

Master Services Agreement

V270108



You will be asked to sign a Hosted Service Order Form (“HSOF”) that lists the services you have chosen and the related fees. The HSOF will incorporate this Master Services Agreement (“MSA”), a Service Level Agreement (“SLA”), and an Acceptable Use Policy (“AUP”). It may also incorporate an addendum to this MSA if you are purchasing specific optional services. When we use the term “Agreement” in any of these documents, we are referring collectively to all of them. The Agreement is effective as of the time that the HSOF is signed.

Definitions

Some words and expressions are defined in the HSOF and they apply equally here.

Some other words and expressions used have the following particular meanings:

“**Confidential Information**” of a party (the “Disclosing Party”) means all information of the Disclosing Party, which has value by virtue of not being publicly known and which is disclosed or otherwise made available to the other (the “Receiving Party”) under this Agreement;

“**Fee(s)**” means the monthly recurring fee(s) set out in the HSOF;

“**Force Majeure**” means any event beyond the reasonable control of the affected party;

“**Initial Term**” means the minimum term for which we will provide the Services as set out in the HSOF;

“**One Time Installation Fee**” means our initial installation charge as set out on the HSOF or as otherwise agreed in writing between us;

“**Professional Services**” means any non-standard professional consulting or support services provided by us;

“**Service Commencement Date**” means the date upon which the HSOF is agreed and signed;

“**Services**” means the services to be provided by us as set out in the HSOF and includes (i) management of the Services by a service delivery team that includes support specialists with training and experience in hosting systems, (ii) availability of support; and (iii) use of the Just Simply Hosted Customer portal;

“**Service Levels**” means our service level commitments set out in the SLA;

“**Supplemental Fee(s)**” means all fee(s) payable by you in respect of any Professional Services including without limitation fees for migrating servers, reconnection and reinstatement of service fees, and any emergency service fees all of which shall be in accordance with our then current prices and pricing policy if not agreed in writing in advance with you in the HSOF.

1. What we will do for you

1.1 We will perform the Services and any Professional Services throughout both the Initial Term and any additional agreed period afterwards in accordance with the Service Levels. In return you agree to pay the Fees and any Supplemental Fees on time and agree to use the Services in accordance with the terms of this Agreement.

1.2 We agree to provide the firewall protection set out in the HSOF but are not liable to you if there is any unauthorised access to your hosted solution, content or data through use of our Services unless the access was caused by our failure to perform our obligations under this Agreement and that failure caused such unauthorised access.

1.3 We will ensure that the Services do not contain any virus on the Service Commencement Date and thereafter, we will provide virus checking as set out in the HSOF.

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1.4 We are constantly upgrading our datacentre facilities and in order for you to benefit from this, you agree that we may relocate your servers within our datacentres, make changes to the provision of the Services, URLs and your IP addresses and may establish new procedures for the use of the Services. In each case we will give you reasonable advance notice and use all reasonable endeavours to minimise the effect that such change will have on your use of the Services.

2. Payment

2.1 All payments will be made in the currency in the HSOF at the exchange rate at the date of the invoice.

2.2 At any time, where you are or have been in material or persistent default of our payment terms, we reserve the right to amend our payment terms or billing practices by giving you not less than 15 days prior written notice.

2.3 Payment of all our invoices shall be due when delivered. If you don't pay within 28 days after the invoice date we will:

2.3.1 suspend and/or terminate any or all of the Services until payment of the invoice, any interest, our administrative and legal costs of collecting payment, and any further sums payable are received by us.

2.4 In the event that the Services are suspended or terminated for any reason other than our fault or in the event that you decide to migrate your servers, a reconnection or migration fee may be payable at our normal hourly rates.

2.5 All Fees and Supplemental Fees are exclusive of applicable Value Added Tax or other relevant taxes.

3. What you will do

3.1 You need to provide and maintain your own equipment, software and communications lines, including any public lines required by you properly to access your hosted solution, content or data.

3.2 All Internet use is subject to security vulnerabilities and you acknowledge that a security breach could be disastrous for you as well as for us. We require you to use at least reasonable security precautions in light of your business and the Services you are using. We provide security for the Services as set out in the HSOF but you are responsible for security other than that.

3.3 The Services are provided subject to your proper use of them and therefore, you undertake that your use of the Services will not be in breach of the AUP nor any other applicable laws, codes or regulations including data protection laws.

3.4 You agree that we may suspend Services without telling you and without liability (but where practicable, we will give you reasonable prior notice) if:

3.4.1 the Services are being used in violation of the AUP;

3.4.2 you do not cooperate with our investigation of any suspected violation of the AUP;

3.4.3 there is an attack on your servers or other event for which we reasonably believe that the suspension of Services is necessary to protect you, our network or our other customers; or

3.4.4 if required by law or regulation or as compelled by a law enforcement or government agency.

3.5 You agree to reimburse us for our costs and expenses arising from any breach of the AUP or a breach of a third party's rights by you or your customer's or user's content, data or equipment.

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4. Ownership Rights and Confidentiality

4.1 Each of us agrees that this Agreement does not transfer any rights of ownership in the other's technology nor intellectual property. Each of us agrees not to try to access each other's and each other's third party supplier's source code or other trade secrets.

4.2 The Receiving Party agrees that (i) it will use the Disclosing Party's Confidential Information solely for the purpose of the Agreement, and (ii) it will not disclose Confidential Information to any third party except as required under the terms of this Agreement.

5. Warranty and Liability

5.1 We warrant that we will use all reasonable skill and care in performing this Agreement and will comply with all relevant laws, statutes and regulations (including the Data Protection Act 1998).

5.2 The remedies given in the Service Levels are your **only** remedy for our failure to meet our warranted performances.

5.3 Subject to clause 5.4:

5.3.1 our total aggregate liability for any loss or damage arising out of or in connection with the Services, the Professional Services, or this Agreement will not exceed the actual Fees received by us during the previous 6 months of this Agreement; and

5.3.2 we will not be liable in any way for any increased costs nor expenses, loss of profit, business contracts, revenues nor expected savings nor any special, indirect nor consequential damage whatsoever arising out of this Agreement nor any provision of it nor use of the Services or Professional Services nor of our negligence, nor any error nor defect in either nor of the performance non-performance nor delayed performance by us under this Agreement.

5.4 Nothing in this Agreement excludes or limits our liability for fraudulent misrepresentation or for death or personal injury caused by our negligence.

5.5 Except for the warranties given in this Agreement, all implied or other warranties are excluded to the extent we are legally able to do so.

5.6 We will not be deemed to break this Agreement nor be liable for any delay, failure of performance nor interruption of the Services to you nor loss caused by Force Majeure. If a Force Majeure event adversely affects your use of the Services and continues for more than 4 weeks, you may terminate this Agreement by written notice to us.

6. Other people's products

6.1 At your request and subject to you entering into their standard contracts, we may provide third party software and/or services and may also provide product support for them.

6.2 If this Agreement indicates that we will use Microsoft Software to provide the Services, you agree to the Customer Licence Terms as defined in the Microsoft Software policy and agree that if you resell the Services you will require each of your customers to also agree to those terms.

6.3 You agree that the use of third party products is in accordance with their standard contracts and is at your sole risk and we are not responsible in any way for their performance, features nor failures.

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7. Ending the agreement

7.1 We will provide the Services and any Professional Services from the Service Commencement Date throughout the Initial Term and continue afterwards until one of us ends the Agreement below or as otherwise permitted in the Agreement.

7.2 Either of us may end this Agreement:

7.2.1 on 30 days written notice to the other after expiry of the Initial Term; or

7.2.2 straight away if the other breaches this Agreement and if the breach is capable of being remedied, has not remedied it within 7 days of receipt of the written notice requiring it to be remedied; or

7.2.3 straight away if the other is unable to pay its debts or enters into compulsory or voluntary liquidation or compounds with or convenes a meeting of its creditors or has a receiver or manager or an administrator appointed or ceases for any reason to carry on business or takes or suffers any similar action which means that it may be unable to pay its debts.

7.3 On termination by either of us the following will apply:

7.3.1 any rights or obligations which have accrued prior to termination will not be affected;

7.3.2 any service credits due to you under the SLA, will be paid by us within 30 days, if it is more than the Fees due to us;

7.3.3 all Confidential Information belonging to the other will be returned or destroyed within 14 days;

7.3.4 you will give up any internet protocol numbers addresses or address blocks allocated to you and if you do not we can change or remove them.

7.4 On termination by either of us other than under 7.3.2 or 7.3.3, we will continue to provide Services to you at your request for up to 6 months until you have migrated your solution to another supplier and do what is reasonable to assist you in your migration provided that you pay the Fees due for such Services monthly in advance.

The provisions of this Agreement including the Service Levels will remain in effect until completion of the migration. We will not be liable for any third party costs incurred by you in connection with the migration.

7.5 If this Agreement is terminated during the Initial Term under clause 7.2.2 or 7.2.3 for your breach then you will still be liable to pay all Fees for the remaining months of the Initial Term.

8. Law and disputes

8.1 This Agreement shall be governed by English law.

8.2 Each of us agrees to attempt in good faith to clear up any dispute first by discussing it. If that does not work then, except for debt recovery, we each agree to attempt in good faith to resolve the dispute through mediation by the Centre for Effective Dispute Resolution in accordance with their rules. Their decision will be final and binding on the parties. If it hasn't been resolved by the CEDR procedure within 2 months of the start of the procedure or if one of us drops out of the CEDR procedure then each agrees to the non exclusive jurisdiction of the Courts of England.

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9. General legal provisions

9.1 If any part of this Agreement is unenforceable the remainder will continue to apply.

9.2 We won't be considered to be partners nor shall we be responsible for any act or failure to act of the other or have the right or authority to bind the other in any way.

9.3 A third party won't have any rights under this Agreement.

9.4 Neither of us may transfer or assign all or substantially all of its rights or duties under this Agreement without the prior written consent of the other except that each of us may transfer all or part of its rights or duties to any group company or affiliates who in the other's reasonable opinion have sufficient assets to meet the obligations of such assignment under this Agreement.

9.5 All formal notices required to be sent shall be by letter. A letter shall be delivered at the address given in the HSOF, by recorded delivery post. If the notice is not returned as undelivered it will be deemed to have been given 3 working days after the day on which it was sent. All other notices shall be made by the opening of a ticket on the myrackspace.com portal which shall be deemed to have been given upon the date opened.

9.6 If one of us does not enforce a right available to it under this Agreement in any particular instance, then that will not prevent it from enforcing that right in future or in any other instance.

9.7 Each of us agrees that during this Agreement and for 1 year after that it will not directly or indirectly seek to hire any of the other's staff who provided or used the Services.

9.8 Each of us gives the other its consent to positively publicise that we have a business relationship, but not to disclose the terms of it.