



Rossera

Empowering your journey to the Oracle Cloud®

G-CLOUD SUPPORT ENAGAMENT TERMS & CONDITIONS

Version 1.2

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1 DEFINITIONS

“Business Day” means 9.00am to 5.30pm Monday to Friday inclusive excluding public holidays in England and Wales.

“Confidential Information” means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 9.

“Commencement Date” means the date hereof.

“Configuration Services” means the configuration and related work to be performed by the Supplier to configure the Software in accordance with the Scope of Work appended to the Implementation and Configuration Services Schedule.

“Customer’s Equipment” means any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services.

“Customer’s Manager” means the Customer’s manager for the Services.

“Deliverables” means all Documents, products and materials developed by the Supplier or its agents, subcontractors, consultants and employees in relation to the Services in any form, including code, configuration, documentation, methodology, a defined level of functionality or other pre-set milestone within a particular phase, to be more particularly described in the Scope of Work.

“Fees” means the fees payable to the Supplier as specified in the relevant Order Form or Scope of Work.

“Intellectual Property Rights” means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including 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 Europe.

“Maintenance and Support” means any error corrections, updates and upgrades that the Supplier may provide or perform with respect to the Software, as well as any other support or training services provided to the Customer under this Agreement, all as described in the Software Maintenance and Support Schedule.

“Order Form” means the Supplier order form which references this Agreement and in which the Services purchased by Customer are detailed and in which the price for such Services is set out.

“Scope of Work” means the document to be entered into by the parties in the form appended to the Implementation and Configuration Services Schedule which sets out the details of the Implementation and Configuration Services to be carried out by the Supplier.

“Services” means the supply of Implementation and Configuration Services, and Maintenance and Support as applicable, given the context in which the term Services is used.

“Software” means the Supplier's proprietary software in machine-readable object code form only and/or Third Party Software as set out in the applicable Order Form.

“Supplier's Equipment” means any equipment, including tools, systems, cabling or facilities, provided by the Supplier or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Customer;

“Supplier's Manager” means the Supplier's manager for the Services.

“Supplier's Team” means all employees, consultants, agents and subcontractors engaged in relation to the Services and who are appointed by the Supplier

“Third Party Software” means the Software of third parties made available to Customer by Supplier subject to Customer agreeing to the terms and conditions of the relevant Third Party Software vendor.

2 SUPPLIERS RESPONSIBILITIES

The Supplier shall:

- i. subject to Customer paying the Fees for the relevant Software and/or Services, provide such Software and/or Services to Customer as ordered by Customer by placing a valid Order Form for Software and/or entering into a Scope of Work for certain Services, in accordance with these General Terms and Conditions and the terms set out in the relevant Schedule;
- ii. provide all necessary Supplier personnel to carry out the activities agreed to by the Supplier under this Agreement; and
- iii. where required and subject to a fee, appoint a Supplier project manager to oversee the supply of the Services to the Customer and to interact with the Customer project manager and Customer personnel; and
- iv. comply with all applicable laws and regulations as applicable to the activities carried out by Supplier under this Agreement.

3 CUSTOMERS RESPONSIBILITIES

The Customer shall:

- i. provide the Supplier with:
 - a. all necessary co-operation in relation to this Agreement; and
 - b. all necessary access to such information as may be required by the Supplier; in order to render the Services, including but not limited to security access information and software interfaces to the Customer's other business applications;
- ii. provide such personnel assistance, as may be reasonably requested by the Supplier from time to time.
- iii. appoint a Customer project manager, who shall have the authority to contractually bind the Customer on all matters relating to this Agreement. The Customer shall use reasonable endeavours to ensure continuity of the Customer's project manager;
- iv. comply with all applicable laws and regulations with respect to its activities under this Agreement; and
- v. carry out all other Customer responsibilities set out in this Agreement or in any of the Schedules in a timely and efficient manner. In the event of any delays in the

Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any timetable or delivery Schedule set out in this Agreement as reasonably necessary.

4 CHARGES & PAYMENT

- i. The Customer shall pay the amounts set out in the relevant Order Form for the Software ordered by the Customer and as set out in the relevant Scope of Work for certain Services.
- ii. Fees for the Software and each Service are invoiced in accordance with the terms of the relevant Software Schedule or the Schedule applicable to each Service.
- iii. The Customer shall reimburse the Supplier for all actual, reasonable travel expenses including, but not limited to, airfare, hotel and meals incurred by the Supplier in performance of the Services.
- iv. All amounts and fees stated or referred to in this Agreement are exclusive of value added tax, services taxes, and all other taxes and charges (except for those on Supplier income) which shall be added to the Supplier's invoice(s) at the appropriate rate.
- v. Each invoice is due and payable 30 days after the invoice date. If the Supplier has not received payment within five days after the due date, and without prejudice to any other rights and remedies of the Supplier:
 - a. the Supplier shall be under no obligation to provide any or all of the Software or the Services while the invoice(s) concerned remain unpaid and Supplier shall be entitled to suspend use of the Software or delivery of Services that have not been paid for; and
 - b. interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of the UK high street banks from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

5 CHANGE CONTROL

- i. The Customer's Manager and the Supplier's Manager shall meet at least once every month to discuss matters relating to the Services. If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.
- ii. If either party has made requests to make a change to the scope or execution of the Services, the Supplier shall, within a reasonable time (and in any event not more than 30 Business Days after receipt of the Customer's request), provide a written estimate to the Customer of:
 - a. the likely time required to implement the change;
 - b. any necessary variations to the Supplier's charges arising from the change; and
 - c. any other impact of the change on this agreement.
- iii. Unless both parties consent to a proposed change, there shall be no change to this agreement.
- iv. If both parties consent to a proposed change, the change shall be made, only after agreement of the necessary variations to the Supplier's charges, the Services and any other relevant terms of this agreement to take account of the change that has been reached.

- v. If the Supplier requests a change to the scope or execution of the Services, in order to comply with any applicable safety or statutory requirements, and such changes do not materially affect the nature, scope of, or charges for the Services, the Customer shall not unreasonably withhold or delay consent to it. Unless the Supplier's request was attributable to the Customer's non-compliance with the Customer's obligations, neither the Supplier's charges nor any other terms of this agreement shall vary as a result of such change.

6 PROPRIARTORY RIGHTS & INTELLECTUAL PROPERTY

- i. The Customer acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights in the Software and the Services unless otherwise expressly provided in a Schedule to this Agreement. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Software or Services.
- ii. The Supplier confirms that it has all the rights in relation to the Software and the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.
- iii. Ownership of Client Data. For the avoidance of doubt, all of Client's data submitted to Service Provider by Client in connection with Business Support Services including, without limitation, the contents of all databases of customer information, and messaging/collaboration data (the "Client Data"), are and will remain, as between the parties, the sole and exclusive property of Client.
- iv. Notwithstanding anything in the Agreement to the contrary, as between the Supplier and Customer, the Customer shall retain and own all right, title and interest and all intellectual property rights in any and all code and/or materials amended or enhanced by Supplier in the course of provision of the Business Support Services for which the intellectual property rights were, as of the commencement of the Statement of Work for Business Support Services, owned by the Customer or its licensors. The Supplier shall assign (or cause to be assigned), and does hereby assign fully to the Customer all such amendments and enhancements and all intellectual property rights embodied therein. In the event that any such intellectual property rights cannot be assigned, the Supplier hereby grants to the Customer a worldwide, non-exclusive, irrevocable, assignable, transferable, and sublicenseable licence to fully exploit such amendments and enhancements.
- v. Except as set forth in clause (iv) above, as between the Supplier and Customer, the Supplier shall retain and own all intellectual property rights relating to any and all inventions (whether or not patentable), works of authorship, mask works, designations, designs, know-how, ideas and information (collectively, the "Inventions") made or conceived or reduced to practice, in whole or in part, by the Supplier during the term of a Schedule for Business Support Services that relate to the subject matter of, or arise out of, the provision by the Supplier of the Business Support Services. Client shall assign (or cause to be assigned), and does hereby assign fully to the Supplier all such Inventions and all intellectual property rights embodied therein. In the event that any such Inventions cannot be assigned, Client hereby grants to Service Provider a worldwide, non-exclusive, irrevocable, assignable, transferable, and sublicenseable licence to fully exploit such Inventions.

7 GUARANTEE

- i. The Service Provider guarantees that all Implementation Services shall be free from any and all defects for a period of 90 calendar days following completion of the Implementation Services Project.
- ii. If any defects in the product of the Implementation Services appear during the guarantee period set out in clause 7(i) the Service Provider shall rectify any and all such defects at no cost to the Client.

8 WARRENTY

- i. The Service Provider warrants to the Client on the Commencement Date that it is not engaged or involved in, or otherwise subject to any litigation, insolvency or other proceedings, or any claims, actions or hearings before any court or tribunal which may have a material adverse effect on the financial position of the Client or prevent the Service Provider from carrying out its duties under this agreement (the "Third Party Claim").
- ii. In the event the Service Provider becomes actually aware of a Third Party Claim during the period of the agreement, the Service Provider shall as soon as reasonably practicable give written notice of the Third Party Claim to the Service Provider, specifying in reasonable detail the nature of the Third Party Claim.

9 CONFIDENTIALITY

- i. Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not include information that:
 - a. is or becomes publicly known other than through any act or omission of the receiving party; or
 - b. was in the other party's lawful possession before the disclosure; or
 - c. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - d. is independently developed by the receiving party, which independent development can be shown by written evidence.
- ii. Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- iii. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- iv. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- v. The Customer acknowledges that the results of any performance tests of the Software and the Services constitute the Supplier's Confidential Information.
- vi. Where a party is required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction, to disclose Confidential Information of the other party, such party shall (where permitted) prior to making such disclosure, notify the other party and give the other party the opportunity to contest the disclosure of its Confidential Information.

- vii. This clause (vi) shall survive termination of this Agreement, however arising.

10 INDEMNITY

- i. The Customer shall defend, the Supplier against claims, actions, proceedings or threatened proceedings, and shall indemnify Supplier in full against all losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Software or Services contrary to the terms of this Agreement or in violation of any Third Party Software licence, provided that:
 - a. the Customer is given prompt notice of any such claim;
 - b. the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - c. the Customer is given sole authority to defend or settle the claim.
- ii. The Supplier shall defend the Customer, against any claim brought by a third party alleging that the Supplier Software (but not for provision of Third Party Software) or any Deliverable infringes such third party's intellectual property rights, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
 - a. the Supplier is given prompt notice of any such claim;
 - b. the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
 - c. the Supplier is given sole authority to defend or settle the claim.
- iii. In the defence or settlement of the claim, the Supplier may obtain for the Customer the right to continue using the Supplier Software or Deliverable (as applicable) replace or modify the Supplier Software or Deliverable (as applicable) so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this Agreement without liability to the Customer. The Supplier shall have no liability if the alleged infringement is based on:
 - a. a modification of the Supplier Software or Deliverable by anyone other than the Supplier; or
 - b. the Customer's use of the Supplier Software or Deliverable in a manner contrary to the instructions given to the Customer by the Supplier; or
 - c. the Customer's use of the Supplier Software or Deliverable after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- iv. The foregoing and clause 11(vi - b) states the Customer's sole and exclusive rights and remedies, and the Supplier's entire obligations and liability, for intellectual property rights or right of confidentiality infringement. For claims by third party's alleging breach of intellectual property rights arising from Customer's use of Third Party Software, Customer's right of recourse and remedies shall be solely as prescribed in the relevant Third Party Software licence agreement.

11 LIMITATION OF LIABILITY

- i. This clause 11 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:
 - a. arising under or in connection with this Agreement;
 - b. in respect of any use made by the Customer of the Services, the Software, the Deliverables or any part of them; and
 - c. in respect of any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- ii. Except as expressly and specifically provided in this Agreement:
 - a. the Customer assumes sole responsibility for results obtained from the use of the Software and the Services by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction; and
 - b. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement
- iii. Nothing in this Agreement excludes the liability of the Supplier:
 - a. for death or personal injury caused by the Supplier's negligence; or
 - b. for fraud or fraudulent misrepresentation.
- iv. The Supplier shall have no liability to Customer for any claims whatsoever arising out of Customer's use of Third Party Software. The Customer's right of recourse in regard to any claims, loss or damage arising out of Third Party Software shall be in accordance with the Third Party Software agreement concluded between Customer and Third Party Software vendor.
- v. The service level arrangements (if any) state the Customer's full and exclusive right and remedy, and the Supplier's only obligation and liability in respect of, the performance and/or availability of the Service, or their non-performance and nonavailability.
- vi. Subject to clause 11 (iii):
 - a. the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent), restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss costs, damages, charges or expenses however arising under this Agreement; and
 - b. the Supplier's total aggregate liability in contract (including in respect of the indemnity at clause 10(ii)), tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the greater of £100,000 or the Fees paid for the Software or for the Service giving rise to the claim during the twelve (12) months immediately preceding the date on which the claim arose.

12 DATA PROTECTION

- i. Each party shall comply with its respective obligations under the provisions of the European Union Data Protection Directive 95/46/EC (EU Directive). The terms “Data Controller”, “Data Processor”, “Data Subject”, “Personal Data” and “processing” as used in this Clause shall have the same meaning as ascribed in the EU Directive.
- ii. It is Customer’s responsibility to ensure that where applicable Customer has the consent of Data Subjects to the processing of their Personal Data by Supplier (if any) in the provision of the Services contemplated under Agreement.
- iii. Where Supplier processes Personal Data as a Data Processor on behalf of Customer, Supplier shall:
 - a. act only on instructions from Customer as a Data Controller; and
 - b. comply with Customer’s instructions in relation to the processing of personal data as such instructions are given and varied from time to time by Customer; and
 - c. at all times take appropriate reasonable measures against unauthorised or unlawful processing of Personal Data and against unintentional loss or destruction of, or damage to, Personal Data.
- iv. Where Supplier receives any access requests in relation to any Personal Data processed by Supplier on Customer’s behalf, Supplier shall notify Customer and where possible hand over the request to Customer for Customer to respond. If Supplier has to manage and respond to the request, Customer shall reimburse the Supplier's reasonable costs of complying with such requests.

13 TERM & TERMINATION

- i. This Agreement shall commence on the Effective Date and shall continue, unless otherwise terminated as provided in this clause 13.
- ii. Either party may terminate this Agreement or any Schedule under it by notifying the other, in writing, at least 60 days before the end of the then current term.
- iii. Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
 - a. the other party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - b. the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- iv. On termination of this Agreement pursuant to clause 13(iii):
 - a. all Schedules under shall terminate including all Scopes of Work;
 - b. all licences granted under this Agreement shall immediately terminate;
 - c. each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party;
 - d. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

- v. On termination of this Agreement pursuant to clause 13(ii), all Schedules under it shall continue until expiry of the term of such Schedule or earlier termination of such Schedule in accordance with clause 13(ii), clause 13(iii) or clause 13(vi).
- vi. Either party may terminate a Schedule to this Agreement without terminating the entire Agreement by giving written notice to the other party where the other party commits a material breach of any term of the relevant Schedule which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so.

14 FORCE MAJEURE

- i. Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors (Force Majeure Event). In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for two (2) months, the party not affected may terminate the relevant Schedule covering the Services affected by the Force Majeure Event by giving 30 days' written notice to the other party.

15 WAIVER

- i. A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

16 SEVERANCE

- i. If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- ii. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

17 ASSIGNMENT

- i. Neither Party shall, without the prior written consent of the other, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement, except to an Affiliate or in connection with a merger, acquisition, corporate reorganisation, or sale of all or substantially all of its assets not involving a direct competitor of the other party.

18 NO PARTNERSHIP OR AGENCY

- i. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

19 VARIATION

- i. No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

20 THIRD PARTY RIGHTS

- i. This Agreement does not confer any rights on any person or party who is not a party to this Agreement.

21 NOTICES

- i. Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this Agreement.
- ii. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

22 GOVERNING LAW & JURISDICTIONS

- i. This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England and the parties irrevocably submit to the exclusive jurisdiction of the courts of England to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

23 CONFLICT

- i. In the event of any conflict between these General Terms and Conditions and any Schedule, the relevant Schedule shall prevail.