

Terms and Conditions for the supply of Services v5

1 Definitions

1.1 In these terms and conditions, unless the context otherwise requires, the following terms shall have the following meanings.

'Charges'	all charges by the Service Provider for the Services supplied under these terms and conditions
'Client Data'	all electronic data created by the Client which is stored on Hardware belonging to the Service Provider
'Client Group Company'	with respect to the Client its ultimate holding company and any subsidiary of such holding company as such expressions are defined in Sections 736 and 736A of the Companies Act 1985
'Installation Site'	the location of the Server as identified in the Quotation
'Intellectual Property Rights'	all vested contingent and future intellectual property rights including but not limited to copyright, trade marks, service marks, design rights (whether registered or unregistered), patents, know-how, trade secrets, inventions, get-up, database rights and any applications or registrations for the protection of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created
'Licence'	the licence granted by the Service Provider to the Client under these terms and conditions to save Client Data on the Server
'Server Insurance'	suitable insurance relating to the Server with a reputable insurer for the manufacturer's list price to cover the risk of loss, theft, damage or destruction of the Server howsoever caused
'Quotation'	a quotation provided by the Service Provider for the Services supplied pursuant to these terms and conditions
'Server'	a System configured to support an agreed number of Users
'Service Provider Group Company'	with respect to the Service Provider its ultimate holding company and any subsidiary of such holding company as such expressions are defined in Sections 736 and 736A of the Companies Act 1985
'Services'	The supply of a Server and support services to be provided by the Service Provider to the Client pursuant to a Quotation
'Service Fees'	the charges payable by the Client to the Service Provider for the Services
'Special Conditions'	those conditions agreed between the parties in relation to any supply of the Services which are additional to these terms and conditions. Any Special Conditions will be set out in writing and will refer expressly to these terms and conditions
'User'	a single terminal workstation or personal computer connected to a Server in such a way to be uniquely identifiable and authorised as such

2 Basis of purchase

2.1 These Terms and Conditions together with any accepted Quotation and Special Conditions will form the contract between the Client and the Service Provider in connection with the supply of the Services.

3 Supply of services

3.1 Quotation

3.1.1 The Service Provider shall supply the Services set out in the Quotation.

3.2 Delivery

3.2.1 The Service Provider shall deliver the Server, to the Installation Site and thereafter supply the Services. Delivery of the Server and its installation at the Installation Site and the provision of the Services shall only take place when the Client has signed and returned to the Service Provider a written acceptance of these terms and conditions and a Direct Debit Mandate duly completed and signed.

3.3 Title

3.3.1 Ownership of all Client Data will belong to the Client at all times. Ownership of the Server will remain with the Service Provider at all times. The Service Provider may not repossess any Server unless the Client has failed to pay for the Services by the due date, such payment or any part of it is not in dispute and the Service Provider is entitled to terminate the supply of the Services under clause 12.2

3.4 Insurance

3.4.1 All risk of loss, theft, damage or destruction of the Server howsoever caused (other than fair wear and tear) shall be the responsibility of the Client from the date that the Server is installed at the Installation Site. The Server shall remain at the risk of the Client at all times until the Server is delivered back to the Company.

3.4.2 Whilst the Server is at the risk of the Client the Client shall:

3.4.2.1 Effect and maintain the Server Insurance;

3.4.2.2 At the Service Provider's reasonable request provide the Service Provider with such information regarding the Server Insurance, as the Service Provider shall reasonably require;

3.4.2.3 Instruct the Server Insurance insurer that such insurer shall pay any insurance payments received in respect of a total loss claim to the Service Provider and the Client irrevocably appoints the Service Provider as its agent to receive the money and authorises the Service Provider to give a good discharge to the insurer for the money.

3.4.2.4 Except as provided by 3.4.2.3 above, apply any insurance monies received in respect of the Server under the Server Insurance in either making good any damage or towards satisfaction of the Client's obligations under these Terms and Conditions, including making up any deficiency if necessary; and

3.4.2.5 Notify the Service Provider immediately of any event that may give rise to a claim under the Service Provider's insurance of the Server and not do or refuse to do anything likely to invalidate such insurance.

3.4.3 If the Server is returned to the Service Provider or if the Service Provider recovers possession of the Server the Client's interest in the Server Insurance shall vest absolutely in the Service Provider who shall be entitled to the full benefit of such insurance including any claims which may be outstanding at the date of such return or recovery of possession.

3.5 Compliance with law

3.5.1 The Service Provider and the Client shall comply with all applicable laws, regulations or other legal requirements concerning the performance of the Services and the use of the Server.

4 Charges

4.1 The Service Provider's Charges shall be calculated on the basis stated in the relevant Quotation

4.2 Any increase in Charges shall be subject to written agreement of the parties.

4.3 Charges shall be expressed and payments made in Pounds Sterling unless otherwise agreed between the parties.

5 Payment

5.1 the Client will pay the Service Fees by Direct Debit in accordance with prices set out in the relevant Quotation or Special Conditions. The Service Provider will provide invoices to the Client for the Services in accordance with the timetable referred to in the Quotation by email.

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- 5.2 The Client shall pay all Charges for the Services performed.
- 5.3 The Client shall not be entitled to set off and withhold against the Charges any debt or sum owed to the Client by the Service Provider in connection with the relevant Quotation.
- 5.4 Any invoice disputes must be raised by the Client within 10 Working Days of receipt.
- ### 6 Client's responsibilities
- 6.1 If so required, the Client shall provide the Service Provider and (provided they have received security clearance) its staff with all office and other accommodation and facilities that the Service Provider may reasonably require to perform Services, in particular administrative support, access to telephone and fax communications and computer facilities.
- 6.2 The Client will take all reasonable steps to protect the Server from damage and will be responsible for all the costs associated with repairing or replacing the Server and the Client Data stored on it in the event that the Server is damaged or destroyed as a result of the negligence of the Client, its employees, agents or representatives.
- ### 7 Intellectual property rights
- 7.1 Neither party is granted any right, title or licence to, or interest in the other party's Intellectual Property Rights. Each party acknowledges the other party's rights in such other party's Intellectual Property Rights and agrees that any and all use by it of such Intellectual Property Rights shall inure to the sole benefit of the other party. Neither party shall take any action inconsistent with the other party's ownership of its Intellectual Property Rights and agrees not to challenge the other party's ownership or use of such Intellectual Property Rights and further agrees not to attempt to register any such Intellectual Property Rights, owned or used by the other party or any other names or marks confusingly similar thereto. If at any time a party acquires any rights in, or any registration or application for any of the other party's Intellectual Property Rights by operation of law or otherwise it will immediately upon request by the other party and at no expense to the other party assign such rights, registrations or applications to the other party, along with any associated goodwill.
- ### 8 Limitation of liability
- 8.1 The Service Provider shall indemnify the Client for personal injury or death caused by the negligence of its employees in connection with the supply of the Services, or by defects in any Services supplied under these terms and conditions.
- 8.2 The Service Provider shall indemnify the Client for direct damage to tangible property caused by the negligence of its employees in connection with the performance of their duties under each Purchase Order. The Service Provider's total liability under this clause shall be limited to a sum equivalent to the total charges paid to the Service Provider (for that Purchase Order) for the Services that are the subject of the Client's claim.
- 8.3 Save in respect of claims for death or personal injury arising from the Service Provider's negligence, in no event will the Service Provider be liable for any damages resulting from lost profits, loss of anticipated savings, nor for any damages that are an indirect or secondary consequence of any act or omission of the Service Provider whether such damages were reasonably foreseeable or actually foreseen.
- 8.4 Except as provided above in the case of personal injury, death, and damage to tangible property, the Service Provider's maximum liability to the Client under these terms and conditions or otherwise for any cause whatsoever (whether in the form of a refund, the additional cost of remedial services or otherwise) will be for direct costs and damages only and will be limited to the lesser of:
- 8.4.1 the sum for which the Service Provider carries comprehensive insurance cover (subject to the Service Provider actually recovering such sum from the insurer); or
- 8.4.2 a sum equivalent to the Service Fees paid to the Service Provider under these terms and conditions for the Services that are the subject of the Client's claim.
- 8.5 In no event shall the Service Provider be liable to the Client for any losses whatsoever (whether lost future revenues, lost future profits, expenditure incurred to no benefit, or otherwise) suffered or incurred by the Client solely or substantially because the supply of the Services has been terminated.
- 8.6 All liability that is not expressly assumed in these terms and conditions is hereby excluded. These limitations will apply regardless of the form of action, whether under statute, in contract, tort, including negligence, or any other form of action. For the purposes of this clause 'the Service Provider' includes its employees, sub-contractors and suppliers. The Client acknowledges that the Service Provider's employees, sub-contractors and suppliers shall have the benefit of the limits and exclusions of liability set out in this clause in terms of the Contracts (Rights of Third Parties) Act 1999. Nothing in these terms and conditions shall exclude or limit liability for fraudulent misrepresentation.
- 8.7 Both parties acknowledge and agree that the limitations and exclusions of liability set out in this clause are reasonable and have been agreed taking into account the commercial value of the supply of the Services and the commercial standing of each party.
- 8.8 No claim or action, regardless of form, arising out of these terms and conditions or a Quotation may be brought by either party more than two years after the cause of action has accrued.
- ### 9 Data protection
- 9.1 The Service Provider warrants that in so far as applicable to Software and Services:
- 9.1.1 the Service Provider will take reasonable commercial efforts in accordance with appropriate security practice to maintain sufficient technical and organisational measures to ensure the security and integrity of its computer and other information systems to prevent the unauthorised disclosure, copying or use of confidential information or personal data and the Service Provider warrants that it will comply with the principles of the prevailing Data Protection regulations; and
- 9.1.2 the Service Provider will act only on the instructions of the Client in respect of any personal data that it processes on behalf of the Client.
- 9.2 Both parties undertake to comply with the provisions of the prevailing Data Protection laws and any related legislation in so far as the same relates to the provisions and obligations under these terms and conditions. Where applicable the expressions used in this clause shall have the meanings given to them in the General Data Protection Regulations 2016/679.
- 9.3 The service provider will only store client data on systems which are under its complete control, and only located within the UK.
- ### 10 Force majeure
- 10.1 Neither party shall have any liability under or be deemed to be in breach of these terms and conditions by reason of any delays or failures to comply with these terms and conditions which result from circumstances beyond the reasonable control of that party. If such circumstances continue for a continuous period of more than one month, either party may terminate the supply of the Services by written notice to the other party.
- ### 11 Health and safety
- 11.1 The Client shall provide the Service Provider with a safe and secure workplace and such facilities as the Service Provider may reasonably require while on the Client's premises and allow access to such premises at all reasonable times for the purpose of any work that is necessary for the Service Provider to carry out to the Server.
- ### 12 Termination
- #### 12.1 Notice
- 12.1.1 Either party may terminate the supply of the Services after a period of one year from the date of delivery of the Server by giving the other party not less than one month's notice in writing of such termination such notice to expire on the last day of a month.
- #### 12.2 Termination for breach and on insolvency
- 12.2.1 Either party shall be entitled to terminate the supply of the Services without liability to the other party by giving notice to the other party at any time if:
- 12.2.1.1 that other party is in material breach of these terms and conditions and any Special Conditions, provided that if the breach is capable of remedy the innocent party shall not be entitled to terminate the supply of the Services unless and until the breaching party shall have failed to remedy the breach within 10 Working Days of such notice;
- 12.2.1.2 that other party makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or becomes subject to an administration order or goes into liquidation otherwise than for the purpose of amalgamation or reconstruction; or

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- 12.2.1.3 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of that other party; or
- 12.2.1.4 that other party ceases, or threatens to cease, to carry on business; or
- 12.2.1.5 the Client or the Service Provider reasonably apprehends that any of the events mentioned above is about to occur in relation to the other party and notifies the other party accordingly.

12.3 Effect of termination

- 12.3.1 Expiration or termination of the Services shall not limit either party from pursuing any other remedies available to it based upon events occurring prior to such expiration or termination, including the Client's obligation to pay all Service Fees.

12.4 Return of property

- 12.4.1 On termination of the supply of the Services each party will return to the other any property of the other that it then has in its possession or control, except that solely for the Service Provider's internal audit purposes, the Service Provider may retain one copy of any documentation, or any documentation upon which the Services are based. Any current Client Data stored on the Server will be moved to a location agreed on by the parties hereto or in default of agreement to a location nominated by the Service Provider and any backed up Client Data held by the Service Provider will be destroyed.

13 Confidentiality

- 13.1 All information of a technical or business nature disclosed by one party to the other either before or after the date of Delivery in connection with any Software or the Services or business dealings between the parties shall be regarded as confidential ('Confidential Information') and shall only be disclosed as is strictly necessary and each party shall procure that its personnel and third parties to which Confidential Information is disclosed treat such information as confidential. Such information shall be used only for the purpose for which it was disclosed and for carrying out the purposes of the supply of the Services and shall not without prior written consent of the disclosing party be disclosed to any third party provided that either party may disclose without consent any Confidential Information:
 - 13.1.1 to its sub-contractors for the operation of any Server or the provision of the Services provided that such disclosures is on a 'need to know' basis only and the sub-contractor undertakes to keep such Confidential Information confidential; or
 - 13.1.2 as required to be disclosed to any governmental and/or regulatory authority; or
 - 13.1.3 to any company within the Client Group Company or Service Provider Group Company.
- 13.2 Information shall not be deemed to be Confidential Information where it:
 - 13.2.1 is authorised to be disclosed by the disclosing party to the extent of the authority given; or
 - 13.2.2 is made public by the disclosing party or is or becomes part of the public domain other than by the default of the receiving party; or
 - 13.2.3 is in the possession of or is known by the receiving party without any obligation to keep it confidential prior to its receipt from the disclosing party; or
 - 13.2.4 is subsequently rightfully obtained by the receiving party from a third party; or
 - 13.2.5 is independently developed by the receiving party.
- 13.3 Notwithstanding the termination for whatever reason of the Services, the obligations of confidentiality shall, unless otherwise agreed, continue for a period of 5 years from such termination.
- 13.4 Any Confidential Information referred to in clause 13.1 shall remain the property of the disclosing party and shall be returned by the receiving party to the disclosing party if so requested.
- 13.5 The obligations of confidentiality set out above shall be deemed to be discharged provided that there is no intentional disclosure of the Confidential Information, that the party in question has taken reasonable efforts in accordance with best current commercial security practice to reduce the risk of accidental disclosure, and that, where accidental disclosure does occur despite the exercise of reasonable care, steps are taken to minimise the risk of further accidental disclosure of the same kind.

14 Agency, partnership

- 14.1 The supply of the Services shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in these terms and conditions.

15 Amendments

- 15.1 These terms and conditions may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the parties.

16 Entire agreement

- 16.1 These terms and conditions and any subsequent amendments supersede all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the supply of the Services. However the obligations of the parties under any pre-existing non-disclosure agreement shall remain in full force and effect in so far as there is no conflict between the same.

17 Notices

- 17.1 All notices under these terms and conditions shall be in writing.

17.2 Notices shall be deemed to have been duly given:

- 17.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
- 17.2.2 when sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; or
- 17.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
- 17.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid,
- 17.3 in each case addressed to the most recent address, e-mail address, or facsimile number notified to the other party.

18 Severance

- 18.1 If any provision of these terms and conditions is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from these terms and conditions and rendered ineffective as far as possible without modifying the remaining provisions of these terms and conditions, and shall not in any way affect any other circumstances of or the validity or enforcement of these terms and conditions.

19 Successors and assignees

- 19.1 These terms and conditions shall be binding upon, and inure to the benefit of, the parties and their respective successors, and references to a party in these terms and conditions shall include its successors and permitted assignees.
- 19.2 In these terms and conditions references to a party include references to a person:
 - 19.2.1 who for the time being is entitled to that party's rights under these terms and conditions (or any interest in those rights); or

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19.2.2 who, as administrator, liquidator or otherwise, is entitled to exercise those rights; and in particular those references include a person to whom those rights (or any interest in those rights) are transferred or pass as a result of a merger, division, reconstruction or other reorganisation involving that party.

20 Waiver

20.1 No delay, neglect or forbearance on the part of either party in enforcing against the other party of any of these terms and conditions shall either be or be deemed to be a waiver or in any way prejudice any right of that party under these terms and conditions. No right, power or remedy in these terms and conditions conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party.

21 Third parties

21.1 The parties confirm their intent not to confer any rights on any third parties by virtue of these terms and conditions and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to these terms and conditions.

22 Proper law and jurisdiction

22.1 These terms and conditions and all matters arising from it and any dispute resolutions referred to below shall be governed by and construed in accordance with English law notwithstanding the conflict of law provisions and other mandatory legal provisions save that:

22.1.1 the Service Provider shall have the right to sue to recover its fees in any jurisdiction in which the Client is operating or has assets; and

22.1.2 the Service Provider shall have the right to sue for breach of its Intellectual Property Rights and other proprietary information and trade secrets (whether in connection with these terms and conditions or otherwise) in any country where it believes that infringement or a breach of these terms and conditions relating to its Intellectual Property Rights might be taking place.

22.1.3 Each party recognises that the other party's business relies upon the protection of its Intellectual Property Rights and that in the event of a breach or threatened breach of Intellectual Property Rights, the other party will be caused irreparable damage and such other party may therefore be entitled to injunctive or other equitable relief in order to prevent a breach or threatened breach of its Intellectual Property Rights.