

## Terms & Conditions

Subject to (and without derogating from) the terms of any contract which may be entered into between DataSpark and (the Customer) in relation to the supply by DataSpark of particular goods or services to the Customer, these terms and conditions (Terms and Conditions) apply to any supply of goods and services by DataSpark to the Customer.

Unless DataSpark vary these Terms and Conditions in writing to the Customer, these Terms and Conditions apply in every contract for the supply of goods and services made between DataSpark as the supplier and Customer as the buyer, including without limitation, pre-configuration, installation, technical or professional services, maintenance tasks on existing infrastructure, structured services delivery unrelated to product supply and any terms and conditions contained in any order, offer, acceptance or other document and all representations, statements, terms, conditions, guarantees and warranties (whether implied by statute or otherwise) not embodied in these Terms and Conditions are expressly excluded to the fullest extent permitted by law.

### 1. DEFINITIONS In these Terms and Conditions:

“DataSpark” means DataSpark Analytics Pty Ltd (ABN: 91 600 889 898) trading as DataSpark

“Customer” means the party named as such in the Acceptance Form;

“Confidential Information” means the contents and subject matter of any information, irrespective of its form, disclosed or made available by either DataSpark or the Customer which:

- is confidential by its nature or by the nature in which it is disclosed;
- is designated or marked by the disclosing party as confidential
- the receiving party knows or ought to know is confidential

“Quotation” means the quotation or proposal provided to the Customer which specifies specific requirements for goods and/or services to be supplied by DataSpark to the Customer, including any specific inclusions or exclusions, and which must be accepted by the Customer prior to the commencement of the supply of the Services;

“Rates” means the rates specified in the Quotation in relation to the supply of the Services;

“Services” means any goods and/or services supplied by DataSpark to the Customer as set out in the Quotation;

“Software License” means any agreement providing for the grant to the Customer of the right to use any Software, including those provided for a specified term; and,

“Subscription” means software solutions or services that are managed by DataSpark and provided for use by the Customer for for a specified term;

### 2. SERVICES

Subject to these Terms and Conditions, DataSpark will supply to the Customer the Services, at the rates specified in the Quotation. DataSpark will use reasonable endeavours to provide the Services within the agreed timeframes, but time will not be of the essence, and DataSpark will not be liable for any loss or damages suffered by the Customer arising out of, or in relation to, a delay in delivery by DataSpark.

### 3. PRICE EXCEPTIONS

#### Regular Working Hours

The Rates, unless otherwise specified, are based upon the provision of the Services during regular working hours (9am to 5pm ACST) on regular working days (Monday to Friday). DataSpark reserves the right to charge additional fees in respect of the provision of Services outside of these times.

#### Proximity

*Data Analytics • Report Automation • System Integration • Work Management Systems • Business Workflow •  
ABN 91 600 889 898 [contact@dataspark.com.au](mailto:contact@dataspark.com.au)*

# DataSpark

DataSpark reserves the right to charge the Customer for any travelling time and expenses incurred in providing Services.

## Customer Interference

DataSpark reserves the right to charge the Customer for any extra costs incurred by DataSpark caused by the Customer's instructions, lack of instructions, interruptions, mistakes, work for which DataSpark was/is not responsible (variations) or a change to/in the Customer's environment.

## Systems recovery

In the event of any unforeseen failure of the Customer environment, recovery and rework tasks will be conducted as additional "time and materials" at DataSpark standard rates.

## 4. USE OF SUB-CONTRACTORS

DataSpark may assign and/or subcontract its rights and obligations under these Terms and Conditions without notice at any time. The Customer may not assign or otherwise dispose of its rights and obligations under these Terms and Conditions without prior written consent from DataSpark.

## 5. EACH PARTY'S OBLIGATIONS

The Customer will:

(a) have sufficient measures in place to ensure continued operation or recovery of systems in the event of a failure.

DataSpark will:

(a) use reasonable measures to ensure that the integrity of systems being accessed, modified or interacted with are maintained during delivery of the Services.

(b) exercise reasonable best practices when accessing the Customer's premises and/or systems when providing the Services.

## 6. INVOICING & PAYMENT

DataSpark will invoice the Customer for agreed subscriptions, licences or services in accordance with these Terms and Conditions. The Customer will pay such invoices within 14 days of the invoice date. Any amounts due by the Customer to DataSpark which have been outstanding for a period in excess of 14 days may, at DataSpark' option, be subject to additional interest charges of 18% annually, calculated weekly from the invoice due date.

No refunds or credits are given for unused pre paid subscriptions, software licenses or services. Unless an alternative term is agreed, prepaid service credit expires after 24 months.

The customer agrees that once a quote for subscriptions, licences or services has been accepted by the customer, DataSpark will issue an invoice and will be pre-purchasing these software licenses on your behalf with the relevant supplier. Following approval, any subscriptions, licences or services are strictly non-refundable regardless of whether they have been activated or used.

## 7. RENEWAL OF ONGOING LICENCES, SUBSCRIPTIONS & SERVICES

Unless alternative arrangements are previously agreed on by both DataSpark and the Customer, 60 days prior to the expiry of a software license, subscription and or service, DataSpark will issue an invoice for the continuation of the software license, subscription and/or service for a period of 12 months or another period of previously agreed. DataSpark will only purchase any renewals of the software license or subscription from vendors on behalf of the customer on receiving payment of the invoice. Once payment is received DataSpark will be purchasing these software licenses and subscriptions on the customer's behalf with the relevant supplier and payments are strictly non-refundable regardless of whether the renewed licences or subscriptions have been activated or used.

Renewal pricing will be based on the current DataSpark pricing at the time of invoicing and is subject to change from the previous period.

On receiving the invoice the customer can notify DataSpark of required changes to the software license, subscription and/or services on renewal or if the customer elects not to renew the software license, subscription and/or service. Any

such changes or termination to the licence, subscription or service agreement are subject to all terms previously agreed with the customer including but not limited to any fixed term agreement periods.

## 8. TERMINATION OF ONGOING SOFTWARE LICENCES, SUBSCRIPTIONS & SERVICES

Termination of software licenses, subscriptions and/or services may occur in the following circumstances:

- Notification from the Customer to DataSpark that the software licenses, subscriptions and/or services are not to be renewed at the end of the current fixed term period.
- Non-payment by the Customer of invoices for the renewal of software licenses, subscriptions and/or services
- DataSpark elects to or is unable to offer renewal of software licenses, subscriptions and/or services

The Customer may elect to terminate existing software licenses, subscriptions and/or services during a fixed term period by written notice to DataSpark. In the event of termination during a fixed term period, the Customer will not be eligible for any refund of amounts previously paid for software licenses, subscriptions and/or services and DataSpark will invoice any remaining costs for the current licenses, subscriptions and/or services which must be paid in full.

Following termination for any reason, access to the software licenses and subscriptions will be revoked and the Customer will no longer have any ongoing rights for the use of software, subscriptions, and/or services provided by DataSpark including any configuration, customisation or data entered or imported by the Customer and must cease such usage upon notice by DataSpark. For any components hosted by DataSpark, DataSpark will remove and archive any Customer data from the solution.

DataSpark reserves the right to implement usage tracking within any subscription provided to the customer that is subject to an initial fixed term with periodic renewals both for the purposes of support as well as monitoring usage following termination of the agreement.

## 9. TAXES

Unless stated otherwise, if a Taxable Supply is made under these Terms and Conditions the party which made the supply (the "Supplying Party") may in addition to the amount payable under these Terms and Conditions recover from the other party (the "Receiving Party") an additional amount on account of GST, calculated by multiplying the amount payable by the GST Rate.

Where a Taxable Supply is made under these Terms and Conditions the Supplying Party shall issue to the Receiving Party a Tax Invoice or an Adjustment Note, as applicable, in accordance with the GST Law.

In these Terms and Conditions, "GST", "GST Law", "GST Rate", "Taxable Supply", "Tax Invoice" and "Adjustment Note" have the meanings given in section 195-1 of A New Tax System (Goods and Services Tax) Act 1999 (Cth).

## 10. LIMITATION OF LIABILITY OF DATASPARK

To the fullest extent permitted by law, DataSpark excludes all warranties, guarantees and conditions, whether arising in contract, negligence or otherwise arising out of or in connection with the supply of the Services.

To the extent that any warranty, guarantee or condition cannot be excluded, the liability of DataSpark for breach of any such guarantee, condition or warranty shall be limited, at the option of DataSpark, to any one or more of the following:

- (a) in the case of provision of goods;
  - (i) the replacement of the goods or the supply of equivalent goods;
  - (ii) the repair of such goods;
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (iv) the payment of the cost of having the goods repaired; and
- (b) in the case of the provision of services;
  - (i) the supplying of the services again; or

- (ii) the payment of the cost of having the services supplied again.

Except as expressly provided to the contrary in these Terms and Conditions, DataSpark excludes all liability for any indirect or consequential expenses, losses, damages or costs incurred by the Customer arising in any way out of or in relation to the supply of the Services (even if due to the negligence of DataSpark) or due to the ceasing of access to software, subscriptions or services provided by DataSpark for any reason including non payment, termination by the customer or a breach of agreement by the Customer. Any DataSpark liability that may arise under these Terms and Conditions is limited to the maximum extent permitted by law.

Neither party will bring an action against the other relating to the Services more than 2 years after the supply of the Services, excluding an action seeking payment for the Services.

## 11. INDEMNITY

The Customer hereby indemnifies and holds DataSpark harmless against any and all damages, losses, claims, liabilities, demands, charges, suits, penalties, costs and expenses (including legal costs) incurred or suffered by DataSpark arising directly or indirectly as a result of, any breach of any provision of these Terms and Conditions, any injury or death to any person negligent act or omission, or willful misconduct of the Customer.

## 12. INTELLECTUAL PROPERTY

The intellectual property rights in all intellectual property owned by DataSpark at the commencement of the application of these Terms and Conditions remain the property of DataSpark. The intellectual property rights in all intellectual property developed by DataSpark, in providing the Services to the Customer shall become and remain the property of DataSpark, of which DataSpark will license non-exclusive, non-transferable rights to the Customer.

All intellectual property rights in data, information, materials utilized by DataSpark in providing the Services, including, without limitation, all software, tools, know-how, methodologies, equipment or processes, shall remain DataSpark' sole and exclusive property.

The customer is permitted to create and store a copy of software and configuration data provided by DataSpark during the term of the agreement for the sole purpose of backup. During and following termination of this agreement for any reason, the customer must not utilise or redistribute a backup of the DataSpark software and configuration for the establishment of a copy of the solution for usage by the customer or any third party included related entities.

In the event of a merger, takeover or other change in corporate structure, the transfer of rights is subject to the agreement by DataSpark at its sole discretion.

Before commencement of delivery of the Services, the Customer is responsible for identifying in writing any instances where the Intellectual Property terms are not compatible with the Customer requirements. In such cases, DataSpark shall be responsible for ensuring that no charged work related to that component of the project is undertaken until any issues that have been raised are resolved. DataSpark will attempt to resolve such matters within a reasonable time frame and in good faith.

The Customer warrants to DataSpark that it has all intellectual property rights necessary to enable DataSpark to carry out the Services. The Customer will indemnify DataSpark from and against any and all damages, losses, claims, liabilities, demands, charges, suits, penalties, costs and expenses (including legal costs) which DataSpark may sustain, or to which any of DataSpark may be subjected, arising out of or relating to any breach of this warranty.

## 13. SOLICITATION OF STAFF

You represent and warrant that you will not without the prior written consent of DataSpark either directly or indirectly solicit, interfere with or endeavour to entice away any employee of DataSpark (or any related company of DataSpark); where introduction, knowledge or otherwise of the employee was acquired as a result of engagement with DataSpark.

## 14. CONFIDENTIAL INFORMATION & PRIVACY

Both parties acknowledge that they may obtain access to confidential and proprietary information belonging to the other in the course of the provision of the Services. The parties agree not to disclose such confidential information to any person except where:

- (a) the information is in, or comes into, the public domain;
- (b) the information is required to be disclosed by law; or
- (c) the owner of the information consents to its disclosure, or disclosure is required for the provision of the Services.

The Customer authorises DataSpark to identify the Customer by its name or logo as a client of DataSpark on its website or other marketing material for the purpose of cross-marketing and brand awareness benefiting DataSpark and the Customer. This authorisation can be revoked by written notice of the Customer and therefore DataSpark will remove any references relating to the Customer.

## 15. RETENTION OF TITLE

Property and ownership in goods and/or entitlements (including software licenses and subscriptions) will remain with DataSpark until the Customer has made payment in full in cleared funds of the purchase price of those Services and all other amounts owing to DataSpark under these Terms and Conditions. Entitlements for the ongoing usage of software licences and subscriptions beyond the initial term are subject to renewal by the customer and payment of any associated invoices issued by DataSpark.

The Customer must pay any costs incurred by DataSpark, including legal costs on a solicitor own client basis, arising from any disputes or negotiations with third parties claiming an interest in any Services supplied by DataSpark.

## 16. DELAY AND FORCE MAJEURE

Neither party is responsible for failure to fulfil any obligations due to causes beyond its control.

## 17. GENERAL PROVISIONS

These Terms and Conditions and the Quotation that they support may not be changed or modified in any way except in writing signed by or on behalf of all the parties. By placing an order or request for Services, The Customer acknowledges that it has read and agrees to be bound by these Terms and Conditions.

These Terms and Conditions and the Quotation constitute the entire agreement between the parties with respect to the provision of the Services and supersede all previous agreements or understandings, representations, warranties and conditions not expressly stated herein.

If any term of these Terms and Conditions or any part thereof is or becomes or is declared illegal, invalid or unenforceable for any reason whatsoever in any jurisdiction and such term or part is severable, it is deemed deleted from these Terms and Conditions in the relevant jurisdiction.

If DataSpark elects not to exercise any of its rights arising as a result of a breach of these Terms and Conditions, this will not constitute a waiver of any rights of DataSpark relating to any subsequent or other breaches.

The Terms and Conditions shall be governed by and interpreted in accordance with the laws in force in the State of South Australia. The parties submit to the exclusive jurisdiction of the Courts of the State of South Australia.

Unless otherwise specified, each party will, at its own expense and when requested by the other party, promptly do, sign and deliver everything reasonably required to give full effect to these Terms and Conditions and the transactions contemplated by these Terms and Conditions.

## 18. COMMUNICATIONS

DataSpark may use personal information for the purpose of direct marketing including renewals, add-ons, offers, business to business marketing or changes to existing service offerings that may be relevant to the Customer. DataSpark understands the importance of the Australian Privacy Principles (APPs) contained in the Privacy Act 1988 (Cth) (Privacy Act), the Privacy Amendment (Enhancing Privacy Protection) Act 2012 and the Spam Act 2003 and is committed to ensuring the privacy of your personal information.

At any time, you can advise DataSpark that you wish to opt-out of future contact of marketing offers by contacting DataSpark via phone or via the unsubscribe function in email marketing communications.

The Customer will notify DataSpark accordingly of any variations regarding the appropriate contacts for receiving communications.