



Rossera

Empowering your journey to the Oracle Cloud®

SUPPLIER FURNISHED TERMS

COTS Software

Terms for licensing of COTS software

Software Support and/or Maintenance Terms

Terms for Provision of Software Support and/or Maintenance

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AGREEMENT

1 Definitions

1.1 In this Agreement, except to the extent expressly provided otherwise:

"Agreement" means this agreement including any Schedules, and any amendments to this Agreement from time to time;

"Business Day" means any weekday other than a bank or public holiday in England;

"Business Hours" means the hours of 09:00 to 17:00 (GMT) on a Business Day;

"Charges" means the charges set out in the <<INSERT REF>>.

"Documentation" means the documentation for the Software produced by the Licensor and delivered or made available by the Licensor to the Licensee;

"Effective Date" means the date of execution of this Agreement;

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" 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 and rights in designs);

"Minimum Term" means, in respect of this Agreement, the period of 12 months beginning on the Effective Date;

"Schedule" means any schedule attached to the main body of this Agreement;

"Software" means the software identified in Part 1 of Schedule 1 (Software License Particulars);

"Software Defect" means a defect, error or bug in the Software having a material adverse effect on the appearance, operation, functionality or performance of the Software, but excluding any defect, error or bug caused by or arising as a result of:

- a) any act or omission of the Licensee or any person authorised by the Licensee to use the Software;
- b) any use of the Software contrary to the Documentation by the Licensee or any person authorised by the Licensee to use the Software;
- c) a failure of the Licensee to perform or observe any of its obligations in this Agreement; and/or

- d) an incompatibility between the Software and any other system, network, application, program, hardware or software not specified as compatible in the Software Specification;

"Software Specification" means the specification for the Software set out in Part 1 of Schedule 1 (Software License Particulars) and in the Documentation, as it may be varied by the written agreement of the parties from time to time; and

"Term" means the term of this Agreement, commencing in accordance with Clause 3.1 and ending in accordance with Clause 3.2.

2 Intentionally Omitted

None

3 Term

- 3.1 This Agreement shall come into force upon the Effective Date of the <<INSERT REF>>.
- 3.2 This Agreement shall continue in force until the client serves 30 days notice that the software will no longer be used by the client, upon which this Agreement shall terminate, subject to termination in accordance with Clause 12 or any other provision of this Agreement.

4 Supply of Software

- 4.1 The Licensee acknowledges that the Licensor supplied a copy of the Software to the Licensee before the Effective Date.

5 License

- 5.1 The Licensor hereby grants to the Licensee from the date of supply of the Software to the Licensee until the end of the Term a worldwide, non-exclusive license to:
 - a) install a single Production instance of the Software;
 - b) install up to 3 Disaster Recovery instances of the Software;
 - c) install up to 5 non-production instances of the Software;
 - d) use a single Production instance of the Software in accordance with the Documentation;
 - e) use up to 3 Disaster Recovery instances of the Software in accordance with the Documentation;
 - a) use up to 5 non-production instances of the Software in accordance with the Documentation;
 - b) create, store and maintain unlimited back-up copies of the Software;subject to the limitations and prohibitions set out and referred to in this Clause 5.
- 5.2 The Licensee may not sub-license and must not purport to sub-license any rights granted under Clause 5.1 without the prior written consent of the Licensor.

- 5.3 The license granted by the Licensor to the Licensee in Clause 5.1 is subject to the limitations regarding the number of installations, the identity of users and the number of concurrent users set out in Part 3 of Schedule 1 (Software License Particulars).
- 5.4 The Software may only be used by the officers and employees of the Licensee, and the officers and employees of the Licensee's agents, subcontractors, suppliers and service providers.
- 5.5 Save to the extent expressly permitted by this Agreement or required by applicable law on a non-excludable basis, any license granted under this Clause 5 shall be subject to the following prohibitions:
- a) the Licensee must not sell, resell, rent, lease, loan, supply, publish, distribute or redistribute the Software;
 - b) the Licensee must not alter, edit or adapt the Software; and
 - c) the Licensee must not decompile, de-obfuscate or reverse engineer, or attempt to decompile, de-obfuscate or reverse engineer, the Software.
- 5.6 The Licensee shall be responsible for the security of copies of the Software supplied to the Licensee under this Agreement (or created from such copies) and shall use all reasonable endeavours (including all reasonable security measures) to ensure that access to such copies is restricted to persons authorised to use them under this Agreement.

6 No assignment of Intellectual Property Rights

- 6.1 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Licensor to the Licensee, or from the Licensee to the Licensor.

7 Charges

- 7.1 The Licensee shall pay the Charges to the Licensor in accordance with this Agreement.
- 7.2 All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Licensee to the Licensor.
- 7.3 The Licensor may elect to vary any element of the Charges by giving to the Licensee not less than 30 days' written notice of the variation expiring on any anniversary of the date of execution of this Agreement.

8 Payments

- 8.1 The Licensor shall issue invoices for the Charges to the Licensee as agreed in the <<INSERT REF>>.

- 8.2 The Licensee must pay the Charges to the Licensor within the period of 30 days following the receipt of an invoice issued in accordance with this Clause 8.
- 8.3 The Licensee must pay the Charges by bank transfer (using such payment details as are notified by the Licensor to the Licensee from time to time).
- 8.4 If the Licensee does not pay any amount properly due to the Licensor under this Agreement, the Licensor may:
- a) charge the Licensee interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or
 - b) claim interest and statutory compensation from the Licensee pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

9 Warranties

- 9.1 The Licensor warrants to the Licensee that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.
- 9.2 The Licensor warrants to the Licensee that:
- a) the Software as provided will conform in all material respects with the Software Specification;
 - b) the Software will be supplied free from Software Defects and will remain free from Software Defects for a period of at least 12 months following the supply of the Software;
 - c) the Software will be supplied free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; and
 - d) the Software shall incorporate security features reflecting the requirements of good industry practice.
- 9.3 The Licensor warrants to the Licensee that the Software, when used by the Licensee in accordance with this Agreement, will not breach any laws, statutes or regulations applicable under English law.
- 9.4 The Licensor warrants to the Licensee that the Software, when used by the Licensee in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.
- 9.5 If the Licensor reasonably determines, or any third party alleges, that the use of the Software by the Licensee in accordance with this Agreement infringes any person's Intellectual Property Rights, the Licensor may acting reasonably at its own cost and expense:
- a) modify the Software in such a way that it no longer infringes the relevant Intellectual Property Rights, providing that any such modification must not

- introduce any Software Defects into the Software and must not result in the Software failing to conform with the Software Specification; or
- b) procure for the Licensee the right to use the Software in accordance with this Agreement.

9.6 The Licensee warrants to the Licenser that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

9.7 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

10 Acknowledgements and warranty limitations

10.1 The Licensee acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, the Licenser gives no warranty or representation that the Software will be wholly free from defects, errors and bugs.

10.2 The Licensee acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, the Licenser gives no warranty or representation that the Software will be entirely secure.

10.3 The Licensee acknowledges that the Software is only designed to be compatible with that software specified as compatible in the Software Specification; and the Licenser does not warrant or represent that the Software will be compatible with any other software.

10.4 The Licensee acknowledges that the Licenser will not provide any legal, financial, accountancy or taxation advice under this Agreement or in relation to the Software; and, except to the extent expressly provided otherwise in this Agreement, the Licenser does not warrant or represent that the Software or the use of the Software by the Licensee will not give rise to any legal liability on the part of the Licensee or any other person.

11 Limitations and exclusions of liability

11.1 Nothing in this Agreement will:

- a) limit or exclude any liability for death or personal injury resulting from negligence;
- b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- c) limit any liabilities in any way that is not permitted under applicable law; or
- d) exclude any liabilities that may not be excluded under applicable law.

- 11.2 The limitations and exclusions of liability set out in this Clause 11 and elsewhere in this Agreement:
- a) are subject to Clause 11.1; and
 - b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.
- 11.3 The Licensors shall not be liable to the Licensee in respect of any loss of profits or anticipated savings.
- 11.4 The Licensors shall not be liable to the Licensee in respect of any loss of revenue or income.
- 11.5 The Licensors shall not be liable to the Licensee in respect of any loss of use or production.
- 11.6 The Licensors shall not be liable to the Licensee in respect of any loss of business, contracts or opportunities.
- 11.7 The Licensors shall not be liable to the Licensee in respect of any loss or corruption of any data, database or software.
- 11.8 The Licensors shall not be liable to the Licensee in respect of any special, indirect or consequential loss or damage.

12 Termination

- 12.1 The Licensors may terminate this Agreement by giving to the Licensee not less than 1 years' written notice of termination after the end of the Minimum Term.
- 12.2 The Licensee may terminate this Agreement by giving to the Licensors not less than 30 days' written notice of termination after the end of the Minimum Term.
- 12.3 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:
- a) the other party commits any material breach of this Agreement, and the breach is not remediable;
 - b) the other party commits a material breach of this Agreement, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied; or
 - c) the other party persistently breaches this Agreement (irrespective of whether such breaches collectively constitute a material breach).
- 12.4 Subject to applicable law, either party may terminate this Agreement immediately by giving written notice of termination 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 this Agreement);

12.5 The Licensor may terminate this Agreement immediately by giving written notice to the Licensee if:

- a) any amount due to be paid by the Licensee to the Licensor under this Agreement is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and
- b) the Licensor has given to the Licensee at least 30 days' written notice, following the failure to pay, of its intention to terminate this Agreement in accordance with this Clause 12.5.

13 Effects of termination

- 13.1 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 8.2, 8.4, 11, 13, 15 and 16.
- 13.2 Except to the extent expressly provided otherwise in this Agreement, the termination of this Agreement shall not affect the accrued rights of either party.
- 13.3 For the avoidance of doubt, the licenses of the Software in this Agreement shall terminate upon the termination of this Agreement; and, accordingly, the Licensee must immediately cease to use the Software upon the termination of this Agreement.
- 13.4 Within 30 Business Days following the termination of this Agreement, the Licensee shall:
- a) return to the Licensor or dispose of as the Licensor may instruct all media in its possession or control containing the Software; and
 - b) irrevocably delete from all computer systems in its possession or control all copies of the Software,

and if the Licensor so requests the Licensee shall procure that a director of the Licensee certifies to the Licensor, in a written document signed by that person and provided to the Licensor within 5 Business Days following the receipt of the Licensor's request, that the Licensee has fully complied with the requirements of this Clause 13.4.

14 Notices

14.1 Any notice from one party to the other party under this Agreement must be given by one of the following methods (using the relevant contact details set out in Clause 14.2):

- a) delivered personally or sent by courier, in which case the notice shall be deemed to be received upon delivery; or
- b) sent by recorded signed-for post, in which case the notice shall be deemed to be received 2 Business Days following posting,
- c) sent by email, without delivery exception, in which case the notice shall be deemed to be received once sent,

providing that, if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.

14.2 The parties' contact details for notices under this Clause 14 are as follows:

<<INSERT REF>> .

14.3 The addressee and contact details set out in Clause 14.2 may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 14.

15 General

15.1 No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.

15.2 If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

15.3 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.

- 15.4 Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.
- 15.5 This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.
- 15.6 Subject to Clause 11.1, this Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 15.7 This Agreement shall be governed by and construed in accordance with English law.
- 15.8 The courts of England shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

16 Interpretation

- 16.1 In this Agreement, a reference to a statute or statutory provision includes a reference to:
- a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
 - b) any subordinate legislation made under that statute or statutory provision.
- 16.2 The Clause headings do not affect the interpretation of this Agreement.
- 16.3 References in this Agreement to "calendar months" are to [the 12 named periods (January, February and so on) into which a year is divided].
- 16.4 In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

17 Scope of License and Exclusion of Third-Party Dependencies (Oracle)

- 17.1 Scope of Granted License. The license granted by the Supplier under this Agreement is strictly limited to the use of the Supplier Application and its proprietary components. This license does not include any rights, explicit or implied, related to the underlying operational infrastructure, operating systems, or third-party software required for the execution of the Supplier Application, except for any open-source or third-party components explicitly bundled and sublicensed by the Supplier.

- 17.2 Exclusion of Oracle Infrastructure and Applications. It is expressly understood and agreed that the Supplier's obligations under this Agreement, including all warranties and indemnities, do not extend to, and expressly exclude, any and all third-party licensing, compliance, fees, and infrastructure requirements relative to Oracle Corporation's infrastructure, applications, and database technologies (collectively, "Oracle Dependencies").
- 17.3 The Licensee acknowledges and agrees that it is solely and exclusively responsible for the acquisition, maintenance, compliance, and payment of all necessary Oracle licenses, support agreements, and any related third-party licenses required to host, operate, or integrate the Supplier Application within the Licensee's environment.
- 17.4 The Licensee shall indemnify and hold harmless the Supplier against any and all claims, costs, liabilities, and expenses (including reasonable legal fees) arising from the Licensee's failure to secure or maintain the proper licensing for any Oracle Dependencies or related third-party software.

SCHEDULE 1 (SOFTWARE LICENSE PARTICULARS)

Specification of Software

Rossera ProcessSense® incorporating Rossera DataQuarry® and Rossera EventSense®.

The product constitutes an Oracle Cloud based process automation suite to complement Oracle Fusion and e-Business Suite products.

Timetable

<<INSERT REF>>

Software License

Per User License – Annual Fee £TBC

Per Process License – Annual Fee £TBC

Enterprise License – Annual Fee £TBC

Perpetual License – Fee £TBC

Fees subject to annual CPI indexation as published 1 month prior to contract anniversary unless otherwise stated.

Financial provisions

<<INSERT REF>>

SOFTWARE SUPPORT AND/OR MAINTENCE TERMS

Terms for provision of Software Support and/or Maintenance

Requirement

Provide specialised 3rd line support services to the client for the Rossera ProcessSense® application.

Product Support Scope

The following items form the scope of what is supported:

- Rossera ProcessSense®

The components outlined above run on the following infrastructure:

- Oracle Weblogic 12.2.1.4+

Oracle Cloud Database on Oracle DBCS 12.2.0.1+ Enterprise Edition.

Service Support Scope

The following items form the scope of the support during defined service hours:

Service Hours: 09:00 – 17:00 (UK) Monday to Friday (excluding public holidays)

- Product Fix on fail defect resolution including test and deployment (DEV > UAT)
- Product Regression test of quarterly SaaS HCM and ERP patches*
- Product Regression test of quarterly PaaS and IaaS infrastructure patches*
- 3rd line Incident management relating to Rossera ProcessSense®
- An incident volume cap of 5 per month for 1st and 2nd line incidents assigned in error. Any 1st or 2nd line incident assigned over an above the cap will incur a charge as set out in the Charges section to cover investigation and analysis.

*Assumption patching is synchronised and all covered in one quarterly test cycle.

Additional Services

The following items are out of the scope of the proposal but available via Change Control:

- Configuration and implementation of changes to the ProcessSense configuration as requested by the client.
- Configuration and implementation of changes to the ProcessSense configuration due to technology changes mandated by the client's platform and infrastructure provider (e.g. Oracle).
- Configuration and implementation of changes to the ProcessSense configuration to resolve issues caused by changes made by other parties such as the client, Oracle, Systems Integrators to other components not supported under this agreement.
- Investigation and resolution of defects associated with client integrations.
- Investigation and resolution of 1st and 2nd line application issues such as user training, user queries, user data issues, configuration errors, user errors etc.
- Investigation and resolution of 1st, 2nd and 3rd line infrastructure issues such as password or certificate expiration, infrastructure failures and recovery etc.
- Infrastructure patching, maintenance and monitoring.
- Infrastructure Data Disaster Recovery.

Deliverables

Rossera will provide the following to deliver the scope set out above:

- Incident management and resolution and RCA as the result of any Incident raised against ProcessSense® where the cause of the Incident is identified as a core ProcessSense® component.
- Patches and Upgrades to the application to resolve failures as necessary i.e. Bug fixes.
- Test evidence and release notes for code releases as necessary.
- Updates to documentation as necessary.
- Quarterly regression test report in line with patch cycles covering all core product touchpoints.
- Reporting metrics as <<INSERT REF>>.

Assumptions

The Parties agree the Supplier shall undertake to provide the activities set out above, based on the following assumptions:

- Client Support tooling and service architecture utilised for Incident Management to allow 2nd line to assign Incidents to a dedicated service channel.
- Client resources will perform user acceptance testing.
- Client business and functional resources are available to answer questions in a timely manner.
- Oracle Cloud products function as documented and expected.
- Oracle Cloud SaaS and PaaS services and infrastructure are available in a timely manner.
- The effort and associated charges outlined within this agreement are based on the assumptions above. In the event any assumption outlined is inaccurate or not met then the parties will discuss in good faith the impacts to the implementation, schedule, resources and resulting incremental charges, if required, and agree any changes to address the impact(s) via a Change Control Process, such agreement not to be unreasonably withheld.

Timetable

Agreed term <<Date>> to <<Date>>.

Charges

Monthly fee TBC

Erroneous incident assignment over agreed cap £TBC per incident.