



From Ground to Cloud™

Database, Systems & Cloud Managed Services Terms & Conditions

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** Distribution Restricted **

ORACLE



Partner



Terms and Conditions for The Provision of Database, Systems & Cloud Managed Services

1. Definitions

In these conditions the following words shall have the following meanings ascribed to them: -

- (a) **"Agreement"** means these Terms and Conditions for the Provision of Managed Services together with Schedule A (to which these Terms and Conditions for the Provision of Managed Services are attached) and Schedules B, C and D.
- (b) **"Cloud Services Provider"** means a provider of public cloud services whose infrastructure is being accessed or consumed by either the Supplier or Customer as part of any jointly agreed solution or service. Such Cloud Service Providers specifically include, but are not limited to, Oracle, Microsoft, Amazon and Google.
- (c) **"Commencement Date"** means the date of this Agreement.
- (d) **"Cover Period"** means the hours of cover specified in Schedules A, B and C.
- (e) **"Customer"** means the person, firm or organisation in placing an order for Service with the Supplier.
- (f) **"Data Controller"** has the meaning given to it by the Data Protection Legislation.
- (g) **"Data Processor"** has the meaning given to it by section 1 of the Data Protection Act 1998.
- (h) **"Data Protection Legislation"** means the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy.
- (i) **"Data Subject"** has the meaning given to it by the Data Protection Legislation.
- (j) **"IPR"** means all intellectual and industrial property rights, including copyright, database rights, registered and unregistered design rights, know-how, patents, registered and unregistered trademarks, rights in confidential information and any rights in any discovery, invention or process, and applications for and rights to apply for each of these in any country.
- (k) **"Manufacturer"** means the original manufacturer of the equipment or software.
- (l) **"Minimum Term of Service"** means the period starting with the Commencement Date for which a charge has been agreed as specified in Schedule A.
- (m) **"Schedule A"** means the schedule attached as Schedule A to this Agreement for the Supply of Managed Services, which Schedule A is an integral part of this Agreement.
- (n) **"Schedule B"** means the Service Level Agreement and service elements attached as Schedule B to this Agreement for the Supply of Managed Services, which Schedule B is an integral part of this Agreement.
- (o) **"Schedule C"** Describes any changes to the standard Managed Services terms and conditions, which schedule C is an integral part of this agreement. Any additions to schedule C will supersede the Terms and Conditions.
- (p) **"Schedule D"** Describes the standard Managed Services deliverables, which schedule D is an integral part of this agreement. Any additions to schedule D will supersede the Terms and Conditions.
- (q) **"Service"** means the service provided by the Supplier under this Agreement which shall consist of the Service criteria selected by the Customer together with any other services which the parties may agree.
- (r) **"Service Level Agreement (SLA)"** means the service level agreement attached hereto as Schedule D, which service level agreement sets out the description of the service to be provided as well as the agreed levels of support and standards of service
- (s) **"Supplier"** means DSP (Company Registration number 3898451);
- (t) **"UK Data Protection Legislation"** means any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.

2. The Service

Services delivered by the Supplier shall:

- (i) be fit for purpose and of satisfactory quality.
- (ii) meet the requirements and specifications set out in Schedules A, B, C & D.
- (iii) be delivered to the locations and at the times specified in Schedules A, B, C & D (or as otherwise agreed in advance) and in accordance with delivery procedures applicable.
- (iv) be delivered with all due care, skill and ability and the Supplier will use reasonable endeavours to promote the interests of the Customer.
- (v) use personnel who are suitably skilled and experienced to perform tasks assigned to them and in sufficient number to ensure that the Supplier's obligations are fulfilled

3. Other Services at Additional Charge

The Supplier may provide “**Additional Services**” subject to an additional charge at its then current rates, subject to technical qualification, agreed in advance. Such services may include, but not limited to: -

- (i) Professional and Consulting Services.
- (ii) Migration Services.
- (iii) Software Asset Management & Cloud Consumption Audits.
- (iv) Software Development services.

Where Additional Services are to be provided the provision of such Additional Services shall be covered by the terms of this Agreement.

4. Charges and Terms of Payment

The charges for the Service shall be as specified in Schedule A

- (a) Payment shall be made in full without any deduction or set-off within thirty days from the date of invoice for the managed service agreement.

If the Customer fails to pay any undisputed invoice in accordance with the Supplier's payment terms then, without prejudice to its other rights and remedies, the Supplier shall be entitled to (i) suspend deliveries due to the Customer under any Agreement, and (ii) charge interest on the sum outstanding on a day to day basis from the date of invoice until the date payment is made at the rate of 4% per annum above the BoE base rate.

- (b) The charges are exclusive of Value Added Tax (and/or any similar tax which may be imposed from time to time) which will be applied in accordance with UK legislation in force at the tax point date.
- (c) Any work requested by the Customer which is not included in this Agreement will be charged at the Supplier's then current rates. A copy of current rates will be provided on request.
- (d) If the Customer cancels by less than 24 hours' notice any appointment forming part of the Service, the Supplier may charge for the Service which would have been performed but for such cancellation.
- (e) All Services must be ordered by the Customer and supplied by DSP by the end of the Contract Term. DSP shall not be liable for the provision of any Services and the Customer shall not be entitled to claim for any credit or refund in respect of Services which are not ordered by and supplied to the Customer by the end of the Term.

- (f) Where the Customer is utilising a Cloud Service Provider, and where DSP acts as a billing agent or intermediary or reseller of such service, the Customer agrees to pay for all usage/consumption at the prevailing rates stipulated by the Cloud Service Provider. DSP shall invoice the Customer on either a monthly or quarterly basis and the Customer shall pay within 30 days of invoice.

5. Alteration of Annual Charge

- (a) The Supplier shall be entitled, on each anniversary of the Commencement Date, to increase its annual charge for the Service unless the agreement is a multi-year agreement in which case the pricing will be fixed for the duration of the contract period. Such increase shall not normally exceed the percentage increase averaged over the previous 12 months of the Retail Prices Index published by HM Government, unless the scope of work changes.
- (b) In the event that a proposed increase is greater than the increase detailed in 5(a) above, the Supplier shall give the Customer not less than 30 days' notice to that effect. The Customer may, within 30 days of receipt of such notice, appeal against such alteration if the Customer finds it unacceptable. If no acceptable solution has been found following such appeal, the Customer may terminate this agreement by giving the Supplier 30 days' notice in writing, the charges payable during such period of notice being at the previously agreed rate.

6. Term of Agreement

After the Contract Term has been served (as stated in Schedule A) the contract will automatically renew for a further period of not less than one year, unless advised by the Customer in writing with a minimum of 90 days' notice before expiry. In the event of the Customer terminating in advance of the such expiry date, but having provided less than 90 days' notice, the contract will roll over to a new period of 90 days.

7. Confidentiality

- (a) Each party (hereafter called the "Receiving Party") undertakes to keep and maintain all Confidential Information (which term shall include all information marked or notified to the Receiving Party as confidential or proprietary together with all information which would in the normal course of business be regarded as confidential or proprietary) in the strictest confidence and not to disclose such information to any third party without the prior written consent of the other.
- (b) Each party shall ensure that its employees and sub-contractors:
 - (i) shall only be given access to Confidential Information received from the other party on a "need to know" basis for the purpose of this Agreement.
 - (ii) shall have been made aware of the requirements of confidentiality set out in this Agreement.
 - (iii) shall not cause or permit the Confidential Information to be disclosed to any third party.
- (c) The provisions of this clause 7 shall not prevent either party from disclosing any Confidential Information where it can demonstrate and document that such information:
 - (i) was in its possession (with full right to disclose) prior to receiving it from the other party; or
 - (ii) is or subsequently comes into the public domain other than by breach of this Agreement; or
 - (iii) is required to be disclosed by law or by any judicial, governmental or regulatory authority with powers over the party; or
 - (iv) was subsequently independently developed by the Receiving Party without use of or reference to the disclosing party's Confidential Information; or
 - (v) received by it from a third party who lawfully obtained the same and who was not bound by any obligation of confidence in respect thereof to the disclosing party.
- (d) The provisions of this clause 7 shall apply throughout the full course of this Agreement and for five years thereafter.

8. Intellectual Property

Supplier hereby irrevocably assigns to Customer absolutely with full title guarantee all right, title and interest in all Developed Material now or at any time subsisting or capable of subsisting for the full term of such Developed Material together with any and all renewals, reversions and extensions thereof. Supplier shall indemnify Customer against any claim that the normal use or possession of Developed Material infringes the Intellectual Property Rights of any third party.

- (a) "Developed Material" means all Intellectual Property Rights that are created in the course of the provision of the Service.
- (b) "Intellectual Property Rights" means patents, inventions, trade marks, service marks, logos, design rights, applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether capable of being registered or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.
- (c) Any IPR created by or on behalf of the Supplier shall be licensed to or vest in SP in accordance with the provisions of any Statement of Work.
- (d) The Supplier shall be entitled to use IPR created by or on behalf of the Customer to the extent necessary in order to deliver its obligations in connection with this Agreement

9. Warranty

- (a) The Supplier warrants that: -
 - (i) the Service provided under this Agreement will be provided with reasonable skill and care.
 - (ii) it will use suitably qualified and experienced personnel in the provision of the Service under this Agreement.
- (b) The Customer acknowledges that where services supplied under this Agreement interface with infrastructure or software which are outside the scope of this Agreement, the Supplier shall not be liable pursuant to this clause; the Supplier shall not be liable for 3rd party Service Level Agreements.

10. Liability

- (a) Subject to the other provisions of this clause 10 (Liability):
 - (i) The maximum liability of the Supplier to the Customer in connection with this Agreement shall not exceed 100% of the Charges paid or payable in the 12 (twelve) months preceding the date on which that liability arises
 - (ii) the maximum liability of the Customer to the Supplier in connection with this Agreement shall not exceed 100% of the Charges paid or payable in the 12 (twelve) months preceding the date on which that liability arises
- (b) Neither party shall be liable for failure to perform its contractual obligations, other than an obligation to make payment, if such failure results from Act of God, governmental act, fire explosion, accident, industrial dispute, or any other cause beyond the party's control.
- (c) The maximum liability of the Supplier in connection with this Agreement shall not exceed £1,000,000 (one million pounds) per claim for each claim arising from damage to or loss of tangible property
- (d) Subject to the other provisions of this clause 10 neither party shall be liable to the other party for any loss of profits, goodwill, revenue, production, anticipated savings or any form of special, indirect or consequential loss.
- (e) Nothing in this agreement shall exclude or limit the liability of either party to the other party for:
 - (i) death or personal injury caused by its negligence.
 - (ii) fraud or fraudulent misrepresentation
 - (iii) any matter for which it would be illegal to exclude or limit liability

11. Data Protection

- (a) All references to Customer in this clause 11 include, where relevant, Customer's customer for whose benefit the Services are delivered.
- (b) To the extent that the Supplier, its agents, staff or subcontractors process any Personal Data in connection with this Agreement the Supplier shall act as a Data Processor and the Data Controller shall be the Customer or a member of Customer's Group (as applicable).
- (c) Without prejudice to the parties' respective obligations to comply with law, the Supplier or any Supplier Employees will comply with any request to audit or for access, data, information or any other requirement from any regulatory authority in connection with this Agreement.
- (d) The Supplier shall and shall ensure that its agents, staff and subcontractors comply with all applicable requirements of the Data Protection Legislation and in addition shall:
 - I. Only process the Personal Data in accordance with instructions from Customer.
 - II. Only process the Personal Data to the extent and in such manner as is necessary for the Supplier to comply with Customer's instructions or as required by law.
 - III. Not otherwise alter, amend or modify the Personal Data or disclose or permit the disclosure of the Personal Data to any third party unless specifically authorised to do so in writing by the Customer or where required to do so by law.
 - IV. Implement appropriate organisational and technical measures to protect Personal Data against accidental loss, alteration, damage, destruction, disclosure or unauthorised or unlawful processing. These measures shall be appropriate to the harm which might result and the nature of the Personal Data to be protected.
 - V. Protect the Personal Data in accordance with the Data Protection Legislation as applicable and not do, permit to be done, omit or permit any omission which might cause Customer to be in breach of the Data Protection Legislation.
 - VI. Notify Customer within 24 hours of any breach of this clause 11 (Data Protection) or unauthorised disclosure of Personal Data and provide Customer all information in its possession or as requested by Customer concerning such breach or disclosure.
 - VII. Notify Customer within 5 (five) Working Days if it receives a complaint, enquiry or request from a Data Subject relating to the Personal Data processed in connection with this Agreement and provide full details to Customer on request.
 - VIII. Provide Customer with full assistance and cooperation as requested by Customer to comply with any exercise of rights by a Data Subject under the Data Protection Legislation in respect of the Personal Data processed in connection with this Agreement, which shall include the provision of all data relevant to that Data Subject within a timescale reasonably specified by Customer.
 - IX. Appoint and identify to Customer a named individual to act as a point of contact for any enquiries from Customer relating to Personal Data; and Not transfer any Personal Data to any place outside the European Economic Area or to any third party without the prior written consent of Customer.

12. Employees

- (a) Without the prior consent in writing of the other, neither party shall during the Term of this Agreement or for 12 months thereafter, solicit, procure or attempt to procure the employment of any persons employed in the provision of the Services and with whom the party had contact as a result of the provision of the Services.
- (b) Notwithstanding any degree of supervision exercised by either party over employees of the other, in no circumstance shall the relationship of employer and employee be deemed to arise between either party and any employee of the other.

13. Transfer

- (a) Subject to other provisions in this clause 13 (Transfer), neither party shall assign, novate or otherwise transfer any of its obligations or rights in connection with this Agreement, save where either party is subject to acquisition or corporate restructure, without the prior written consent of the other party, such consent not to be unreasonably delayed or withheld.
- (b) The Customer may assign, novate or otherwise transfer any of its obligations or rights in connection with this Agreement to any member of its Group without the consent of the Supplier.
- (c) The Supplier may assign, novate or otherwise transfer any of its obligations or rights in connection with this Agreement to any member of its Group without the consent of the Customer.

14. Whole Agreement

This Agreement represents the entire agreement between parties. Each party warrants that no representation not recorded in this Agreement has been made which has induced the other to enter into this Agreement.

15. Headings

Headings are for convenience only and shall not affect the construction of the conditions of this Agreement.

16. Waiver

No failure, delay, relaxation or indulgence on the part of either party in exercising any power or right conferred upon such party in this Agreement shall operate as a waiver of such power or right nor shall any single or partial exercise of any such power or right preclude any other or further exercise of any power or right.

17. Notices

Any notice given under this Agreement by either party to the other must be in writing and delivered by email or registered mail. Notices sent by first class post shall be sent to the address of the party set out on the face of this Agreement or to such other address notified in writing by that party to the other for such purposes.

18. Severability

The various provisions of this Agreement are severable and if any provision is held to be invalid or unenforceable by any court of competent jurisdiction such invalidity or unenforceability shall not affect the validity or enforceability of any of the other provisions unless the result goes to the root of this Agreement or radically affects it.

19. Variations

No variation is valid unless signed by authorised signatories of both parties.

20. Right of Termination

- (a) If, at any time either party makes default or commits any material breach of its obligations under this Agreement and (upon receiving written notification from the other of such default or breach) fails to remedy the default or breach within 30 days, or is involved with any legal proceedings concerning its solvency, or commences liquidation or threatens to cease trading, then the other party shall immediately become entitled (without prejudice to its other rights) to terminate this Agreement forthwith by notice in writing to the other.
- (b) Upon termination of this Agreement by the Supplier for whatever reason the Supplier shall, without prejudice to its other rights and remedies, be paid:
 - (i) the outstanding balance of charges due in respect of any works or Services carried out or provided in accordance with the provisions of this Agreement prior to the date of termination and...
 - (ii) the price of equipment or services ordered by the Supplier on behalf of the Customer for which the Supplier has paid or is legally bound to pay.
- (c) Termination of this Agreement for whatever reason shall not bring to an end any provision hereof which expressly or by implication comes into or continues in force after the date of termination.

21. Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with English Law and the parties hereto submit to the jurisdiction of the English Courts.

Database Service Provider Global Ltd
Registered Office: C/O Browne Jacobson LLP
15th Floor, 6 Bevis Marks, Bury Court, London,
United Kingdom, EC3A 7BA
Company Reg: 3898451