

Destin Solutions Ltd - Standard Terms and Conditions

DEFINITIONS

“Agreement” means the agreement between Destin and the Customer for the provision of the Application, incorporating these terms and conditions (including any related Schedules), and any amendments to the Agreement from time to time;

“Application” means the software application supplied by Destin to the Customer, details of which are more particularly set out in the Agreement for the purpose of enabling the Customer to access and use the Portal;

“Charges” means the amounts payable by the Customer to Destin under or in relation to the Agreement (as set out in Agreement);

“Confidential Information” means the Customer Confidential Information and Destin Confidential Information;

“Consultancy” refers to any advice or guidance provided by Destin to the Customer in terms of the layout, development and design of the Application;

“Customer” means the customer specified in the Agreement;

“Customer Materials” all works and materials:

- a) uploaded to, stored on, processed using or transmitted via the Application by or on behalf of the Customer or by any person or application or automated system using the Customer's account; and
- b) otherwise provided by the Customer to the Provider in connection with the Agreement;

“Customisations” means customisations to the application that Destin and the Customer agree that Destin will produce on behalf of the Customer;

“Destin” means Destin Solutions Limited, Company registration number 05658906, whose registered office address is Albert Edward House, The Pavilions, Ashton on Ribble, Preston, Lancashire, PR2 2YB;

“Defect” means a defect, error or bug having a materially adverse effect on the appearance, operation or functionality of the application, but excluding any defect, error or bug caused by or arising as a result of:

- a) an act or omission of the Customer, or an act or omission of one of the Customer's employees, officers, agents, suppliers or sub-contractors; or
- b) an incompatibility between the application and any other system, program or software not specified as compatible in the contract;

“Documentation” means the documentation produced by Destin and made available on the application to the Customer specifying how the Application should be used;

“Effective Date” means the date that the Agreement comes into force as specified in the contract;

“Force Majeure Event” means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, [hacker attacks, virus or other malicious software attacks or infections,] power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

“Initial Period” means the period set out in the Agreement;

“Intellectual Property Rights” means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the “intellectual property rights” referred to above include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

“Normal working hours” means between 08:00 and 18:00, London time on any week day, other than a bank or public holiday in England;

“Personal Data” has the meaning given to it in the Data Protection Act 1998;

“Support” this refers to the advice and guidance supplied by Destin to the Customer with regards to the day to day use of the Application;

“Support Services” means the support and maintenance services provided by Destin designed to ensure that the Application remains fully accessible and available to the Customer within Normal working hours;

“Term” means the period from the Effective date until the date of termination as notified by either party.

1. Terms of Licence

1.1 The Customer is licensed to use the Application for the Term for internal purposes and from remote locations providing the access is for purposes directly associated with the Customer. Any development of the application to provide access to a third party must be with the express permission of Destin.

1.2 The Customer and any party granted use of the Application in accordance with the terms of this Agreement shall:

- a) not (and instruct its employees having access to the Application not to) copy the contents of the application for use by a third party, or assist any third party to do so;
- b) not permit access to the Application by any third party, except access by temporary staff or Customer's sub-contractors solely for the Customer's purposes.

2. Customer Responsibilities

2.1 The Customer will allow Destin access to the Customer's premises during Normal working hours to meet with relevant parties to ascertain how and where the Application will be deployed. The Customer shall provide Destin with all information and Customer Materials which may reasonably be requested by Destin in order to allow Destin to fulfil its obligations.

2.2 The Customer shall provide Destin, at no cost to Destin, access during Normal working hours to facilities such as electricity, telephones and computers, as Destin may reasonably consider necessary for performance of its obligations.

2.3 The Customer agrees that the data and/or datasets they provide to upload into the Application conforms to the standards and guidelines supplied by Destin and where data is loaded up on to a FTP server by the Customer it is done so in the way prescribed by Destin.

2.4 The Customer agrees to only load the data they are permitted to, under the terms of the Agreement.

2.5 The Customer takes full responsibility for the data it loads up into the Application and agrees to take every precaution to ensure the data;

- a) is accurate and within the standards prescribed by Destin
- b) does not contain malicious code, either accidental or deliberate
- c) is not libellous or in any way defamatory
- d) does not contain obscene or indecent content
- e) does not infringe any copyright, moral rights, database rights, trade mark rights, design rights, rights in passing off, or other intellectual property rights
- f) infringe any rights of confidence, rights of privacy, or rights under data protection legislation

2.6 The Customer is expected to operate in a 'virus-free' environment. If this is found to not be the case, Destin, reserve the right to deny the Customer access to the Application and quarantine the Customer data as appropriate.

- 2.7 The Customer must not use the application to promote or distribute any software, programs, routines, applications or technologies that will or may negatively affect the performance of a computer or introduce significant security risks to a computer.
- 2.8 The Customer agrees to inform Destin in a timely manner of any technology upgrades that it introduces including but not limited to, new software or new software versions which might impact the provision of data to be loaded into the Application.
- 2.9 The Customer agrees to inform Destin of any site or software upgrades that it introduces which may result in changes to column names, tables names or data types as soon as practically possible.
- 2.10 The Customer understands and agrees to access and view the Application in supported web browsers only and with the correct settings as prescribed by Destin in the terms of service or contract.
- 2.11 The Customer will ensure that the end users of the Application as well as new and transferred staff are properly trained in how to use it, following initial training delivered by Destin.
- 2.12 The Application must not be used at any point in time by more than the number of users and/or department specified in the Agreement.
- 2.13 The Customer must not frame or otherwise re-publish or re-distribute the Application.
- 2.14 The Customer must not alter or adapt or edit the Application, save as expressly permitted by the Documentation, and for the avoidance of doubt, the Customer has no right to access the object code or source code of the Application, either during or after the Term.
- 2.15 The Customer shall use all reasonable endeavours to ensure that no unauthorised person will or could access the Application using the Customer's account.
- 2.16 The Customer must not use the Application in any way that causes, or may cause, damage to the solution or impairment of the availability or accessibility of the solution, or any of the areas of, or services on, the Application.
- 2.17 The Customer must not use the Application:
- a) in any way that is unlawful, illegal, fraudulent or harmful; or
 - b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 2.18 The Customer must not:
- a) sell, resell, rent, lease, loan, supply, distribute, redistribute, publish or re-publish the Application or any part thereof;
 - b) modify, alter, adapt, translate or edit, or create derivative works of, the Application or any part thereof;
 - c) reverse engineer, decompile, disassemble the Application or any part thereof
 - d) use the Application other than in accordance with the Documentation; or circumvent or remove or attempt to circumvent or remove the technological measures applied to the Application for the purposes of preventing unauthorised use.
- 2.19 All Intellectual Property Rights in the Application are the exclusive property of Destin.
- 2.20 The Customer shall be responsible for the security of the Customer's copies of the Application, and will use all reasonable endeavours to ensure that access to the Application is restricted to persons authorised to use it.
- 2.21 The Customer warrants and represents to Destin that the Customers datasets, and their use by Destin in accordance with the terms of the Agreement, will not:
- a) breach any laws, statutes, regulations or legally-binding codes;
 - b) infringe any person's Intellectual Property Rights or other legal rights;
 - c) or give rise to any cause of action against Destin or the Customer or any third party.

3. Destin Responsibilities

- 3.1 During the Term Destin will provide Support Services to the Customer, and may apply upgrades or enhanced features and functionality to the Application, in the general course of business and product development.
- 3.2 Destin will not sub-contract the provision of any Support Services without obtaining the prior written consent of the Customer.
- 3.3 Destin warrants that it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by Destin on behalf of the Customer.

4. Customisations

- 4.1 From time to time Destin and the Customer may agree that Destin will customise the Application in accordance with a specification agreed in writing between the parties.
- 4.2 The Customer acknowledges that the Intellectual Property Rights in the Customisation belong to Destin and that Destin may make any Customisation available to its other Customers.
- 4.3 The Customer will provide Destin with such access to the Customer's computer systems and such other co-operation as is required by Destin (acting reasonably) to enable the performance by Destin of its obligations under this Clause.
- 4.4 The Customer will be responsible for procuring any third-party cooperation reasonably required by Destin to enable Destin to fulfil its obligations under this Clause.

5. Warranties

- 5.1 Destin warrants that any Consultancy and Support provided under the Contract will be of a professional quality conforming to generally accepted industry standards.
- 5.2 Destin will have no liability or obligation under the Consultancy and Support warranty in respect of incorrect instructions or information from the Customer or the Customer's failure to provide information or documentation.
- 5.3 The Customer acknowledges that:
 - a) complex software is never wholly free from defects, errors and bugs;
 - b) and Destin gives no warranty or representation that the Application will be wholly free from such defects, errors and bugs.
- 5.4 Destin does not warrant or represent that the Application will be compatible with any application, programme or software not specifically identified as compatible in the Terms of Services or contract.

6. Payment

- 6.1 The Customer shall pay to Destin the sums set out in the Agreement (together with VAT) at the times or on the dates detailed on the Agreement or (if none is specified) within 14 days of the date of each invoice. The Customer will make all payments due in full without any deduction whether by way of set-off, counterclaim or otherwise.
- 6.2 In the event that the Customer fails to pay any correctly submitted invoice by the due date, then Destin reserves the right to suspend the provision of all Services, Consultancy and Support to the Customer.

- 6.3 Without prejudice to any other right or remedy available, Destin is entitled to charge the Customer interest on any monies overdue at the rate of 2.0% over the UK clearing bank base lending rate, commencing on the date that the sum becomes overdue until the date that payment is received.
- 6.4 In the event of the Customer cancelling delivery of previously agreed days of Consultancy with less than two full working days notice, Destin reserves the right to charge the Customer in full for the days in question, at the prevailing day rate.
- 6.5 After the expiry of the Initial Period, Destin reserve the right to increase its charges in line with any increase in the Retail Price Index.

7. Confidentiality

- 7.1 Both parties agree to treat as confidential all information contained in or embodied in any documentation made available to them and shall not disclose the whole or any part of the information to a third party without the prior written permission of the other party. The terms of this clause shall not apply to the following information:
- a) Information which was in the public domain at the time of disclosure;
 - b) Information which, subsequently falls into the public domain through no fault of either party receiving the Confidential Information;
 - c) Information disclosed pursuant to a duty to disclose imposed by law or the requirements of a regulatory body but only to the extent so required; or
 - d) Information disclosed with the other party's prior written approval.
- 7.2 The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of the Contract for whatever reason.

8. Limitation of Liability

- 8.1 The Customer agrees that Destin is in no way responsible nor can be held accountable for the data created solely in the Application if it is deemed outside the terms of use.
- 8.2 The Customer agrees that Destin provide a platform for various datasets to be viewed, cleansed and reported on but Destin take no responsibility for monitoring or checking that the initial data provided by the Customer is correct.
- 8.3 Except in the case of death or personal injury caused by Destin's negligence, Destin's liability under or in connection with this agreement, whether arising in contract, tort, negligence, breach of statutory duty or otherwise, shall not exceed the sum of £1,000,000 (one million pounds sterling).
- 8.4 Neither party shall be liable to the other party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other party of an indirect or consequential nature including without limitation any economic loss or other loss of turnover, profits, business or goodwill.
- 8.5 Neither party will be liable for any losses arising out of a Force Majeure Event.

9. Indemnity

- 9.1 The customer shall indemnify Destin against all actions, claims and demands, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of data protection, breach of this Agreement, copyright, patent, registered design or other property right used at the request of the Customer by Destin in the course of fulfilling its obligations under the Agreement.

10. Termination of Contract

- 10.1 The Agreement is for the duration of the Initial Period and is terminable by either party giving not less than 2 months notice in writing expiring on the final day of the Initial Period.

10.2 In the absence of any notice being given, the Agreement shall continue on a rolling annual basis until either party gives not less than two months notice to expire on the anniversary of the contract.

10.3 Either party may terminate the Agreement immediately by giving written notice to the other party if:

a) the other party:

- (i) is dissolved;
- (ii) ceases to conduct all (or substantially all) of its business;
- (iii) is or becomes unable to pay its debts as they fall due;
- (iv) is or becomes insolvent or is declared insolvent; or
- (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;

b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;

c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up [(other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement)]; or

d) where that other party is an individual, that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

10.4 Upon termination of the contract by either party Destin will:

- a) irrevocably delete from the Application all Customer Confidential Information; and
- b) irrevocably delete from its other computer systems all Customer Confidential Information, and return to the Customer or dispose of as the Customer may instruct all documents and materials containing Customer Confidential Information.

10.5 In the event, upon termination of the Agreement by either party, that the Customer requires Destin to return any data to them, Destin shall be entitled to charge the Customer for their time spent in collating and returning such data, that charge to be calculated at the rate of £150 plus VAT per hour or part thereof, together with the cost of any media purchased to return such data (such as, but not limited to external hard drives, securely encrypted USB memory sticks or flash drives).

11. Force Majeure Event

11.1 Where a Force Majeure Event gives rise to a failure or delay in either party performing its obligations under the Agreement other than obligations to make payment, those obligations will be suspended for the duration of the Force Majeure Event.

11.2 A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under the Agreement, will:

- a) forthwith notify the other; and
- b) will inform the other of the period for which it is estimated that such failure or delay will continue.

11.3 The affected party will take reasonable steps to mitigate the effects of the Force Majeure Event.

12. General

12.1 Neither party shall be entitled to sell, assign, sub-licence, transfer or otherwise dispose of whether directly or indirectly any of its rights or obligations under the Contract without the prior written consent of the other party (save for the purposes of internal reconstruction only).

12.2 Should a dispute arise between the parties in relation to the Contract then prior to pursuing any legal rights the aggrieved party must provide written notification of the problem to a Director of the other party. Both parties shall then use all reasonable endeavours to resolve the dispute within thirty days. Should there still be no resolution then the aggrieved party is entitled to pursue its legal rights.

12.3 The construction, validity and performance of the Contract will be governed by English Law and subject to the exclusive jurisdiction of the English courts.