

Metafour Contract Agreement

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Date last amended: [DD/MM/YY]

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Document Classification	Restricted - Must only be shared with the person(s) or organisation(s) listed below		
Document reference:			
Author:			
Distribution:			
Update history:	Version v2.3	22 March 2025	New document
Status:	Live		

SIGNATURE PAGE

This Agreement is between the parties named below for the services outlined in this document for 'Software as a Service', in accordance with this agreement.

Authorised signatory for Metafour UK Ltd:

Signature:	
Name:	
Position:	
Date:	

Authorised signatory for [Name]:

Signature:	
Name:	
Position:	
Date:	

METAFOUR TERMS AND CONDITIONS OF SUPPLY

1. INTRODUCTION

This plain English agreement uses as little legal jargon as possible. It explains our obligations to you, your obligations to us and what you should do if things go wrong.

It is a legally binding contract, which applies to all supplies of equipment, software and services by Metafour UK Limited of 2 Berghem Mews, London W14 0HN Company registration number 01528556 ("Metafour", "we", "our", "us") to NAME of ADDRESS Company registration number XXXXXXXX ("NAME"), "you", "your"). It will be governed and construed in accordance with English Law.

This agreement replaces any other agreement between you and Metafour.

WHAT WE AGREE TO DO

2. SUPPLY

Metafour will supply the Software as a Service, Installed Software, Services and Support specified in the Sales Schedule.

This agreement also applies to all future supplies, which will be charged according to our written quotation or price list current at the time of purchase.

3. SOFTWARE AS A SERVICE

Where Metafour supplies Software as a Service, we will provide a fully hosted service to enable you to use the software effectively over the Internet.

We are responsible for providing and maintaining the software and network infrastructure at our hosting sites. This hosting infrastructure, operating software, network infrastructure and the network connection from our server site to the Internet.

You are responsible for the equipment, software and network infrastructure and system set-up at your offices and user sites. This normally includes client PCs with suitable operating system and browser software, printers and an adequate network connection from your sites to the Internet.

4. INSTALLED SOFTWARE

Where Metafour supplies Installed Software, we will provide software for you to use on equipment you operate.

You are responsible for providing, maintaining and making available the equipment, operating software and network infrastructure at your locations and user sites.

This includes client PCs and handheld computer devices with suitable operating systems, printers and a network connection from your sites to the Internet.

You are responsible for installing such software on your equipment, unless otherwise specified.

5. SOFTWARE AND COPYRIGHT

For both Software as a Service and Installed Software, we grant to you a non-transferable licence to use the software for the volume of sites, servers, devices, users and transactions specified in the Sales Schedule. Title to, and intellectual property rights in the software, and any improvements or amendments to it, and copies of it will remain with Metafour or its licensor.

You must not sell, assign nor grant sub-licences of the software and you will retain any copyright or proprietary notices on the software and copies thereof.

You must not, without our written consent, copy, nor allow the copying of any software except as you reasonably require to use it or secure it and you will keep records of the number and locations of all such copies. You will ensure that Installed Software remains under your sole control, and that no third party will have access to it.

You will not use the terms “Metafour” or “NetCourier” or our logos in your sales collateral or sales presentations, either written or verbal, without the prior written consent from us.

The software will include a Metafour copyright notice.

6. CONFIDENTIALITY

Both you and we undertake to keep confidential any information that we receive from each other, and undertake not to disclose that information to anyone, including staff, unless they are directly involved in carrying out this agreement. That confidentiality will be kept for a time period as outlined in the SLA after this agreement terminates. The only exception to this clause is if there is a statutory or legal reason for disclosure.

The following is not considered confidential:

- i. Information that is known to either you or us before it was received
- ii. Information that is already in the public domain before it was received
- iii. Information which gets into the public domain after the date it was received through no action or fault of either you or us
- iv. Information which either you or we authorise in writing for the other to disclose

You agree that Metafour may identify you as a NetCourier user and may use your company name and logo on our website and in our marketing material.

7. THE INTERNET

Metafour will use reasonable skill and care to ensure its Software as a Service is reliable, resilient and secure from physical or on-line interference by unauthorised third parties.

Our service inevitably relies on third-party hardware, software, firewall, anti-virus software and internet service provision. Although we take all reasonable care, we cannot guarantee to provide 100% up time or that our servers will be free from unauthorised users or hackers. Metafour is not liable for any service interruptions or data loss arising from any technical failure or unauthorised access.

Metafour does not offer legal advice on Internet trading or technical advice on securing your own computer network and you are advised to seek appropriate third-party advice on these matters.

8. DATES

Whilst we will make reasonable efforts to meet delivery dates when specified, these dates are not a condition of contract, and we are not liable for any loss or damage (including consequential loss) arising from failure to deliver by such dates.

WHAT YOU AGREE TO DO

9. PRICES

You will pay the amount quoted in the Sales Schedule, written quotation or the price list current at the date of order. The prices will increase automatically on the 1st of January each year by at least the rate of inflation (using the UK Government Retail Price Index (RPI)).

Quotations and contract rates are based on the representations of courier volumes as indicated by you. Metafour reserves the right to renegotiate prices should courier volumes be significantly different to what was represented.

If there are any other changes to your pricing, you will be notified in writing and have 30 (thirty) days to query them before they come into effect.

Prices are quoted in UK Pounds Sterling and are exclusive of taxes, duties, bank charges and exchange rate fees which will be charged at prevailing rates. Quotations are valid for 30 days.

Support is normally carried out remotely; any site visits which you request will be charged at our prevailing rates.

10. PAYMENT

Payment for Software as a Service must be made by direct debit; payments will be scheduled between 15 and 30 days after the invoice date.

Payment for other items is due within 30 days of the invoice date except for items where alternative terms have been agreed in writing.

If payment for any item is not received by the due date we may, in addition to other legal remedies, suspend any service (including Support, Software as a Service and renewing software time-expiry) until we receive payment in full. During any such period of suspension this Agreement will continue, and you must pay for suspended services until the termination date after the service is terminated by either party giving notice in accordance with this Agreement. All payments are non-refundable.

11. RECRUITMENT

Metafour's staff are our most important investment and asset. You must not employ a former employee of Metafour for a period of eleven months after they cease to be employed by us without our written agreement.

If you do employ a former employee of Metafour within eleven months after they cease to be employed by us, whether directly or through a supplier or connected company, you must pay us a recruitment fee. This is a percentage of the gross cost of their first year's remuneration, including salary, National Insurance, bonus and benefits in kind. The recruitment fee is 25% where such remuneration is up to £25,000 and 40% where it is £25,000 or more.

12. IMPLEMENTATION

We commit to ensuring the relevant resources and support are available to meet key milestones to be outlined in a project initiation meeting, except for situations outside of our control. As part of the System Training our implementation team will train and guide you in the setup and maintenance of relevant parts of the system. Metafour is not responsible for sourcing or entering any of your data into the system. You agree to dedicate reasonable time and resources to sourcing and entering the required data (including but not limited to data on pricing zones, routes, legs, cost and sales tariffs, extras, customer information, address books and geography, if applicable).

Third parties may be relevant to the implementation project. We will assist in liaising with any third-party supplier; however, it is not our responsibility if the third-party does not complete any required actions in the agreed timeframe. It will be the responsibility of the party who holds the relationship with the third-party (typically you) to provide login credentials and ensure timelines are met.

During your implementation our team will schedule regular agreed training sessions with you to give you the guidance and training in configuring your new system. At a minimum we encourage at least one 2 hour session per week to ensure the project remains on schedule and will be booked in advance with you so you can ensure the correct people are available to attend.

If you are unable to attend the meeting we ask that you provide at least 1 business day's notice to cancel. Failure to notify us or at too short notice Metafour will deduct the planned session time from the training allowance purchased at the time of sale. This may also have an impact on desired go live timelines if sessions are regularly not attended.

A go live date will be agreed upon based on the agreed scope at the time of execution of this contract. Any new software development requested post execution of the contract/during the implementation phase (i.e. software development that is not described in Appendix A Section 3) may affect the agreed go live date, and may incur additional costs. If new development or configuration items (not previously agreed) are requested during the implementation phase that are not essential to go live, the original go live date will remain the target go live date. Delivery dates for new scope items will be agreed with your project manager and will not delay the master project go live.

If the implementation project is unable to move forward for any reason outside of our control, we reserve the right to place the implementation on hold pending a revised agreed target date and a firm commitment from all parties that the project can effectively restart. During the time on hold billing will continue according to the terms of this Agreement.

IF THINGS GO WRONG

13. PROBLEMS

We aim to provide a high quality of service. However, computer systems involve complex technology and some problems can be expected to arise.

In the first instance, you should, as soon as possible, contact Metafour's support team with a clear description of the problem.

If this does not lead to a satisfactory resolution, you must inform your Account Manager at Metafour who will escalate the problem to the appropriate resource. It is important to state clearly, in writing, what you believe the problem to be and what action you are requesting. If you are not happy with how your problem has been handled, you must write to or email a Director of Metafour, setting out the details of the problem and what action you are requesting.

14. MATTERS BEYOND REASONABLE CONTROL

Neither party will be liable for any delay or failure in performance of its obligations resulting from causes beyond its reasonable control, such as national emergency, power failure, industrial dispute etc. In such cases the guarantees set out in paragraphs 15 and 16 will not apply.

15. GUARANTEE: SOFTWARE

We guarantee that our Software is of merchantable quality and fit for the purpose of typical businesses for which it was designed. You are responsible for checking prior to purchase that our Software packages meet the needs of your specific business.

16. GUARANTEE: REGULAR SERVICES

We will provide Software as a Service and Support in accordance with our Service Level Agreement current at the time. If we fail to meet these service levels, we will pay you service credits as set out in the current SLA.

17. LIABILITY

Metafour is not liable for any indirect or consequential loss including, without limitation, loss of profits.

Metafour is not liable for any loss attributable to:

- i. Breach of this Agreement by you
- ii. Misuse or modification of Equipment or Software without our prior written approval
- iii. Your failure to enter into an equipment maintenance contract
- iv. Use of equipment or software not supplied by Metafour
- v. Your failure to take regular security copies of data you host
- vi. Unauthorised access to computers, including physical access, online access or access using a password you have made available to us

Our liability to you and third parties is limited to twice the amount paid for items in respect of which the claim is made or, in the case of Software as a Service, to payments made in the six months prior to the date of the claim.

These conditions will not apply so as to restrict our liability for death or personal injury resulting from our negligence. If any limitations on our liability are found to be unenforceable at law, they will be deemed to be omitted, and the remaining limitations will continue to apply.

When you use NetCourier to integrate with third-party suppliers and external systems, the commercial relationship and account credentials belong to you and it is your responsibility to ensure that you comply with the relevant terms and conditions. You expressly understand and agree that Metafour shall not be liable for any damages or losses resulting from your use of such integrations.

18. MEDIATION

If any dispute arises out of this agreement, the parties will attempt to settle it by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.

CHANGING AND ENDING THE AGREEMENT

19. CHANGES

No purported variation of the terms of this Agreement will be valid unless the parties confirm them in writing.

20. TRANSFERRING AGREEMENT

Neither party may assign its rights under this Agreement without the other party's prior written consent.

21. TERMINATION AND BREACH

Software as a Service will be provided for a minimum period of 36 (thirty-six) months, beginning from the first core hosting and support fee invoice. Thereafter either party may cancel this agreement at any time by providing 9 (nine) months' notice in writing.

If you commit a breach of these conditions, and fail to remedy this breach within 30 days of written notice requiring the breach to be remedied, or if you go into liquidation (other than for the purposes of reconstruction or amalgamation) or have a receiver appointed over any part of your assets, then we may (without prejudice to our other rights) immediately terminate the software licence by written notice.

On termination (30 working days from receipt of termination) we will hard delete your NetCourier or Mailroom system and all its related data. No backups will be made of your system and that data will not be retrievable. This deletion will include, but is not limited to, all transaction data, client data, client invoices, supplier invoice data, and all items tracking data. You are solely responsible for extracting any required data from your instance of NetCourier or Mailroom software that is required by law where you operate.

THE GENERAL DATA PROTECTION REGULATION (GDPR)

22. PERSONAL DATA AND THE GENERAL DATA PROTECTION REGULATION

Metafour acknowledges that it is a data processor on your behalf for providing hosted applications in connection with this agreement. We are not a data processor in respect of any on-premises applications.

You hereby instruct Metafour to process personal data for the purpose of providing the applications in accordance with this Agreement.

The categories of personal data processed include:

- i. User data, including username, password, location and identification document numbers (such as drivers licence)
- ii. Shipper and consignee data, including name, address, email address, telephone number and shipment details
- iii. Bank account information and financial information (for driver payments)
- iv. Tracking data, including name, location, photograph and signature
- v. Any other associated data

You acknowledge that you have the appropriate legal relationship with your supply chain and you instruct Metafour to transfer personal data within the application functionality (including transfers outside the EEA) to your users, customers, carriers and organisations you provide login details to or set up automated data transfer to.

Further details on GDPR are outlined in the SLA document provided.

23. DATA SECURITY

Taking into account a) the nature, scope, context and purpose of the processing; b) the state of the art and the costs of implementation and c) the risk of varying likelihood and severity for the rights and freedoms of Individuals, we will implement and maintain at all times technical, physical and organisational measures designed to ensure a level of security appropriate to the risk.

Before disclosing any personal data to sub-processors, we will enter into a written contract with that sub-processor under which they agree to comply with obligations equivalent to those set out in this clause.

Metafour will promptly, and in any case within the SLA, inform you if we become aware of any actual or suspected data security breach which is likely to result in a risk to the rights and freedoms of individuals.

In the event of such a data security breach, Metafour will implement appropriate measures to stop the breach and prevent a recurrence. We will provide you with all relevant information you request regarding the breach and cooperate with you to develop and execute a response plan to address the breach, to comply with your obligations under relevant data protection laws and to mitigate any adverse effects on your business and the affected individuals. We will not publicise the breach without first informing you except to comply with the law.

APPENDIX A – SALES SCHEDULE

SECTION A: UPFRONT SET-UP FEE

Description of items and fees for client to be entered here for Professional fees.

SECTION B: SOFTWARE AS A SERVICE

Description of items and fees for client to be entered here for monthly SaaS fees.

SECTION C: PAYMENT TERMS

- Professional fees with order
- Monthly fees invoiced one month in advance
- Monthly core system license hosting and support fees apply from signing
- Single system licence (single database & single business entity)