



From Ground to Cloud™

Terms & Conditions for the provision of Professional Services

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1 Definitions

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

- (a) **"Acceptance Form"** means the Supplier's standard technical services acceptance form which is signed by the Customer to signify acceptance of the Product and/or the Service.
- (b) **"Agreement"** means these terms and conditions and any schedules hereto together with the front sheet signed by the Customer and the Supplier and the Supplier's quotation.
- (c) **"Customer"** means the person, firm or organisation placing an order for Service with the Supplier.
- (d) **"Equipment"** means any equipment or software, or telecommunications links required on the Customer's site to complete the Service.
- (e) **"Product"** means any service, product, item of equipment, hardware, software, microchip, semiconductor (or other item containing, using or dependent upon any of the foregoing) supplied by the Supplier under this Agreement including, in the case of the Service, any hardware or software provided to the Customer by the Supplier as part of such Service or used by the Supplier as part of such Service.
- (f) **"Service"** means the services to be provided under this Agreement as described in Clause 2.
- (g) **"Statement of Work"** means a document containing a detailed description of the Service to be provided by Supplier to Customer.
- (h) **"Supplier"** means Database Service Provider Global Limited (Company No 03898451) t/a DSP.
- (i) **"Developed IPR"** all Intellectual Property Rights (including without limitation Intellectual Property Rights in enhancements to Retained Materials) in any country that are created by DSP and/or its Sub-contractors specifically for the Customer in the course of the provision of the Services whether before, on or after the date of signature of any Statement of Work, including without limitation all Source Materials, tools and methodologies relating to the foregoing;
- (j) **"Intellectual Property Rights"** patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, moral rights, rights in Confidential Information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;
- (k) **"Retained Material"** Intellectual Property Rights or works of DSP or a third Party (including but not limited to reports, documents, papers, drawings, diagrams, discs, tapes, computer software, Source Materials, magnetic and optical media, tools or methodologies) which are in existence prior to the provision of the Services and/or have been developed or acquired otherwise than pursuant to any Statement of Work or pursuant to the Framework Agreement and/or come into existence after the date of any Statement of Work but which have been developed otherwise than pursuant to any Statement of Work or the Framework Agreement;

2 The Service

- (a) The Service will be defined and documented in a Statement of Work'.
- (b) The Service shall commence on the date agreed between the parties and shall be deemed complete on signature by the Customer of an Acceptance Form.
- (c) Where the Service is performed on a time and materials basis rather than a fixed price, the Supplier shall supply, if requested, completed time sheets to verify its charges. The information contained in such timesheets shall be conclusive evidence of the time spent by the Supplier.
- (d) The Supplier may subcontract any or all of the works forming part of the Service to a competent sub-contractor with the prior written consent of the Customer.

3 Customer's Responsibilities

- (a) The Customer shall provide a representative on site who shall sign the Acceptance Form on completion of the Service to his satisfaction. Signature of the Acceptance Form shall not be unreasonably withheld or delayed.
- (b) The Customer shall provide, at its expense, such technical and other information as the Supplier shall request in connection with its performance of the Service.
- (c) The Customer shall provide; such access to its computer and other equipment as the Supplier shall require for the provision of the Service. If the Supplier's engineer finds that sufficient access to the equipment is not provided, the Supplier shall not be obliged to perform the Service and may charge the Customer for costs and expenses reasonably incurred.
- (d) The Customer shall take all reasonable precautions to protect the health and safety of the Supplier's personnel whilst on the Customer's site, including ensuring the presence or availability of a representative during such visits.
- (e) Where required for the Service, the Customer, at the Customer's expense, shall make available and keep in good working condition the following:
 - (i) One item of media of any type used on the Equipment for storage or diagnostic programs.
 - (ii) Any items of media originally supplied by the manufacturer for maintenance purposes.
 - (iii) Such consumables as may be reasonably required to perform the Service.
- (f) The Customer shall be responsible for ensuring adequate backup copies of its operating system, application software and data files are kept.

4 Charges and Terms of Payment

- (a) The charges for the Service shall be as specified in the Statement of Work.
- (b) Unless otherwise agreed, the charges are payable by the Customer as follows:

Payment shall be made in full without any deduction or set-off within thirty days of the date of invoice.

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 base rate ruling from time to time of Lloyds Banking Group.
- (c) 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.
- (d) 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.
- (e) All Services must be ordered by the Customer and supplied by DSP by the end of the 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

5 Copyright and other Intellectual Property

- 5.1 DSP or its licensors shall retain all Intellectual Property Rights in the Retained Material and all Intellectual Property Rights therein shall remain vested in DSP or its licensors.
- 5.2 DSP hereby irrevocably assigns to the Customer (or such other person as the Customer may direct) absolutely with full title guarantee all right, title and interest in all Developed IPR now or at any time subsisting or capable of subsisting for the full term of such Developed IPR together with any and all renewals, reversions and extensions thereof. DSP hereby grants to Customer a perpetual, worldwide, non-exclusive, non-transferrable, royalty free licence to use such parts of the Retained Material to such an extent as is necessary to enable the Customer to make reasonable use of the Developed IPR for its own internal purposes but not further or otherwise.
- 5.3 To the extent permissible by law the assignment set out in clause 5.2 shall include the assignment of future Developed IPRs. To the extent that any Developed IPRs are not assigned pursuant to clause 5.2, DSP shall as and when requested by Customer assign such Developed IPRs to the Customer or such other company as the Customer may direct by executing an assignment in the form reasonably requested by the Customer.
- 5.4 If by law an assignment of an item of Developed IPR is not possible DSP grants to the Customer or such other company as the Customer may direct an irrevocable, perpetual, exclusive, worldwide, royalty-free licence to use, modify, commercialize and otherwise exploit in any manner such Developed IPR, including the right to sub-license and assign any or all of such Developed IPR until such Developed IPR is assigned to the Customer or such other company as the Customer may direct.
- 5.5 DSP shall, to the extent that it is lawfully able and at the request and reasonable cost of the Customer (whether during or after termination of the relevant Statement of Work) sign and execute all such deeds and documents and do all acts and things as the Customer may reasonably require to give effect to clauses 5.1, 5.2 and 5.3 and to apply for, obtain and vest in the name of the Customer or such other company as the Customer may direct alone (unless the Customer otherwise directs) the Developed IPRs in all countries throughout the world and, when so obtained or vested, to renew and maintain the same; or to defend any proceedings in respect of such Developed IPRs including, without limitation, any petitions or applications for revocation of patent, registered designs or other protection.
- 5.6 For the avoidance of doubt, the Customer grants to DSP for the term of the relevant Statement of Work assignable, irrevocable, non-exclusive, royalty free right to use the Developed IPRs and any software code submitted to DSP by the Customer for the sole purpose of providing the Services.

6 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 purposes 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 6 shall not prevent either party from disclosing any 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) was subsequently independently developed by the Receiving Party without use of or reference to the disclosing party's Confidential Information; or 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; or
 - (iii) is or subsequently comes into the public domain other than by breach of this Agreement.
 - (iv) is required to be disclosed by law or by any judicial, governmental or regulatory authority with powers over the party.
- (d) The provisions of this clause 6 shall apply throughout the full term of this Agreement and for five years thereafter.

7 Warranty

- (a) The Supplier warrants that:
 - (i) the Service will be provided with reasonable skill and care.
 - (ii) it will use suitably qualified and experienced personnel in the provision of the Service.
 - (iii) cabling installed under this Agreement will be free from defects in workmanship and materials for a period of one year from the date of installation.
- (b) The warranty period in relation to cabling can be extended by written agreement between the parties.
- (c) In the event of any breach of the warranties given in this clause 7 the Customer's sole remedy shall be the repair or replacement, at the Supplier's sole discretion, of the item concerned

8 Liability

- (a) 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.
- (b) The Supplier indemnifies the Customer in respect of:
 - (i) Direct physical damage to the Customer's property which is established to be the result of negligence by the Supplier or its servants or agents while on the Customer's premises for the purpose of this Agreement. In respect of the Equipment, liability is limited to the prompt making good by repair or replacement of any Equipment or part thereof damaged or destroyed as a result of such negligence. The Supplier's liability for direct damage to property other than the Equipment is limited to £1,000,000 in respect of any event or series of related events.
 - (ii) Direct physical injury or death of any person resulting from the negligence of the Supplier or its servants or agents.
- (c) The Customer indemnifies the Supplier in respect of:
 - (i) Direct physical damage to the Supplier's property which can be established to be the result of negligence by the Customer or its servants and agents. The Customer's liability for direct physical damage is limited to £1,000,000 in respect of any one event or series of related events.
 - (ii) Direct physical injury to, or death of any person resulting from the negligence of the Customer or its servants or agents.
- (d) In view of the disproportion between the acts or omissions likely to constitute breach or negligence on its part and the consequences for the Customer, the Supplier excludes all liabilities not expressly included in this Agreement, and in particular the Supplier shall have no liability for:
 - (i) Destruction of or damage to the Customer's data. (The Customer must keep a copy of all data from which it shall exclude the Supplier notwithstanding any requests made by its employees or agents).
 - (ii) Any loss of profits, goodwill, revenue, production, anticipated savings, use or contracts or any form of special, indirect or consequential losses whatsoever.

- (e) In any event other than set out in (b) above, the maximum liability of the Supplier shall be the value of the contract (excluding VAT).

9 Data Protection

- (a) All references to Customer in this clause 9 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, if the Supplier or any Supplier Employees receive a 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 9 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.

10 Employees

- (a) Without the prior consent in writing of the other, neither party shall during the term of this Agreement or for six months thereafter solicit, procure, or attempt to procure the employment of any persons employed in the provision of the Service. The Customer will extend this provision to its own customers, where the Supplier is undertaking work on behalf of the Customer for a third party. If either party fails to adhere to this term, then a sum equal to the yearly wage of the employee whose services have been solicited or procured, will be payable to the party that has suffered the loss of personnel.
- (b) Notwithstanding any degree of supervision exercised by either party over employees of the other, in no circumstances shall the relationship of employer and employee to be deemed to arise between either party and any employee of the other.

11 Whole Agreement

This Agreement represents the entire Agreement between the 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.

12 Headings

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

13 Assignment

Neither party shall assign this Agreement without the prior written consent of the other (not to be unreasonably withheld or delayed) save that either party may assign or novate this Agreement should they be subject to a merger, takeover or other corporate event which would lead to a change of ownership.

14 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 thereof or the exercise of any power or right.

15 Notices

Any notice given under this Agreement by either party to the other must be in writing and shall be effected by personal delivery, email, or registered mail postage and shall in the case of email be deemed to be received on the same date as it was sent and in the case of postage within 48 hours after the date of posting if posted in the United Kingdom. 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.

15 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.

16 Variations

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

17 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, or if serious doubt arises as to its solvency, 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 under this Agreement prior to the date of termination
 - (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.

18 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
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15th Floor, 6 Bevis Marks, Bury Court, London,
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Company Reg: 3898451