

CONSULTING SERVICES TERMS & CONDITIONS

1. DEFINITIONS

1.1 In this Agreement:

“Agreement” means these terms & conditions together with the Order attached, and (if applicable) any attached appendix required to provide further details of the Assignment;

“Assignment” means the work specified or referred to in the Order and (if applicable) any attached appendix;

“Background IP” means any IPR in the Deliverables that a party owns or controls before entering into this Agreement or that is developed by a third party and made available for use as part of the Services.

“Foreground IP” means any IPR in the Deliverables that are created, developed, or first brought into existence for the purposes of the Services under the Agreement and are bespoke in nature and are not owned or developed by anyone else apart from DT;

“Confidential Information” means all information of a confidential nature in the disclosing party’s possession or control, whether created before or after the Agreement has been entered into by the parties, whatever its format, and whether or not marked ‘confidential’, including the existence and terms of the Agreement and negotiations relating to it, but not including information that: (i) is or comes into the public domain through no fault of the other party; (ii) was already lawfully in the other party’s possession or comes into the other party’s possession without breach of any third party’s confidentiality obligation to the disclosing party; or (iii) is independently developed by or on behalf of the other party.

“Customer” means the company, firm or other association specified in the Order; “Data Protection Legislation” means all laws and regulations relating to privacy and security of personal data, including but not limited to Regulation (EU) 2016/679 (“GDPR”), the GDPR as amended and incorporated into UK law under the UK European Union (Withdrawal) Act 2018, the UK Data Protection Act 2018, in each case as amended, replaced or superseded, and any subsequent applicable regulations applicable to personal data processing in accordance with the terms of this Agreement;

“Developed Software” means the bespoke or customised software produced by means of the Software Development;

“Disputes” shall have the meaning accorded to it in Condition 16.1; “DT” means Data Technology Ltd;

“Event of Default” shall have the meaning accorded to it in Condition 12.1; “Functional Specification” means the functional requirements of any Software Development as agreed by the parties pursuant to Condition 5.2;

“IPR” means all copyrights, patents, trademarks, trade names or other intellectual property rights or rights of a similar nature in the United Kingdom or elsewhere; “Products” means the hardware and/or Software including any instalment of the same or any part of them described in the Assignment;

“Software” means the Third-Party Software to be modified and adapted under the Works Order;

“Services” means the services as set out in the Order.

“Software Development” means the project for bespoke or customised Software to be produced by DT in collaboration with the Customer as detailed in the Assignment; “Order” means the works order form or order form.

1.2 In this Agreement, unless the context requires otherwise, any reference to a party or the parties is to a party or the parties (as the case may be) to this Agreement.

2 ASSIGNMENT

2.1 The Customer hereby engages DT to undertake the Assignment and DT hereby

accepts such engagement to serve the Customer as a consultant in performance of the Assignment.

2.2 All work carried out by DT under this Agreement will be carried out on a time and materials basis, charged for at the rates specified in this Agreement.

3 TERM

DT shall commence work on the Commencement Date specified in the Order and shall continue thereafter until completion of the Assignment.

4 DUTIES OF DT

4.1 DT shall, while this Agreement is in force or until the satisfactory completion of the Assignment, unless prevented by staff ill-health or circumstances beyond its reasonable control, devote such of its time, attention and abilities to the Assignment as may be reasonably necessary for the satisfactory completion thereof and as set out in the Order.

4.2 If DT is delayed or prevented from carrying out the Assignment for

any reason, DT will promptly inform the Customer and will use all reasonable efforts to meet the Completion Date.

4.3 DT shall ensure compliance with any reasonable policies and procedures brought to its attention by the Customer from time to time.

4.4 DT Warranties

DT warrants that:

- a) it will perform the Software Development in accordance with good industry practice and ensure that all personnel are suitably skilled and qualified to perform the Services;
- b) it will perform the Software Development with reasonable skill and care and in accordance with applicable laws;
- c) the consultants will have the appropriate qualifications and experience necessary to fulfil the agreed Order.

5 SERVICES

5.1 IT Consultancy

DT accepts responsibility only for the Services supplied under the Order. The Customer must satisfy itself as to the suitability of any Services provided by DT to fulfil the Customer’s needs.

5.2 Software Development

- (1) If applicable, DT and the Customer shall discuss the Customer's functional requirements for any Software Development. DT shall, if required by a further Order provide a form of Functional Specification. If a Functional Specification is agreed between the parties DT shall if required by a further Order provide a technical specification and/or a prototype/a series of prototypes (as appropriate) .
- (2) The Customer undertakes to DT:
- (a) where hardware is to be supplied by the Customer for the use of DT, to:
 - (i) keep the hardware in good working order;
 - (ii) train DT in the use of the hardware if required;
 - (iii) obtain permission for DT to use any software that is part of the hardware from the owners of the software.
 - (b) to ensure the software, operating system and compiler and any other software with which the Developed Software will be used is either the property of the Customer or is legally licensed to the Customer and to indemnify DT in respect of any claims against DT by third parties and all related costs, expenses or damages, in the event of any actual or alleged violations of third party proprietary rights or software licences;
 - (c) to recognise that the ability of DT to successfully complete Software Development depends upon the cooperation of the Customer. ;
 - (d) to accept that the Software Development is subject to potential technical limitations if so advised by DT, having regard to the applicable Customer hardware, software, operating system, any programming language limitations and any limits on expenditure under the Order.;
 - (e) to create an appropriate test environment in order to satisfy itself that the Developed Software meets the needs of its business. It is the sole responsibility of the Customer to determine that the Developed Software is ready for operational use in the Customer's business before it is so used.
- (3) If compliance with the Customer's designs, specifications or instructions results in DT being subject to any claim for infringement of any IPRs or any third-party rights, the Customer will indemnify DT against any claims, demands, damages, costs and expenses made against or suffered by DT as a result of any such claim or action.
- (4) (a) The Customer acknowledges that all proprietary rights in any other deliverable ("Deliverables") arising out of performance of the Assignment, including but not limited to any title or ownership rights, patent rights, copyrights and trade secrets, will at all times and for all purposes vest and remain vested in DT. DT acknowledges that all proprietary rights in any reports produced by DT for the Customer will at all times and for all purposes vest and remain vested in the Customer.
- (b) DT grants to the Customer a limited, revocable, non-transferable, non-exclusive licence to use the Background IP in the Deliverables for an indefinite term and for its own internal purposes, provided that:
- (i) the Customer will not provide or otherwise make available the Deliverables or any part or copies of any related documentation in any form to any third party; and
 - (ii) the Customer does not transfer or assign this Deliverables licence without DT's prior written consent.
- (iii) The Customer hereby undertakes as a condition of this Agreement not to copy, adapt, vary or modify the Deliverables without DT's prior written consent.
- (c) DT assigns to the Customer all right and title in the Foreground IP in the Deliverables and shall vest in and be the exclusive property of the Customer.

6 SYSTEMS SUPPLY AND CONFIGURATION

In cases where DT supplies the Customer with a combination of hardware, software, third party services, implementation and configuration services, the following shall apply:-

- 6.1 The Customer acknowledges that the Products have not been prepared to meet the Customer's individual requirements and that it is therefore the responsibility of the Customer to ensure that the facilities and functions of the same meet its requirements.
- 6.2 If the Customer wishes to take advantage of the hardware manufacturer's warranty then the Customer is responsible for:
- (1) completing the warranty documents;
 - (2) ensuring the level of support is satisfactory;
 - (3) returning the warranty documents to the manufacturer as soon as possible after delivery; and
 - (4) notifying DT that this has taken place.

DT has no responsibility for the provision of, or terms and conditions of, any third-party agreement or warranty.

7 FEES

- 7.1 In consideration of the services rendered by DT hereunder the Customer shall pay to DT a fee at the rates set out in the Order payable in accordance with the provisions of Condition 9 below.
- 7.2 DT is responsible for accounting to the relevant fiscal and/or revenue authorities for all taxes, insurance contributions and other liabilities, charges and dues for which DT is liable.
- 7.3 The daily fee rate quoted in the Order is based on DT's consultant(s) working a total of 7.5 hours a day between the hours of 09.00 a.m. and 5.30 p.m., Monday to Friday inclusive which shall apply unless the Order indicates otherwise. Work by DT's consultants on these days outside these hours will be charged at 1.5 times the fee rate quoted whereas work carried out at the weekend or Public Holidays will be charged at 2.0 times the rate quoted in the Order.
- 7.4 All invoiced services must be utilised within 12 months of invoice date, after which time any remaining balance shall expire.

8 EXPENSES

The Customer shall reimburse such agreed travelling, subsistence and other expenses as are properly incurred by DT in the performance of its duties under this Agreement, together with VAT in accordance with the Customer's expenses policy. All claims for reimbursement should be itemised in an appropriate invoice and should be accompanied by evidence of payment or expenditure.

9 PAYMENT AND OTHER CUSTOMER OBLIGATIONS

9.1 Fees are payable in monthly arrears within thirty days of receipt by the Customer of DT's invoice for work done and reimbursement of expenses is payable by the Customer within thirty days of receipt by the Customer of DT's note of expenses and other items as shown in Condition 8. Interest will be charged on all bona fide undisputed late payments at a rate of 3 per cent above the base rate of Barclays Bank PLC as varied from time to time commencing on the thirtieth day after which the Customer received the invoice.

9.2 The customer acknowledges that DT maintains a [sexual harassment policy](#) applicable to all parties interacting with its personnel, including third parties. The customer agrees to comply with the terms in this policy, as may be amended from time to time, and to ensure that its employees, agents, and the same.

9.3 All sums payable under this Agreement unless otherwise stated are exclusive of VAT and other duties or taxes. Such VAT or other duties or taxes payable in respect of such sums shall be payable in addition to such sums.

9.4 In consideration of the services rendered by DT under this Agreement, the Customer agrees to make the payments of the fees promptly without demand, deduction or set-off.

9.5 The Customer undertakes:

- (a) to provide DT and its employees (at no charge) with all necessary software, documentation, information, support and co-operation that may be required to enable DT to carry out this Assignment;
- (b) to provide at no charge to DT, adequate office accommodation, a secure work space, telephone and typing services and other facilities including access to the applicable equipment and systems of the Customer, to enable the employees and sub-contractors of DT to perform the Assignment and any other obligations of DT under this Agreement which need to be performed on site and further to allow full access to the areas in which the same are to be performed; and
- (c) to take all reasonable steps to ensure the health and safety of DT's employees and sub-contractors while they are at the Customer's sites.

10 CONFIDENTIALITY and DATA PROTECTION

10.1 Each party shall protect the other party's Confidential Information using the same degree of care used to protect its own Confidential Information, but in no event less than a reasonable degree of care.

10.2 The receiving party shall not: (i) use Confidential Information for any purpose outside the scope of this Agreement; or (ii) voluntarily disclose Confidential Information except to employees, contractors and agents as required to perform its obligations under the Agreement provided such employees, contractors and agents are bound by obligations of confidentiality substantially similar to those set forth in this Agreement. Notwithstanding the foregoing, a party may disclose the other party's Confidential Information to the extent that it is required to be disclosed in accordance with an order or requirement of a court, administrative agency or other governmental body, provided that such party, to the extent permitted by law, provides the other party with prompt notice of such order or requirement in order that it may seek a protective order.

10.3 Each party's confidentiality obligations hereunder will continue for a period of five (5) years following any termination of this Agreement, provided, however, that each party's obligations will survive and continue in effect thereafter with respect to, and for so long as, any Confidential Information continues to be a trade secret under applicable law. The parties acknowledge and agree that all pricing information shall be the Confidential Information of DT.

10.4 At the request of the disclosing party, the receiving party shall: (i) destroy or return to the disclosing party all documents and materials (and any copies) containing, reflecting, incorporating, or based on the disclosing party's Confidential Information;

(ii) erase all the disclosing party's Confidential Information from its computer systems or which is stored in electronic form (unless such Confidential Information is stored electronically pursuant to an existing routine data back-up exercise on servers or back-up sources so long as no attempt is made to recover it from such servers or back-up sources); and (iii) certify in writing to the disclosing party that it has complied with the requirements of this section. Nothing in this Clause shall require the receiving party to destroy or expunge Confidential Information that the receiving party is required to retain by applicable law. Any Confidential Information that is not destroyed or expunged will continue to be subject to the confidentiality obligations pursuant to this Agreement. The Parties acknowledge that they are both independent controllers as defined by Data Protection Legislation and that DT will at all times comply with their privacy policy found at <https://datatechnology.co.uk/cookie-privacy-policy>.

10.5 Both parties will comply with all applicable requirements of Data Protection Legislation. Where the provision of the Services by DT requires it to process personal data as a processor or equivalent term, the parties agree that to enter into DT's data processing addendum which shall supplement and form part of this Agreement once signed by both parties.

11 POACHING STAFF

11.1 Each party undertakes that for the period of this Agreement and for 2 years thereafter, it will not attempt to solicit or entice away from the other any of the other's staff who at any time have been engaged in the performance of this Agreement, in whatever respect. In the event of breach of this obligation by either party, the other party will be entitled to claim against the offending party damages equal to the loss of revenue it has suffered as a result of such breach, which in case of breach by the Customer shall be limited to twelve months chargeable invoice value in respect of the services provided, by the said member of DT's staff and in case of breach by DT shall be limited to a sum equal to one year's gross salary of the poached member of staff.

12 LIMITATION OF LIABILITY

12.1 The following provisions set out the Parties entire liability (including any liability for the acts, omissions, negligence or default of its employees, agents or sub-contractors) to each other in respect of:

- (a) any breach of its contractual obligation arising under this Agreement;
- (b) any negligent or willful act or omission or breach of statutory duty arising under or in connection with this Agreement;

together for the purposes of this Condition hereinafter referred to as an "Event of Default".

12.2 Each Party's liability to the other for death or personal injury resulting from its own negligence or the negligence of its employees, agents or sub-contractors shall not be limited.

12.3 Neither Party shall accept liability in respect of damage to the tangible property resulting from its own negligence or the negligence of its employees, agents or sub-contractors up to a maximum of £2 million sterling arising from any one Event of Default and shall ensure that it has appropriate insurance in place to cover such liability.

12.4 (a) The Parties shall not be liable for any indirect or, consequential loss, loss of profit or revenue, whether arising from an Event of Default or howsoever caused.

12.4 (b) Each Party's liability for any breach of its contractual obligations in respect of any Order shall be limited in aggregate to 125% of the Services fees payable by the Customer under such Order.

12.5 DT's liability to the Customer for any loss of data by the Customer, howsoever caused (whether before or after termination of this Agreement) or for the reinstatement of the same shall be limited in aggregate to 125% of the Services fees payable by the Customer under such Order.

12.6 If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this Agreement.

12.7 Except in the case of death or personal injury pursuant to Condition 12.2,

12.8 DT shall not be liable to the Customer in respect of any Event of Default unless it has served written notice of the same within 3 months of the date it became aware or reasonably ought to have become aware of the circumstances giving rise to the Event of Default. DT shall not be liable in respect of any claim under these provisions made more than 3 months after the termination of this Agreement.

12.9 This Condition 12 shall continue in force after this Agreement is terminated for whatever reason.

12.10 DT shall indemnify the Customer against any claims, demands, damages, costs and expenses made against or suffered by the Customer arising out of the inclusion of any unauthorised third party IPR in any software or materials generated by DT for the Customer.

13 TERMINATION

13.1 This Agreement may be terminated forthwith upon the occurrence of the earliest of the undermentioned events provided that, except in the case of sub-Condition (c), no such termination will have effect until notice in writing to terminate has been received by the addressee:

- (a) by DT giving notice to the Customer upon failure by the Customer to pay any sum due hereunder within 30 days of the due date therefore and such sum remains unpaid for 14 days after written notice from DT that such sum has not been paid (such notice to contain a warning of DT's intention to terminate).
- (b) by DT or the Customer giving notice to the other if the other commits any material breach of any term of this Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within 21 days of a written request to remedy the same.
- (c) by DT or the Customer if the other is unable to pay its debts, ceases or threatens to cease carrying on business, is wound up or (as an individual) is made bankrupt.

:

13.2 Any termination of this Agreement pursuant to this Condition 13 shall be without prejudice to any other rights or remedies a terminating party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination. Upon the termination of this Agreement or the Assignment whichever shall be the earlier, DT shall immediately deliver up to the Customer all correspondence, reports, documents, specifications, papers, information (on whatever media) and property belonging to the Customer which may be in its possession or under its control. The Customer shall immediately pay to DT all arrears of Fees as described in the Order and expenses and any other sum due under the terms of this Agreement.

14 CANCELLATION

14.1 The Customer may upon one month's notice at any time cancel the Order. At the expiration of such notice DT will cease work on the Assignment. DT shall be entitled to receive payment of 100% of the estimated fee (calculated in accordance with the Order) pro-rata for the period from the Commencement Date up to ceasing work, and 50% of its fee for the estimated time remaining to complete the Assignment, such payment being a genuine pre-estimate of the loss likely to be incurred by DT as a result of cancellation. This provision will not apply to 'open' Orders for which no specific Assignment has been defined. Payment due under this Condition will be invoiced together with VAT and be payable in accordance with Condition 9 above.

15 ASSIGNMENT

15.1 DT shall not transfer or assign the whole or any part of this Agreement without the prior written consent of the Customer (such consent not to be unreasonably withheld) but shall be entitled to subcontract any part of the same upon the giving of not less than 21 days' notice to such effect to the Customer.

16 INVALIDITY AND SEVERABILITY

16.1 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The Customer and DT hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision that achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

17 DISPUTES

17.1 The Customer and DT shall meet to discuss and resolve all matters not specifically provided for in this Agreement and which require a decision, and all differences, disputes or disagreements ("Disputes") which may arise between the parties. If the parties are still unable to resolve any such matters they shall reconvene for further discussions within 48 hours of the previous meeting. If the parties are still unable to resolve such matters at the reconvened meeting, then the matters shall be referred to the Managing Director of the Customer and the Managing Director of DT for a decision.

17.2 If, despite Condition 16.1, any Dispute cannot be resolved between the parties, the parties will attempt in good faith to resolve the Dispute through an Alternative Dispute Resolution

("ADR") procedure as recommended to the parties by the Centre for Dispute Resolution.

17.3 If the matter has not been resolved by an ADR procedure within 60 days of the initiation of such procedure, the Dispute shall be settled by the Courts.

18. **WAIVER OF REMEDIES**

18.1 No forbearance, delay or indulgence by any party enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for any party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

19. **ENTIRE AGREEMENT**

19.1 This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof. No addition or modification of any provision of this Agreement shall be binding upon the parties unless made in writing and signed by a duly authorised representative of each of the parties.

20. **HEADINGS AND EXPRESSIONS**

20.1 The headings contained herein are for convenience of reference only and shall not affect the construction hereof.

21. **FORCE MAJEURE**

21.1 Neither party shall be liable for any default in its obligations under this Agreement resulting from causes beyond its reasonable control including without limitation, fires, strikes (of others' employees), insurrection or riots, embargoes, container shortages, wrecks or delays in transportation, inability to obtain supplies and raw materials or requirements or regulations of any civil or military authority.

21.2 In the event that those causes referred to in Condition 20.1 persist for a period in excess of 12 weeks either party shall have the right at any time after the end of that 12 week period if those causes persist to terminate the Agreement by giving not less than 30 days' written notice to the other.

22. **NOTICES**

22.1 Any notice to be given hereunder shall be delivered, sent by first class post or facsimile to the address of the other party as set out in this Agreement (or such other address as may have been subsequently notified in writing) and any such notice shall be deemed to have been served, if delivered, at the time of delivery, if sent by first class post, upon the expiration of 48 hours after posting if the recipient of the notice is within the UK or 5 days if the recipient of the notice is outside the UK and if sent by facsimile shall be deemed delivered upon transmission to the correct number, provided such notice is confirmed within 48 hours by either delivery or posting a copy by first class post to the appropriate address.

23. **LAW**

23.1 The parties hereby agree that this Agreement and the provisions hereof shall be construed in accordance with the Laws of England to the exclusive jurisdiction the courts of England and Wales.