

# Datasouth UK Limited Terms and Conditions

## 1. Interpretation

1.1. In these Terms and Conditions the following definitions apply:

<b>"Licensor"</b>	means Datasouth UK Limited or any of its Subsidiaries and Partners providing Datasouth related products and services;
<b>"Business Day"</b>	means any day which is not a Saturday, Sunday or a bank or public holiday in England;
<b>"Retainer"</b>	means the monthly charge specified in the purchase order for the ongoing provision of the software and support;
<b>"Customer"</b>	means the individual or company to whom the invoice is addressed;
<b>"Service"</b>	means the goods or services specified in the Proposal;
<b>"Software"</b>	means the software that is used to provide the Service;
<b>"DCAS"</b>	means the "Datasouth Content Administration System" and its variations owned by the Licensor
<b>"First Line Support"</b>	means initial analysis and fault logging;
<b>"Confidential Information"</b>	for each party the terms of this Agreement and all information and/or data belonging to or relating to that party, its associates, its or their businesses, activities, affairs, products, services, suppliers, customers or prospective customers disclosed (whether in writing, orally or by any other means and whether directly or indirectly) by that party, its representatives or advisers, to the other party, its representatives or advisers whether before, on or after the date of this Agreement;
<b>"Proposal"</b>	means the order form completed and signed by the Customer;
<b>"Purchase Price"</b>	means the price for Software and Services as detailed in the Proposal.
<b>"Partner"</b>	means an authorised partner of the Licensor who provides web solutions that include the Datasouth software, bound by a Partner agreement;
<b>"Datasouth Personnel"</b>	means any employee of the Licensor or its duly authorised agents or representatives;

1.2. In these Terms & Conditions (except where the context otherwise requires):

- 1.2.1. the clause headings are included for convenience only and shall not affect the interpretation of these Terms & Conditions;
- 1.2.2. use of the singular includes the plural and visa versa;
- 1.2.3. use of any gender includes the other genders;
- 1.2.4. any reference to "persons" includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, foundations, and trusts (in each whether or not having separate legal personality);
- 1.2.5. any reference to a statute, statutory provision or subordinate legislation ("legislation") shall (except where the context otherwise requires) be construed as referring to:
  - a) such legislation as amended and in force from time to time and to any legislation which (either with or without modification) re-enacts, consolidates or enacts in rewritten form any such legislation; and
  - b) any former legislation which re-enacts, consolidates or enacts in rewritten form.

- 1.2.6. any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## **2. Force Majeure**

Neither The Licensor or the Customer shall be under any liability for any delay or the failure to perform any or part of its obligations under this agreement if such delay or failure shall be due to, including but without limitation, war, riot, storm, fire, earthquake, explosion, flood, electrical failure, non-availability of spares or parts, act of God, strikes, lock outs, labour disturbances, statute, order or any regulation of any Government, public or local Authority, delays or defaults of suppliers and sub-contractors, together the “Events” and, without prejudice to the generality of the foregoing, any other causes beyond the reasonable control of the relevant party.

## **3. Law**

This agreement shall be governed and construed in all respects in accordance with the Law of England and shall be subject to the exclusive jurisdiction of an English Court of Law.

## **4. Severability**

- 4.1. If any term or provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or in conflict with the law the validity or enforceability of the remainder of this agreement shall not be affected thereby.
- 4.2. If any provision of this Agreement is found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.

## **5. Waiver**

No failure or delay by either party in exercising, wholly or partially, any of its rights with regard to any breach or default of this agreement by the other party shall constitute a waiver of such rights and no waiver of any such breach or default shall be deemed to constitute a waiver of any other rights or any subsequent or continuing breach of default.

## **6. Assignment**

The Customer may not sub-licence, assign, transfer or otherwise dispose of its rights under this Agreement or any part of it without the consent of The Licensor.

## **7. Notices**

- 7.1. Any notice or demand to be given pursuant to this Agreement must be in writing and signed by or on behalf of the party giving it and may be served by pre-paid first class post to the address of the relevant party as set out in this Agreement or so notified pursuant to this clause, by fax or subject to the provisions of clause 7.2 by email. All such notices or demands shall be deemed to have been received:
- 7.1.1. in the case of pre-paid first class post two Business Days after posting; and
- 7.1.2. in the case of fax, at the time of transmission, provided that if deemed receipt occurs before 9am on a Business Day the notice shall be deemed to have been received at 9am on that day, and if deemed receipt occurs after 5pm on a Business Day, or on a day which is not a Business Day, the notice or demand shall be deemed to have been received at 9am on the next Business Day.
- 7.2. A communication sent by email shall not be effective unless the addressee acknowledges receipt of such communication, such acknowledgement to take the form of a reply e-mail to include the communication being acknowledged.

## **8. The Proposal**

The Proposal forms part of this agreement.

## **9. Confidentiality**

- 9.1. During the period of this Agreement and for a period of 3 years after both parties undertake:
  - 9.1.1. to keep the Confidential Information confidential;
  - 9.1.2. not to use the Confidential Information for any purpose except the performance of its obligations under this Agreement; and
  - 9.1.3. not to use the Confidential Information so as to procure any commercial advantage over the other party.
- 9.2. The obligations contained in clause 9.1 above shall not apply to any Confidential Information which:
  - 9.2.1. is already in the possession of the disclosing party other than as a result of a breach of this Agreement;
  - 9.2.2. is at the date of this Agreement or at any time after the date of this Agreement comes into the public domain other than through breach of this Agreement; or
  - 9.2.3. is required to be disclosed by any applicable law or regulation or by any governmental or administrative authority or by an order of any court of competent jurisdiction.
- 9.3. Each party undertakes to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of Clause 9 by its employees, agents and sub-contractors.
- 9.4. The Customer agrees that the Software and manuals and other documents relating to the Software are confidential and all proprietary rights belong to the Licensor and shall not be used or disclosed except as permitted by this Agreement.
- 9.5. This clause 4 shall survive the termination of this Agreement for whatever reason.

## **10. License**

The Customer is granted a limited, non-exclusive license to do only the following:

- 10.1. The Customer owns the right to use the Service on a single Web Site domain only. The domain for which the Service is to be provided must be supplied to the Licensor at the time of purchase.
- 10.2. The Customer has the right to use the Service on this web site to provide web pages to any visitor to this web site alone.
- 10.3. The Customer has the right to use the Service to modify the content of the DCAS database in order to change the data presented to visitors of the web site using the built-in administration facilities. The Datasouth service and the underlying software must not be used in any other way or to provide content for any other site without the express written permission of the Licensor.
- 10.4. The Customer may transfer the Service and all rights under this License to another party together with a copy of this License and all written materials accompanying the Service, provided (i) the Customer gives Licensor written notice of the transfer (including in such notice the identity of the transferee), and (ii) the other party reads and agrees to accept the terms and conditions of this License. This clause can only be executed if the Service is sold as part of an entire website sale (for the domain for which the Service was licensed.) The Service itself cannot be sold as a separate entity.
- 10.5. The Customer assumes sole responsibility for the use and results obtained from use of the Service.

## **11. Restrictions**

The Software must, by its nature, be installed in source code (human readable) form on the web server.

- 11.1. The Customer has no rights to the Software or the Intellectual Property Rights (IPR) contained therein other than as granted explicitly in this software license.
- 11.2. The Customer may not modify the Software in any way.
- 11.3. The Customer may NOT sublicense, assign, or distribute copies of the Software to others. The Software contains trade secrets.
- 11.4. The Customer may not modify, adapt, translate, rent, lease, loan, resell for profit, distribute, or otherwise assign or transfer the software, or create derivative works based upon the software or any or any part thereof.

11.5. The Customer may not communicate details of any part of any written document or Software supplied by the Licensor without the written consent of the Licensor.

11.6. The Licensor retains ownership of all copies of the Software itself.

## **12. Protection and Security**

12.1. The Customer agrees to take all reasonable steps to safeguard the Software to ensure that no unauthorized person shall have access thereto and that no unauthorized copy, publication, disclosure or distribution in whole or in part, in any form, shall be made. The Customer acknowledges that the Software contains valuable copyrighted information, confidential information and trade secrets and that unauthorised use and/or copying are harmful to the Licensor.

12.2. The Licensor may from time to time notify the Customer of steps to take to safeguard the Software and the Customer agrees to follow these steps to the best of their ability.

## **13. Activation, Suspension and Reactivation**

13.1. Minimum Activation Period: The minimum period for Service Activation is nine months from the date of the original Order. After this time the Customer may elect to suspend or terminate the Service with a minimum of three months written notice.

### **13.2. Suspension of Service**

13.2.1. If the service is suspended, the DCAS Administration facility will be locked and the Customer shall not be able to make further changes to their web site. The interactive features of the web site shall be disabled with the sole exception of submission of Email Response Forms.

13.2.2. On suspending the Service, the Licensor will make a backup copy of the data stored on the DCAS system available to the Customer.

13.2.3. While the Service is in Suspension, the Customer agrees to pay the hosting and maintenance costs of the site.

13.3. Reactivation of Service: Following suspension, the Customer may elect to reactivate the Service. The Customer may again elect to suspend the Service with a minimum of three months written notice.

13.4. Termination of Service: The Customer may terminate this License by giving three months written notice from the next due payment, subject to the Minimum Activation Period.

## **14. Termination**

14.1. This License is effective until terminated. This License will terminate immediately without notice from Licensor if the Customer fails to comply with any of its provisions. Such termination shall be without prejudice to the obligation of the Customer to purchase the Service for the Minimum Activation Period or for a minimum of three months following the termination whichever is the longer.

14.2. Upon termination the Customer must return or destroy any documentation associated with the usage of the Service.

14.3. Should The Licensor cease trading, the Customer gains the right to modify the software for the purposes of maintenance and upkeep of the original Web site only. The intellectual property rights for the software remains the property of the Licensor.

## **15. Limited Warranty**

15.1. The following provisions set out the entire financial liability of The Licensor (including any liability for the acts or omissions of its employees, agents or subcontractors) to the Customer in respect of:

15.1.1. any breach of this Agreement; and

15.1.2. any representation, statement or tortious act or omission including negligence arising under or in connection with the contract.

15.2. Subject as expressly provided in these conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law

15.3. Nothing in these conditions excludes or limits the liability of The Licensor for death or personal injury caused by negligence or for fraudulent misrepresentation.

15.4. Subject to clauses 11.2 and 11.3:

15.4.1. The Licensor shall not be liable to the Customer for any loss or damage, costs or expenses (whether direct, indirect or consequential and whether relating to loss of profit, loss of business, loss of data, depletion of goodwill or other such losses), suffered by the Customer which arise out of or in connection with the supply of the Equipment and Software or their use by the Customer; and

15.4.2. The Licensor total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise arising in connection with the performance or contemplated performance of this contract shall be limited to, and in no event shall exceed, the amount originally paid to the Licensor for the licence of the service.

15.5. The Customer acknowledges that The Licensor is not responsible for any failure of the network or any third party software.

15.6. The Licensor is not liable for any loss or damage caused to the Customer by any failure of the network or third party software.

15.7. Licensor agrees that, during the period for which the service is activated, the Software shall operate substantially in accordance with the published functional specifications current at the time of the original Order.

15.8. This warranty does not cover any Software that has been altered or changed in any way by anyone other than Licensor. The Licensor is not responsible for problems associated with or caused by incompatible operating systems or equipment, or for problems in the interaction of the Software with software not furnished by Licensor.

15.9. No oral or written information or advice given by the Licensor or its dealers, distributors, employees or agents shall in any way extend, modify or add to the foregoing warranty.

15.10. The warranty is exclusive and in lieu of all other warranties, express or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose, The Customer assumes all risks as to the suitability, quality, and performance of the software, In no event will licensor, or its Directors, Officers, Employees or Affiliates, be liable to the Customer for any consequential, incidental, indirect, special or exemplary damages (including but not limited to damages for loss of business profits, business interruption, loss of data or business information, and the like) arising out of the use of or inability to use the software or accompanying written materials, even if the Licensor has been advised of the possibility of such damages.

## **16. Support Policy**

The Licensor provides a Support Policy during the period of Service Activation. The support policy provides the following elements:

16.1. Free support via email.

16.2. Support via telephone, with call costs paid by the Customer. If the Licensor considers the Customer representative has not received Software training or requires additional Software training the Licensor reserves the right to insist that the Customer representative attends chargeable Software training before any further support is delivered to that Customer representative.

## **17. Enhancements**

From time to time the Licensor may, in its sole discretion, advise the Customer of updates, upgrades, enhancements or improvements to the Software and/or new releases of the Software (collectively, "Enhancements").

17.1. The Licensor may, in its sole discretion, install and license the Customer to use such Enhancements at no cost, whilst the Service is activated.

17.2. From time to time, the Licensor may make available Enhancements giving additional functionality to the Customer, for an agreed extra cost.

17.3. All such Enhancements to the Software provided to the Customer shall also be governed by the terms of this License.

## **18. Web Hosting**

The Licensor shall provide the Customer with a web hosting facility suitable for use with the Software.

- 18.1. The Customer agrees to abide by the separate terms and conditions of the Acceptable Usage Policy, available on request, of the Licensor.
- 18.2. The Customer agrees that the web hosting facility may be provided by a third party and that the Terms and Conditions, including the Acceptable Usage Policy, of that third party shall apply to the Customer.
- 18.3. The Licensor shall make all reasonable efforts to ensure that the Service is available, subject to any limitations imposed by the third party web hosting.
- 18.4. The Licensor may, from time to time, temporarily withdraw service for the purpose of making Enhancements available to the Customer.
- 18.5. The Customer understands that Web Hosting excludes Internet Service Provider (ISP) services, such as provision of an Internet connection to the Customer's computer or computer network or provision of a mail server for the purpose of sending email messages from the Customer's computer or computer network. The Customer is responsible for selection and payment of ISP services.
- 18.6. The web hosting is provided on the basis of "normal use". In extreme cases, the Customer may require additional or dedicated hosting facilities to be mutually agreed at extra cost.

## **19. Domain Registration**

- 19.1. The Licensor will register and maintain the registration of a domain name for the Customer as detailed in the proposal. Additional domains will be registered and maintained only by special agreement in writing.
- 19.2. The contract for the registration is between the Customer and the Naming Authority.
- 19.3. The Customer is bound by the terms and conditions of the Naming Authority; a copy is available upon request.
- 19.4. The Licensor cannot guarantee that they will be able to register any requested domain name and until the Licensor has given specific confirmation of registration the Customer cannot assume the registration has been affected.
- 19.5. The Licensor gives no warranty that the Internet Domain Name requested will not infringe the rights of any third party and the Customer indemnifies the Licensor in respect of and such infringements.

## **20. Third Party Software/Services**

Where the Proposal includes any third party software and/or services as part of the Proposal the Licensor will provide First Line Support only. Where the fault is caused by the third party software and the Licensor is unable to correct the fault the Licensor will use its reasonable endeavours to ensure that the problem is reported to the relevant third party for resolution.

## **21. Payment Terms**

- 21.1. Unless otherwise stated in the Proposal the Purchase Price shall be payable to The Licensor by the Customer as follows:-
  - 21.1.1. 50% non-refundable deposit payable on receipt of the order acknowledgement; and
  - 21.1.2. 25% upon completion of the installation of the Software, for the avoidance of doubt the installation is completed when the administration facility is available.
  - 21.1.3. 25% upon delivery of the Software training to the Customer representative(s) or when the Web site is activated on the Internet, whichever is earliest.

- 21.2. The Licensor is not obliged to carry out any work before the deposit is received. In the event that any preliminary work is carried out prior to receipt of the deposit and the order is then cancelled the Licensor will invoice the Customer for this work.
- 21.3. The Purchase Price is exclusive of VAT. VAT shall be charged at the prescribed rate at the date of invoicing. The Customer shall pay the VAT to the Licensor as if it were part of the Purchase Price and all requirements and other provisions concerning payment of the Purchase Price shall apply accordingly.
- 21.4. If the Customer fails to make payment on a due date then without prejudice to any other right or remedy available to the Licensor, the Licensor shall be entitled to suspend or terminate the Service.
- 21.5. Should a payment be late by 30 or more days, the Licensor may suspend the Service
- 21.6. Should a payment be late by 60 or more days, the Licensor may terminate the Service and charge a reconnection fee.
- 21.7. In the event that any payments due under these terms and conditions become overdue interest on such amounts shall be payable by the Customer forthwith on demand, from the due date to the actual date of payment, after as well as before any judgment, at the rate of 2% over the base lending rate for the time being of Barclays plc. Such interest shall accrue on a daily basis and be compounded quarterly.
- 21.8. All payments shall be paid in full without setoff, deduction or counterclaim whatsoever.

## **22. Entire Agreement**

- 22.1. This Agreement and the documents referred to in it, constitute the entire agreement and understanding of the parties and shall supersede any previous agreement between the parties relating to the subject matter of this Agreement. No variation of this Agreement shall be valid unless in writing signed by both parties.
- 22.2. Each of the parties acknowledges and agrees that in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) which it may have relied on in entering into this Agreement. The only remedy available to it shall be for breach of contract under the terms of this Agreement. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.
- 22.3. Any notices or other communications to be sent to Licensor must be mailed first class, postage prepaid, to the registered address of the Licensor.

## **23. Acknowledgment**

By purchasing the Service and/or using the Software, the Customer acknowledges that it has read these Terms and Conditions, understands it and agrees to be bound by them.

Should you have any questions concerning these Terms and Conditions, contact the Licensor before submitting signed agreement to any Proposal.