becomes aware of any unauthorised possession, copy or use of the Software and to cooperate fully with Minerva in pursuing any claims or proceedings in connection with any unauthorised Use;
- 5.8 not to market, exploit or make the Software available to any third party or permit a third party to use the Software without the prior written consent of Minerva;
- 5.9 not to use the Software on behalf of or for the benefit of any third party without the prior written consent of Minerva;
- 5.10 not to make copies of the Software without the prior written consent of Minerva;
- 5.11 not to charge or otherwise encumber the Software in any way without the prior written consent of Minerva

6. Client's Obligations

- 6.1. Access to the Software shall only be permitted to Authorised Users. Should the Client know or suspect that an Authorised User's password has been made available or is being used by an unauthorised third party, the Client shall immediately inform Minerva.
- 6.2. The Client shall cover all Minerva charges from time to time as detailed in the Subscription and Services Agreement and in accordance with Clause 4 below.
- 6.3. The Client shall use all reasonable efforts to ensure that only those of its officers and employees who are Authorised Users use the Software. Should the Client know or suspect that an Authorised User's password has been made available or is being used by an unauthorised third party, the Client shall immediately inform Minerva.
- 6.4. The Client will provide Minerva with all Data and all other information Minerva may reasonably request from time to time to allow Minerva to make the Software available to the Client and will provide such Data and information in the format which may be specified by Minerva.. In particular, where the data import option has been

selected, the data will be provided in the format as specified in the Subscription and Services Agreement. All information the Client supplies will be complete, accurate and given in good faith. Such information will be treated as Confidential Information under the terms of Clause 11 of the Terms and Conditions.

- 6.5. The Client acknowledges that the Software may enable the Client and/or the Client's employees to access other websites and such sites may have their own terms and conditions. When the Client and or the Client's employees access, browse or use such a site they accept without limit or qualifications the terms and conditions of use set out in such site.

7. Warranties And Support

- 7.1. Minerva makes no warranty that the use or operation of the Software will be uninterrupted or error free.
- 7.2. Subject to clause 4.4, Minerva warrants that the Software will be provided on a continuous basis throughout the Licence Period and shall promptly credit or refund to the Client a pro rata proportion of the subscription fee for any period of unavailability of the Services longer than 24 hours. Any such 24-hour period will commence from the receipt of written notice of any unavailability of the Software from the Client and the 24-hour period shall only apply during Working Days.
- 7.3. Minerva will update the Software from time to time to enhance its functionality and structure of the Data to improve its usability by the Client. For the avoidance of doubt this does not include new and separate modules and products developed by Minerva. Minerva reserves the right to change the structure of the Data to enable it to provide these enhancements.
- 7.4. Minerva will fulfil its obligations under this Agreement with all reasonable skill, care and diligence and in accordance with the Subscription and Services Agreement.
- 7.5. Subject to any applicable legislation, Minerva may provide the Software and Services from any hardware installation anywhere in the world and may, at any time, transfer the provision of the Software from

one installation to another. Minerva does not guarantee that any such installation is dedicated to the sole use of the Client. In order to fulfil its obligations in managing the Software Minerva may at any time amend the Software and any documentation relating thereto for reasons including (but not limited to) any legal, health and safety, commercial or technical considerations.

- 7.6. Minerva will provide customer support regarding the Software to the Client in accordance with this clause 7.6. If any Authorised Users have any queries regarding the Software the Client must ensure that they first refer them to a Nominated Administrator who shall use all reasonable endeavours to resolve such queries without involving Minerva. If a Nominated Administrator is unable to resolve the issue he shall be entitled to contact Minerva for telephone or e-mail assistance (such contact details to be contained in the Subscription and Services Agreement). Minerva will only be obliged to provide customer support to a Nominated Administrator and will refer any queries raised to it directly by Authorised Users back to the Nominated Administrator. Minerva will be available to provide support services to the Nominated Administrator during Working hours within Working Days.
- 7.7. Training on the use of the Software will be provided online for up to three of the Client's Employees by way of one live online initial overview course Any person who receives such online training (up to a maximum of three people) shall be referred to as a "Nominated Administrator". Minerva's charges for additional training are detailed in the Subscription and Services Agreement. Minerva reserves the right to charge variable rates for training depending upon at what location the training takes place. Any travel and out of pocket expenses incurred by Minerva or the Client in relation to the provision of training shall be borne by the Client
- 7.8. The following shall not be included in the Agreement and shall be charged for by Minerva at such rates as prevail at the relevant time: -
- 7.8.1. rectification, including replacement, of lost, or corrupted, data arising for any reason other than Minerva's own negligence;

- 7.8.2. support rendered more difficult because of any changes, alterations, additions, modifications or variations to the Software or operating environment;
- 7.8.3. attendance to faults caused by using the Software outside its design or other specifications or outside any other provisions laid down in any documentation or information supplied on within the Software or at www.minervabs.net.
- 7.8.4. diagnosis and/or rectification of problems not associated with the Software;
- 7.8.5. loss or damage caused, directly or indirectly, by operator error or omission;

8.6. Neither party accepts any liability under or in relation to this Agreement or its subject matter (whether such liability arises due to negligence, breach of contract, misrepresentation or for any other reason), including under any indemnity given, for any loss of profits, loss of sales or turnover, loss of or damage to reputation, loss of contracts, loss of clientele, loss of, or loss of use of, any software or data, loss of use of any computer or other equipment or plant, wasted management or other staff time, losses or liabilities under or in relation to any other contract, indirect loss or damage, consequential loss or damage, loss(es) directly or indirectly due to network access by third parties; or special loss or damage. For the purposes of this Clause 7.7 the term "loss" includes a partial loss or reduction in value as well as a complete or total loss.

8. Liabilities

9. Intellectual Property Rights

- 8.1. Minerva's liability to the Client for any loss or damage caused by or arising from this Agreement, the Software, its Use, maintenance or otherwise, resulting from the negligence of Minerva shall be limited to the Licence Fee.
- 8.2. Minerva excludes liability for any indirect, incidental, special, consequential loss or damage by or to the Client or any third party which may arise from any failure of the Software, or its Use, or in respect of other equipment or property supplied by Minerva, this Agreement or for loss of profit, use, data, business, revenue, or goodwill.
- 8.3. Minerva has made every effort to prevent any software virus from forming part of the Software but in the event that a virus arises during the use of the Software and can be shown to be attributable solely to the Software, Minerva shall not be liable for any damage, which may result from such a virus.
- 8.4. Minerva will if requested, at the Client's expense, arrange insurance for the Client against any virus, or negligence of Minerva in the production or maintenance of the Software.
- 8.5. The Client further expressly accepts sole and full responsibility for ensuring that the computations data or other material inputted to, or produced by, the Software is suitable for the purpose for which the Client intends.

- 9.1. The Client acknowledges that any and all Intellectual Property rights used or embodied in or in connection with the Software or its support shall be and remain the sole property of Minerva. The Client shall not during or at any time after the expiry or termination of this Agreement (whether in whole or with respect to support only) in any way question or dispute the ownership by Minerva or any other identified party of any such rights.
- 9.2. In the event that new inventions, designs or processes evolve in performance of or as a result of this Agreement or the use of the Software, the Client acknowledges the same shall be the property of Minerva unless otherwise agreed in writing by Minerva.
- 9.3. The Client shall indemnify Minerva fully against all liabilities, costs and expenses, including legal expenses, which Minerva may incur as a result of work done in accordance with the Client's specifications which results in any infringement of any copyright, patent or other proprietary or Intellectual Property right, or any claim for such infringement.

10. Indemnity

- 10.1. Minerva agrees to protect and save harmless and defend at its own expense the Client from and against any and all claims or infringements of Intellectual Property rights

relating to the Software provided that: -

- 10.1.1 the Client shall not have done, permitted or suffered to be done anything, which may have, been or become an infringement of any rights in any Intellectual Property;
- 10.1.2 the Client shall have exercised all due care in protecting the same.
- 10.2. If the Client fails to carry out its duties in Clause 10.1, the Client shall indemnify Minerva against all actions, proceedings, costs, claims, liability or expenses incurred by Minerva and attributable to the acts or omissions of the Client.
- 10.3. The Client undertakes that Minerva shall be given notice immediately of any claim specified in Clause 10.1 above that is made against the Client and Minerva shall have the right to defend any such claims and make settlements at its own discretion and the Client shall give all such assistance as Minerva may reasonably require to settle or oppose any such claims, including court action.
- 10.4. In the event that any such infringement occurs or may occur, Minerva may at its sole option and expense do any of the following: -
 - 10.4.1. Procure for the Client the right to continue using the Software or infringing part of it;
 - 10.4.2. Modify or amend the Software or infringing part of it so that the same becomes non-infringing;
 - 10.4.3. Replace the Software or any infringing part of it by other software of similar capability;
 - 10.4.4. Repay to the Client, a proportion of the fees paid to the Minerva (at Minerva's sole discretion)..

11. Confidential Information

- 11.1. All information, data, documentation, drawings, listings, object codes, listings, specifications or source codes which Minerva may have imparted and may, from

time to time, impart to the Client relating to the Software is proprietary to Minerva and confidential between the parties. The Client shall not at any time during or after expiry or termination of this Agreement disclose the same, whether directly or indirectly, to any third party without Minerva's prior written consent.

- 11.2. To the extent necessary to implement the provisions of this Agreement each party may disclose the Confidential Information to those of its employees and sub-suppliers as may be reasonably necessary or desirable provided that before any such disclosure each party shall make those employees and sub-suppliers aware of its obligations of confidentiality under this Agreement and shall at all times procure compliance by those employees and sub-suppliers with them
- 11.3. The Client shall not itself, or through any other person sell, lease, licence, sub-licence or otherwise deal with the Software or any part or parts or variations, modifications, copies, releases, versions or enhancements or any supporting software or have any software or other program written or developed for it based on the Software or on any confidential information supplied to it by Minerva.
- 11.4. Where Minerva exercises the rights outlined in clause 11.2 Minerva will use reasonable endeavours to keep confidential all information received from the Client or for the Client in connection with this Agreement.
- 11.5. Minerva will keep the Client's Data secure and apply appropriate policies and safeguards. if any breach of security should occur due to the standard policies and safeguards not being adhered to, then Minerva will inform the Client immediately of the breach of security and work with the Client as a matter of highest priority to ensure the security and integrity of the Data.

12. Termination

- 12.1. Minerva may by notice in writing to the Client terminate this Agreement forthwith at its sole discretion, without any rebate or compensation being payable to the Client if an event of default occurs.
- 12.2. Any of the following events shall constitute

an event of default:-

- 12.2.1. The Client breaches any term, condition or provision of this Agreement or requirement of law;
- 12.2.2. the Client presents a petition, or a petition is presented by a creditor, for the Client's winding up, or shall convene a meeting to pass a resolution for voluntary winding up, or shall enter into any liquidation (other than for the purposes of a bona fide reconstruction or amalgamation,) or shall call a meeting of its creditors, or shall have a receiver or administrator or similar officer appointed over all or any of its assets or undertaking or shall be deemed by virtue of Section 123 of the Insolvency Act 1986 to be unable to pay its debts or shall be wound-up.
- 12.3. Notwithstanding the termination of the provision of the Software under this Agreement, all other continuing obligations shall remain in full force and effect and, in particular, without prejudice to the foregoing generality, the obligations set out in Clauses 8, 9, 11, 13, and 15 shall continue.
- 12.4. Upon termination of this Agreement, the Licence shall terminate.
- 12.5. Upon termination of the Head Licence the Licence shall terminate.

13. Consequences Of Termination

- 13.1. The following consequences apply on termination
 - 13.1.1. Within 30 days of the date of termination, Minerva will delete all Client Data from the Software.
 - 13.1.2. All unpaid invoices from Minerva become due and payable immediately; and
 - 13.1.3. subject to Clause 12.3 all rights of the Client under this Agreement shall terminate on the termination date.

14. Notices

- 14.1. Any notice required or permitted to be given under this Agreement shall be sufficiently given to either party if sent in a legible form by first class or express registered post ("post"), telex, facsimile transmission ("fax") or by personal delivery, including courier delivery, if for the attention of Minerva to 12a South East Lane, Cumberland Street, Edinburgh, EH3 6RU and if for the attention of the Client to the address specified in the Subscription and Services Agreement or to the postal address of the addressee within the United Kingdom last notified in writing to the sender.

- 14.1.1. Any notice served by telex, fax, post or personal delivery shall be deemed to have been received:-

- 14.1.2. in the case of fax, one hour after the time of despatch, evidenced by the relevant completed transmission report;

- 14.1.3. in the case of telex, on receipt by the sender of the appropriate "answer back";

- 14.1.4. in the case of first class or express registered post, thirty-six hours from midnight (24.00 hrs) on the date of posting, evidenced by the relevant proof of posting except where the day of receipt of such a notice is a Sunday or public holiday at the place of delivery in which event, notice shall be deemed to be received at 9 a.m. on the next day which is not a Sunday or a public holiday; and

- 14.1.5. in the case of personal delivery, one hour after the time of delivery to the party, evidenced, where appropriate, by the courier's receipt duly counter-signed for or on behalf of the addressee.

15. Announcements And Confidentiality

No announcement, press or media release or other publicity regarding this Agreement, directly or indirectly, shall be made by either party unless it has been approved in writing by the other party, or is required by law, and the terms of this Agreement and any matters arising from or relating to it shall be kept confidential by the parties at all times.

16. Assignment

16.1. The benefit of, and rights and obligations under, this Agreement may be assigned:-

16.1.1. by Minerva at its sole discretion;

16.1.2. by the Client only with the prior written agreement of Minerva.

17. Entire Agreement

17.1. This Agreement (comprising the Terms and Conditions and the Subscription and Services Agreement) constitutes the entire agreement and understanding of the parties and supersedes all prior agreements, representations, discussions, negotiations and arrangements whether written or oral, express implied, between the parties, their representatives or agents.

17.2. Nothing in this Clause 17 will operate to exclude liability for fraudulent misrepresentation made by a party.

18. No Waiver

Except as otherwise provided in this Agreement, no modification, alteration or waiver of the provisions of this Agreement shall be effective unless it is in writing and executed by or on behalf of each of the parties. No delay, omission or failure by either of the parties to exercise any right or remedy shall operate as a waiver. Any partial exercise of a right or remedy shall not preclude any other or further exercise of any such right of action.

19. Severability

If any of the Clauses, Sub-Clauses or other provisions of this Agreement are found by an arbiter, court or other competent authority to be void or unenforceable, such provision shall be deemed to be deleted from the Agreement but the remaining provisions of the Agreement shall continue in full force and effect insofar as they are not affected by any such deletion.

20. Time

Time shall be of the essence in all dealings or acts required, or agreed, to be carried out under or in accordance with this Agreement.

21. Governing Law

The construction, validity and performance of

this Agreement shall be governed by the Law of Scotland and the parties prorogate the non-exclusive jurisdiction of the Scottish Courts.