

BUSINESS RESILIENCE TERMS AND CONDITIONS

This Agreement is made as of the INSERT DATE

1. Definitions and Interpretation

1.1 The definitions and rules of interpretation in this condition 1 apply in these Conditions.

Business Resilience Services: As detailed in the Customer Service Order and Statement of Work;

Charges: means the Non-Recurring Charges, the Recurring Charges and any Additional Fees as described in Charges and Term;

Confidential Information: information that is proprietary or confidential and which is either labelled as such or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure including any information or material relating to the parties' systems, websites (including any related website code and/or website user data howsoever stored), applications (including any related application code and/or application user data howsoever stored), operations, opportunities, business or advertising plans, intentions, market opportunities, know-how, trade secrets, Intellectual Property Rights, personnel, research, costs, prices, finances and business affairs;

Contract: the Customer Service Order as accepted by Databarracks under condition 2;

Customer: the person, firm or company described on the Customer Service Order who purchases Services from Databarracks;

Customer Data: any information or data which is provided by the Customer to Databarracks as part of Customer's use of a Services, including any information derived from such information;

Customer Service Order: means the counter-signed order detailing the Charges and Services;

Data Protection Laws: all privacy laws applicable to any Personal Data processed under or in connection with this Agreement, including, without limitation, the UK Data Protection Act 2018 (known as "GDPR"), the Data Protection Directive 95/46/EC, the Privacy and Electronic Communication Directive 2002/58/EC and all national legislation implementing or supplementing the foregoing and all associated codes of practice and other guidance issued by any applicable supervisory authority, all as amended, re-enacted and/or replaced and in force from time to time;

Databarracks: Databarracks Limited, incorporated and registered in Guernsey with company number 40662 whose registered office is Avenue House, St Julian's Avenue, St Peter Port, Guernsey, Channel Island, GY1 1WA;

Effective Date: means the date of this Agreement;

Expenses: means any travel and subsistence expenses necessarily incurred during the delivery of the Services as outlined in the Customer Service Order;

Fees: the fees payable to Databarracks by Customer, as described in the Customer Service Order;

Intellectual Property: any and all intellectual property rights of any nature anywhere in the world, whether registered, registrable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases and moral rights;

Initial Period: means the minimum term of the provision of Services as set out in the Customer Service Order, from and including the Effective Date, or until the Contract is terminated by either party in accordance with condition 11;

Non-Recurring Charges: means the one-off charges payable by the Customer in the Customer Service Order;

Services: means the Business Resilience Services as summarised in the Customer Service Order;

Statement of Work: is the document employed by Databarracks to define the programme deliverables available to the Customer;

Service Overview: means the Service Overview set out in the Customer Service Order (Services);

Term: the total number of months as specified in the Customer Service Order, or until the Contract is terminated by either party in accordance with condition 11; and

Working Days: means Monday to Friday 9am-5pm in any week, excluding Bank and other public holidays in England.

1.2 Condition headings shall not affect the interpretation of the Contract.

1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.4 Words in the singular shall include the plural and vice versa.

1.5 A reference to one gender shall include a reference to the other genders.

1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment, and includes any subordinate legislation for the time being in force made under it.

1.7 A reference to writing or written includes faxes but not e-mail.

1.8 Any phrase introduced by the words including, includes, in particular or for example, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.

1.9 References to conditions and specifications are to the conditions and specifications of the Contract.

1.10 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

2. Application of these Conditions

2.1 The Customer Service Order constitutes an offer by the Customer to purchase the Services specified in it on these Conditions; accordingly, the execution and return of the acknowledgement copy of the Customer Service Order by Databarracks, or commencement by Databarracks of Services pursuant to the Customer Service Order, shall establish the Contract for the supply and purchase of those Services on these Conditions.

2.2 These Conditions shall apply to and be incorporated in the Contract and prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

3. Databarracks obligations

3.1 Databarracks warrants that the Service will be performed with all reasonable skill and care and that it will be provided substantially in accordance with the relevant Customer Service Order.

4. Customer's obligations

- 4.1 The Customer shall:
- a. co-operate with Databarracks in all matters relating to the Services;
 - b. provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by Databarracks;
 - c. provide in a timely manner such information as Databarracks may request, and ensure that such information is accurate in all material respects; and
 - d. be responsible (at its own cost) for preparing the relevant premises for the supply of the Services.
- 4.2 If Databarracks' performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall in all circumstances be liable to pay to Databarracks on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to Databarracks confirming such costs, charges and losses to the Customer in writing.
- 4.3 The Customer shall not, without Databarracks' prior written consent, at any time from the Effective Date to the expiry of six months after the completion of the Services, solicit or entice away from Databarracks or employ or attempt to employ any person who is, or has been, engaged by Databarracks as an employee or sub-contractor, except that the Customer shall not be in breach of this condition 4.3 if it hires an employee or sub-contractor of Databarracks as a result of a recruitment campaign not specifically targeted to any of Databarracks' employees or sub-contractors.
- 4.4 Any consent given by the Databarracks in accordance with condition 4.3 shall be subject to the Customer paying to Databarracks on demand a sum equivalent to 20% of the then current annual remuneration of the Databarracks's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Customer to such employee or sub-contractor.

5. Charges and payment

- 5.1 The Customer shall pay Fees set out in the Customer Service Order.
- 5.2 All amounts and Fees stated or referred to in the Contract are exclusive of value added tax, which shall be added to Databarracks' invoice(s) at the appropriate rate.
- 5.3 Databarracks shall invoice the Customer monthly as of the last day of each month for all Services performed by Databarracks during that month.
- 5.4 Each invoice is due and payable 30 days after the invoice date.
- 5.5 Without prejudice to any other right or remedy that Databarracks may have, if the Customer fails to pay Databarracks on the due date Databarracks may:
- a. charge interest on any overdue amounts at the rate of 4% over the base lending rate of Databarracks' bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after the judgment; and
 - b. suspend all Services until payment has been made in full.
- 5.6 Time for payment shall be of the essence of the Contract.
- 5.7 All payments payable to Databarracks under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 5.8 Databarracks reserves the right to increase all Recurring Charges once per annum on 1st January. Such Recurring Charges shall be increased by no more than the Consumer Prices Index (CPIH) for the preceding 12 months (as published by the UK Office for National Statistics).
- 5.9 Databarracks shall provide half a day per year for supplier assessment and audits, required by the Customer at no additional cost. Any time required above half a day for supplier assessment and audits shall be chargeable as per the Additional Fees in the Customer Service Order. Standard service and organisation information will be provided at no cost to the customer in writing or via Databarracks' supplier management software tool. Any Customer supplier management software costs paid by Databarracks shall be recharged to The Customer.

6. Change control

- 6.1 If either party wishes to change the scope of any Services (including Customer requests for additional services), it shall submit details of the requested change to the other in writing.
- 6.2 If either party requests a change to the scope or execution of the Services, Databarracks shall, within a reasonable time, provide a written estimate to the Customer of:
- a. the likely time required to implement the change;
 - b. any variations to the Fees arising from the change;
 - c. the likely effect of the change on the Customer Service Order; and
 - d. any other impact of the change on the terms of the Contract.
- 6.3 If Databarracks requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.
- 6.4 If the Customer wishes Databarracks to proceed with the change, Databarracks has no obligation to do so unless and until the parties have agreed in writing the necessary variations to its charges and any other relevant terms of the Contract to take account of the change.

7. Proprietary rights

- 7.1 The parties acknowledge and agree that each party retains ownership of its respective Intellectual Property either existing in any material developed or produced by the party before the Effective Date and/or that which is subsequently developed or produced by the party in connection with the Contract.

8. Data Protection

- 8.1 Both parties will comply with all applicable requirements of the Data Protection Laws.
- 8.2 Databarracks and the Customer acknowledge that for the purposes of the Data Protection Laws, the Customer is the data controller of certain personal data in respect of which Databarracks will be the processor.
- 8.3 Without prejudice to the generality of condition 8.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Databarracks for the duration and purposes of this agreement. Databarracks shall, in relation to any personal data processed in connection with the performance by Databarracks of its obligations under this agreement:
- a. process the personal data only to the extent, and in such a manner, as is necessary for the purpose for which the personal data is collected and processed as notified to Databarracks by the Customer and in accordance with the Customer's instructions from time to time and shall not process the personal data for any other purpose;
 - b. ensure it has in place appropriate technical and organisational measures against the unauthorised or unlawful processing of personal data and against the accidental loss or destruction of, or damage to, personal data;
 - c. ensure that access to the personal data is limited to those personnel who need access to the personal data to meet Databarracks' obligations under this Agreement;
 - d. not transfer the personal data outside the United Kingdom or the European Economic Area without the prior written consent of the Customer;
 - e. assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - f. notify the Customer without undue delay if, in its opinion, the Customer's instructions infringe the Data Protection Laws or upon Databarracks becoming aware of a personal data breach;
 - g. notify the Customer without undue delay if, in its opinion, the Customer's instructions infringe the Data Protection Laws or upon Databarracks becoming aware of a personal data breach;
 - h. at the written direction of the Customer and upon the payment of Databarracks' reasonable costs where applicable, delete or return Personal Data and copies thereof to the Customer on termination of this agreement unless required or permitted by applicable law to store the personal data;
 - i. at the written direction of the Customer and upon the payment of Databarracks' reasonable costs where applicable (including any required software or tools, and time taken by suitably qualified personnel), conduct audits and inspections; and
 - j. maintain records of any types of processing of personal data it carries out on behalf of the Customer.
- 8.4 The Customer consents to Databarracks appointing a sub-contractor (or third-party processor) of personal data under this agreement. Databarracks will confirm if requested by the Customer in writing of the identities of such third parties and that it has entered or (as the case may be) will enter a written agreement with such third parties incorporating terms which are substantially similar to those set out in this clause.
- 8.5 Databarracks shall inform the Customer without undue delay if any of Customer's personal data is lost or destroyed or becomes damaged, corrupted, or unusable. Databarracks shall use reasonable endeavours to restore the lost or damaged Customer Data. Without prejudice to any other term of this Agreement, in the event of any loss or damage to Customer Data caused by (i) a breach by Databarracks of this Agreement or (ii) any act or omission of any Databarracks Personnel, then Databarracks will restore such Customer personal data at its own expense. Databarracks shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by the Customer, or the Customer's employees or agents.
- 8.6 To the extent that any Customer's Personal Data is being processed in the Customer's IT environment, it is the Customer, and not Databarracks, which determines the purposes for which, and the means by which, it is so processed and the Customer, and not Databarracks, which configures the Customer's IT environment, and thereby acts as data controller.
- 8.7 The Customer acknowledges and confirms that it is permitted to transmit to Databarracks pursuant to this Agreement all Customer Data without breach of any law, agreement, arrangement or duty or the rights of any third party.
- 8.8 The parties undertake to each other that, if required by ICO guidance or best practice, they shall enter into a separate data processing agreement that will supplement the provisions of this condition in order to cover the data processing obligations that will arise under the GDPR and that they shall negotiate the provisions of that agreement in good faith.

9. Confidentiality

- 9.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Contract. 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;
 - b. was in the other party's lawful possession before the disclosure;
 - c. is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - d. is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - e. is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 9.2 Each party shall keep the other's Confidential Information secure and hold it in confidence and, unless required by law, shall 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 the Contract.
- 9.3 The Customer acknowledges that Databarracks Confidential Information includes any designs, plans, software or other materials created by Databarracks in connection with a Services and the Customer agrees not to make use of any such material for any purpose other than receipt of a Services from Databarracks.
- 9.4 Databarracks acknowledges that Customer's Confidential Information includes any designs, plans, software or other materials created by Customer in connection with fulfilling its obligations under the Contract and Databarracks agrees not to make use of any such material for any purpose other than to fulfil its obligations under the Contract.
- 9.5 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 the Contract.

- 9.6 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this condition 9.6, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 9.7 Databarracks acknowledges that the Customer Data is the Confidential Information of the Customer and any use of such Customer Data without obtaining Customer's consent other than in accordance with the Contract shall be classified as a material breach of the Contract for the purposes of condition 11.3a.
- 9.8 This condition 8 shall survive termination of the Contract, however such termination occurs.
- 10. Limitation of liability**
- 10.1 This condition 10 sets out the entire financial liability of Databarracks (including any liability for the acts or omissions of its employees, agents and subcontractors) to the other party in respect of:
- any breach of the Contract;
 - any use made by the Customer of the Services and any deliverables in the Statement of Works; and
 - any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 10.2 Except as expressly and specifically provided in the Contract:
- the Customer assumes sole responsibility for results obtained from the use of the Services, and for conclusions drawn from such use; and
 - all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in the Contract excludes or limits the liability of either party for:
- death or personal injury caused solely by a party's negligence;
 - fraud or fraudulent misrepresentation; or
 - any other liability which cannot lawfully be excluded or limited.
- 10.4 Subject to condition 10.3:
- Databarracks shall not be liable for any loss of profits, loss of business, depletion of goodwill or similar losses, or pure economic loss, loss or corruption of data or information, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising; and
 - Databarracks' total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Services during the 12 months preceding the date on which the claim arose.
- 11. Term and termination**
- 11.1 The Contract shall commence on the Effective Date and shall continue for the Term, unless otherwise terminated as provided in this condition 11.
- 11.2 Following the expiry of the Initial Period, this Agreement shall, subject to the termination provisions, continue for a further 12 months and thereafter shall automatically be extended for like periods, unless either party gives the other written notice to terminate 3 months prior to the anniversary of the Effective Date. The Customer and Databarracks acknowledge and agree that this notice requirement is a reasonable notice requirement, and that the automatic renewal provision is also reasonable given the nature of the Service(s).
- 11.3 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:
- the other party commits a material breach of any of its terms and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;
 - an order is made or a resolution is passed for the winding up of the other party, unless such order is set aside within 14 days;
 - an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986) and such appointment, notice or filing is not set aside within 14 days;
 - a receiver is appointed of any of the other party's assets or undertakings such appointment not being set aside within 14 days;
 - the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt;
 - the other party ceases, or threatens to cease, to trade; or (g) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 11.4 On termination for any reason:
- Databarracks shall immediately cease provision of a Service;
 - each party shall return and make no further use of any equipment, property, confidential information, materials and other items (and all copies of them) belonging to the other party;
 - the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.
- 12. Compliance with laws and policies**
- 12.1 In performing its obligations under the agreement, both parties shall comply with:
- all applicable laws, statutes and regulations from time to time in force; and
- 12.2 Without prejudice to the generality of condition 12.1, neither party will engage in any activity, practice or conduct:

- a. which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - b. would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
 - c. which would cause the other party to breach its obligations under the Data Protection Act 1998 or the EU General Data Protection Regulation.
- 12.3 Either party may terminate this agreement with immediate effect by giving written notice to the other if that other commits a breach of condition 12.1.
- 12.4 Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this condition 12.
- 12.5 The Customer acknowledges that Databarracks is reliant on the Customer for direction as to the extent to which Databarracks is entitled to use and process any personal data. Consequently, Databarracks will not be liable for any claim arising from any action or omission by Databarracks, to the extent that such action or omission resulted directly from the Company's instructions.
- 13. Force majeure**
- Neither party shall have any liability to the other under the Contract if either is prevented from, or delayed in, performing its obligations under the Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving either party's workforce or that of any other party), failure of a utility service or transport 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, provided that the party not affected is notified of such an event and its expected duration. If the period of delay or non-performance continues for 12 weeks or more, the party not affected may terminate the Contract by giving 14 days' written notice to the affected party.
- 14. Waiver**
- 14.1 A waiver of any right under the Contract 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.
- 14.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 15. Severance**
- 15.1 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 15.2 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.
- 16. Entire agreement**
- 16.1 The Contract, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 16.2 Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.
- 17. No partnership or agency**
- Nothing in the Contract is intended to, or shall, operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of, or otherwise to bind, the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 18. Third-party rights**
- The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit or be enforceable by anyone else.
- 19. Notices**
- 19.1 Any notice required to be given under the Contract 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 addresses as set out in the Contract, 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 the Contract.
- 20. Governing law and jurisdiction**
- 20.1 The Contract and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the laws of England and Wales.
- 20.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract.
- 21. Signatures**
- 21.1 By signing by hand or through DocuSign, I confirm I am duly authorised on behalf of the Customer to be bound by this Agreement and the attached Customer Service Order detailing the Charges and Services delivered under these terms and conditions.

Signed for and on behalf of the Customer:

Signed for and on behalf of Databarracks Ltd:

SIGNATURE:_____

SIGNATURE:_____

NAME:_____

NAME: James Watts

TITLE:_____

TITLE: Managing Director, Databarracks Ltd

DATE: _____

DATE: _____