DCS

Data Centre Services: Additional Contract Terms

Version 3.6

1. General

These Additional Contract Terms shall apply to and be incorporated into any Agreement between DCS and a Customer for the provision of data centre Services, in addition to the relevant Order Form (pursuant to which these Services were ordered), any Statement of Work annexed thereto, and DCS's General Terms. The order of priority between such documents in the event of conflict is described in clause 1 of the General Terms.

2. Interpretation

2.1 Save only where expressly stated otherwise in this clause 2, the terms defined in the General Terms shall apply in these Additional Contract Terms. The following definitions shall also apply in these Additional Contract Terms:

Hours of Cover	*means the times during which a customer can expect DCS to perform Support relating to their contract (as set out or referred to in the Order Form);*
Hosting Service	*means in respect of each of the Hosted Systems that service of hosting services described in the relevant Order Form and as further described in Schedule 2;*
Monitoring	*means activity checking that the Hosted System is operational, This can only be done if DCS monitoring software is installed on Hosted System;*
Hosted Systems	*means those systems identified as Virtual Servers set out on the Order Form;*
Service Level	*means the level of Hosting Service selected by the Customer in respect of the Hosted Systems which is set out in the Order Form and further described at Schedule 2 (including the manner of delivery of which is described in outline in our proposal as amended or varied by DCS from time to time);*
Software	*means data, operating and application software used or provided by the Customer essential for the correct operation of the Hosted Systems;*
Support	*means functions include maintenance and configuration of Virtualised Hardware, and Virtual Networking within the data centre;*
Virtualised Hardware	*means any Virtual Server presented to a customer from DCS's physical platform using server virtualisation technologies;*
Virtual Networking	*Means a network created within the Virtualised Hardware isolated for the use of the Customer;*

Virtual Server/Virtualisation	*Is a server provisioned by partitioning a physical server computer into multiple servers such that each has the appearance and capabilities of running on its own dedicated machine. Each virtual server can run its own full-fledged operating system, and each server can be independently rebooted.*

3. Services

3.1 In consideration of the Fees payable by the Customer to DCS, DCS shall make available to the Customer on the terms and conditions of this Agreement the Hosting Service in accordance with the applicable Service Level.

3.2 DCS shall be under no obligation to provide Services in respect of problems arising out of (a) tampering, modification, alteration or addition to the hardware or Software, which is undertaken maliciously or otherwise by persons outside of the control of DCS or its authorised representatives or (b) programs or hardware supplied by the Customer (c) resolution of problems or server 'clean up' arising out of (i) compromise of server attributed to any script or code created or loaded by the Customer; or (ii) compromise of server attributed to any user password guessed or cracked and used to access the server. Where such services are required these will be charged for at the DCS emergency hourly rate in force at the time the service is required (and the Customer shall pay such charges within 14 days of invoice). Any time spent by DCS investigating such faults will be chargeable at the same rates.

4. Hosting Service

4.1 The Customer acknowledges and agrees that DCS operates a commercial Virtual Hosting service and has a number of customers and accordingly runs a Multi Tenanted platform:

4.1.1 one or more other customers may be using the Hosting Service at a time;

4.1.2 DCS shall operate in accordance with the Service Levels;

4.2 DCS shall be entitled on not less than 30 (thirty) days notice to the Customer to change the nature of the Services, the Hosting Service and/or the equipment and/or other resources used and/or the benefits provided (including but not limited to the Fees and/or the terms of this Agreement) in or as part of the Hosting Service. DCS shall not be required to notify the Customer of changes to the equipment or resources used that are routine, arise through remedial maintenance, involve standard upgrades to equipment, software or services or are otherwise not material. In the event of any notification of a change of equipment or resources or any alteration to the Hosting Service and/or to the terms and conditions of this Agreement that would materially and adversely affect the Customer's use of the Hosting Service, the Customer shall be entitled at any time within 15 (fifteen) days after the date of DCS's notice to elect to terminate this Agreement with immediate effect, any such termination being within 60 days or mutually agreeable timeframe, and without liability to DCS but not otherwise affecting the parties´ then accrued rights and obligations. In the event that the Customer does not terminate this Agreement then any change notified to it by DCS under this clause 4.2 shall take effect following expiry of 30 (thirty) days following notification in accordance with this clause.

4.3 In the circumstances of this Agreement, the Customer agrees with DCS that the following

provisions are reasonable:

4.3.1 DCS will use reasonable endeavours to provide the Hosting Service in accordance with the Service Level applicable to it, and will use reasonable skill and care in the provision of the Hosting Service and the Services generally. However the Customer acknowledges that the Services cannot be provided fault free and that DCS cannot warrant error free or uninterrupted use of the Services;

4.3.2 DCS will use reasonable endeavours to provide the Services and the Hosting Service for use by the Customer from the Commencement Date unless otherwise specifically agreed in writing or unless it is unable to do so as a result of a failure by the Customer to fulfil their obligations under this Agreement or by any delay caused by any third party including but not limited to network service providers;

4.3.3 DCS do not guarantee 100% availability of any part of the Services and/or Hosting Service and the Customer acknowledges that DCS may be dependent on third parties including but not limited to network service providers, data centres, software and hardware manufacturers in order to provide the Hosting Service, and therefore makes provision with the attached service level agreement in Schedule 2 to detail specific service availability targets and associated service credits if applicable;

4.3.4 the Customer acknowledges that the Hosted Systems are not backed up unless agreed;

4.3.5 DCS undertakes to take reasonable measures to maintain in good working order all computer hardware and software that it uses in the supply of the Services but DCS does not represent or make any commitment that the operation of any such hardware or software shall be uninterrupted or error-free;

4.3.6 This Agreement will not prevent DCS from entering into any similar agreement(s) with one or more third parties;

4.3.7 DCS shall be entitled to reject any unsuitable media and shall have no responsibility or legal liability whatsoever for any of the things in clause 5 for which the Customer has agreed that it alone has responsibility.

5. Customer's obligations

5.1 While using the Hosting Service, the Customer will, and will ensure that all relevant personnel and contractors of the Customer will, comply with DCS's guidelines, policies and procedures relating to the Hosting Service or any part or parts of the same.

5.2 The Customer will:

5.2.1 use and operate the Hosting Service in a proper, professional and responsible manner and in the ordinary course of its business;

5.2.2 ensure that only by properly trained and skilled personnel use the Hosting Service; and

5.2.3 take good care of any hardware or software equipment or resources offered or supplied to it by DCS as part of the Hosting Service or in connection with the Hosting Service at all times while using the Hosting Service and at the end of use return any and all such items to DCS in the same condition they were in before the Customer's use of the

Hosting Service commenced. Without prejudice to any other rights of DCS, the Customer will within thirty days pay any invoice from DCS in respect of restoration to such condition. Any hardware or software provided by DCS as part of or in connection with the Hosting Service unless purchased by the Customer will remain the property of DCS, and will be returned following any such termination of this Agreement. Any such hardware or software provided shall only be used by or on behalf of the Customer for the purpose of the Hosting Service.

5.3 The Customer alone is responsible in relation to its use of the Hosting Services for:

5.3.1 the security, proper configuration, management, organisation, functionality, compliance with legal requirements and good practice and all other attributes of the Hosted Servers defined on the Order Form;

5.3.2 the adequacy, accuracy and security of all storage media and data it processes, generates and/or uses;

5.3.3 all software and other proprietary materials that do not form part of the supply by DCS of the Hosting Service (including ensuring that they are appropriately licensed);

5.3.4 ensuring that DCS is aware of all Software licenced as part of the Hosting Service and that it matches that specified on the Order Form;

5.3.5 the supply, operation, control and support of all other resources not included within the Hosting Service;

5.3.6 risk of loss of or damage to any such data, storage media, software, proprietary materials or other resources in any way in connection with the Hosting Service;

5.3.7 all necessary security arrangements appropriate to its use of the Hosting Service including without limitation passwords, pass codes, audit controls, the creation of backup files and operating methods and procedures; and

5.3.8 all results it obtains from the Hosting Service.

5.4 It is the Customer's responsibility to maintain adequate copies (or provide original versions) of such software as is necessary to ensure that the Software may be restored in the event of corruption or other similar loss howsoever occasioned. The Customer will indemnify DCS against any and all loss, damage, cost or expense suffered or incurred by DCS whether directly or indirectly as a result of any claim by a third party relating to DCS's use of the Software (including any claim relating to any Intellectual Property Rights).

5.5 The Customer will be responsible for ensuring any network connectivity not managed by DCS is functioning properly.

Schedule One – Customer License Terms Regarding Use of Microsoft Software

This Schedule governs the use of Microsoft software, which may include associated media, printed materials, and "online" or electronic documentation (individually and collectively, "Licensed Products") provided by DCS (hereinafter referred to as "Company"). Company does not own the Licensed Products and the use thereof is subject to certain rights and limitations of which Company must inform you. Your right to use the Licensed Products is subject to the terms of your agreement with Company, and to your understanding of, compliance with, and consent to the following terms and conditions, which Company does not have authority to vary, alter, or amend.

1. Definitions

"Client Software" means software that allows a Device to access or utilize the services or functionality provided by the Server Software.

"Device" means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, "smart phone," server or other electronic device.

"Server Software" means software that provides services or functionality on a computer acting as a server.

"Software Documentation" means any end user document included with server software.

"Redistribution Software" means the software described in Paragraph 4 ("Use of Redistribution Software") below.

2. Ownership of licensed products

The Licensed Products are licensed to Company from an affiliate of the Microsoft Corporation (collectively "Microsoft"). All title and intellectual property rights in and to the Licensed Products (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text and "applets" incorporated into the Licensed Products) are owned by Microsoft or its suppliers. The Licensed Products are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Your possession, access, or use of the Licensed Products does not transfer any ownership of the Licensed Products or any intellectual property rights to you.

3. Use of client software

You may use the Client Software installed on your Devices by Company only in accordance with the instructions, and only in connection with the services, provided to you by Company. The terms of this document permanently and irrevocably supersede the terms of any Microsoft End User License Agreement that may be presented in electronic form during your use of the Client Software.

4. Use of redistribution software

In connection with the services provided to you by Company, you may have access to certain "sample," "redistributable" and/or software development ("SDK") software code and tools (individually and collectively "Redistribution Software"). **YOU MAY NOT USE, MODIFY, COPY, AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE SERVICES PROVIDER USE RIGHTS ("SPUR") APPLICABLE TO COMPANY, WHICH TERMS MUST BE PROVIDED TO YOU BY COMPANY.** Microsoft does not permit you to use any Redistribution Software unless you expressly agree to and comply with such additional terms, as provided to you by Company.

5. Copies

You may not make any copies of the Licensed Products; provided, however, that you may (a) make one copy of Client Software on your Device as expressly authorized by Company; and (b) you may make copies of certain Redistribution Software in accordance with Paragraph 4 (Use of Redistribution Software). You must erase or destroy all such Client Software and/or Redistribution Software upon termination or cancellation of your agreement with Company, upon notice from Company or upon transfer of your Device to another person or entity, whichever occurs first. You may not copy any printed materials accompanying the Licensed Products.

6. Limitations on reverse engineering, decompilation and disassembly

You may not reverse engineer, decompile, or disassemble the Licensed Products, except and only to the extent that applicable law, notwithstanding this limitation, expressly permits such activity.

7. No rental

You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the Licensed Products to any third party, and may not permit any third party to have access to and/or use the functionality of the Licensed Products except for the sole purpose of accessing the functionality of the Licensed Products in the form of software services in accordance with the terms of this agreement and any agreement between you and Company.

8. Termination

Without prejudice to any other rights, Company may terminate your rights to use the Licensed Products if you fail to comply with these terms and conditions. In the event of termination or cancellation of your agreement with Company or Company's agreement with Microsoft under which the Licensed Products are licensed, you must stop using and/or accessing the Licensed Products, and destroy all copies of the Licensed Products and all of its component parts.

9.

NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT. ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY COMPANY AND NOT BY MICROSOFT, ITS AFFILIATES OR SUBSIDIARIES.

10. Product support

Any support for the Licensed Products is provided to you by Company and is not provided by Microsoft, its affiliates or subsidiaries.

11. Not fault tolerant

THE LICENSED PRODUCTS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE LICENSED PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.

12. Export restrictions

The Licensed Products are of U.S. origin for purposes of U.S. export control laws. You agree to comply with all applicable international and U.S. laws that apply to the Licensed Products, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by the U.S. and other governments. For additional information, see http://www.microsoft.com/exporting/.

13. Liability for breach

In addition to any liability you may have to Company, you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions.

Schedule Two - Service Level Agreement

1. Definitions

Resolution Delivery Time	*means the time to be taken by DCS to resolve a call from the time DCS first becomes aware of the problem, by recommending a workaround, or by supplying a solution, or resolving a query to the customers reasonable satisfaction.*
DCS Service Desk	*means the desk operated by DCS to provide initial contact to the customer in relation to all and any events relating to the use or access of the Hosted Services.*
Hosted Service(s)	*Means the hardware and software managed by DCS defined on the Order Form.*
Response Time	*means the period from when an event is logged by the DCS Service Desk to the time when DCS processes the call in accordance with the Support Service Response Level as defined SUPPORT SERVICES: ADDITIONAL CONTRACT TERMS available at https://www.virtualdcs.co.uk/download/support-services-terms.pdf.*
Scheduled Downtime	*scheduled maintenance of equipment or software (including operating systems patches and updates) where no less than two (2) days notice has been given to the Customer.*
Emergency Maintenance	*Emergency maintenance i.e. unscheduled maintenance necessitated by unforeseen circumstances (including (without limitation) software failure)*
Force Majeure Event	*events, omissions or accidents beyond the affected parties reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (other than involving the workforce of the affected 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 other party is notified of such an event and its expected duration.*
Service Hours	*Means 24hours per day, seven days per week including all UK and Statutory Bank Holidays.*
Platform	*Means the set of computer equipment which the Hosted Service is provided from.*
Working Hours	*Means 9.00am to 5:30pm Monday to Friday excluding all UK and Statutory Bank Holidays.*
System Outage	*means the unavailability of the Hosted Service during the Service Hours.*
Virtual Server/Virtualisation	*Is a server provisioned by partitioning a physical server computer into multiple servers such that each has the appearance and capabilities of running on its own dedicated machine. Each virtual server can run its own full-fledged operating system, and each server can be independently rebooted.*

2. Service Level Definition

2.1 DCS shall ensure that the Hosted Services will be available during the Service Hours in accordance with this Agreement.

2.2 Measurement of service levels will be based on the ability of the Hosted Service to be accessed by the customer during the Service Hours subject to any Scheduled Downtime or Service Level Exclusions as detailed below.

3. Scheduled Downtime

3.1 DCS shall notify the customer in advance, usually no less than one week and in any event no less than 48 hours, by email of any Scheduled Downtime.

4. Service Availability

4.1 The following equation will be used to calculate Service Availability. References to hours are to the number of hours (rounded to the nearest hour) in the applicable Monthly Review Period Based on a 30 day Month: ((Total hours - Total hours Unavailable)/Total hours) x 100), subject to any Scheduled Downtime or Service Level Exclusions.

4.2 Platform Availability consists of firewalls, network switches, physical servers, and storage, presenting Virtual Servers to customers.

Service Availability during Monthly Review Period	Service Credits as % of Monthly Rental Charge
<99.95%-99.8%	5%
99.79%-99.5%	10%
99.49%-99.0%	20%
98.9%-98.0%	30%
<98%	40%

4.3 Network Service Availability constitutes the availability of physical external switches to customer networks or to Internet connectivity when provided. The Service is “available” when the external monitors connected via the Internet show that any one hosted service is available. Network downtime would be in the event of the total failure of all provided connections to or from the Internet or failure of DCS physical switches connected to a customer network.

Service Availability during Monthly Review Period	Service Credits as % of Monthly Rental Charge
<99.95%-99.8%	0%
99.79%-99.5%	5%
99.49%-99.0%	10%
98.9%-98.0%	15%
<98%	20%

5 Calculation of Service Credits

5.1 Where a Monthly Review Period incorporates part of a month, any service credit will apply to a pro-rated monthly Rental Charge.

5.2 Service credits will be calculated monthly, aggregated and credited to the Customer on a quarterly basis.

5.3 If a Service is cancelled during a Monthly Review Period, no service credit will be payable in respect of that service for that Monthly Review Period.

5.4 The Customer must claim any service credit due to a failure to meet the Service Levels, in writing, within twenty one (21) Business Days of the date at which the Customer could reasonably be expected to become aware of such failure, otherwise no service credits shall be payable. The Customer shall not be entitled to any service credits in respect of a claim unless and until DCS has received notice of the claim in writing in accordance with the above. Should DCS require additional information from the Customer, the Customer shall assist, and shall not be entitled to any service credits until DCS has received all the information it has reasonably requested.

5.5 Service credits relate to the part of the service that has failed not the whole service.

5.6 Reports above those available through the service can be made available on request with 48 hours notice.

6. Service Level Exclusions

6.1 The Service shall not be deemed unavailable in the event of any failure caused by the following:

(i) communication links and network infrastructure of the customer (including Internet connections);

(ii) (removed);

(iii) failure by customer to meet any of its obligations under the Agreement;

(iv) Scheduled Maintenance where no less than two (2) days notice has been given to the Customer; and

(v) emergency maintenance i.e. unscheduled maintenance necessitated by unforeseen circumstances (including (without limitation) software failure) provided that such Emergency Maintenance continues for a period of less than 2 hours.

Schedule Three – Acceptable Use Policy

1. Introduction

All Customers who utilise the DCS Platform or any of its services are bound to comply with this Acceptable Use Policy (AUP). DCS reserves the right to change this policy according to changes in law, company policy or Internet standards from time to time. Should changes be made they will be posted on the company web site, at the following url: www.virtualDCS.co.uk Customers are advised that they must actively consult this page regularly to ensure that they are fully aware of any changes.

2. Illegal Use

The DCS Platform and Services must only be used with lawful intention. This means that Customers must not send or receive any material that would be considered offensive, abusive, indecent, obscene, pornographic, fraudulent, libellous, defamatory, menacing, criminal or likely to cause stress or annoyance.

3. System and Network Security

DCS cannot be held responsible for the content distributed through its Network or services. Any violations of this policy by the Customer or any third party will be investigated thoroughly by DCS in conjunction with relevant authorities' bodies. Violations to systems and the Network include, but are not limited to, any of the following, and may result in criminal action:

- Unauthorised access to or use of networks, systems or data will not be tolerated. This includes the attempt to probe, scan or test such systems for vulnerability or monitoring purposes, without authorised permission from the owners of such network, systems or data or the processing or publication of personal data without authority to do so.
- Any malicious interference to Customers service, and networks, including but not limited to the following, spamming, flooding or overloading the System and broadcast attacks.
- The storing of programs that may compromise the security integrity of data, systems or the DCS Network.

4. World Wide Web Usage

Customers are responsible for the content of web pages hosted by DCS. DCS reserves the right to remove any web page/site from our servers following what we consider to be justified concerns regarding inappropriate material or behaviour in connection with such web page or site. The process for raising concerns is found in section 7 of this policy. Customers must not use the World Wide Web in such a way as to violate this AUP or disrupt the delivery of pages or experiences of other users.

5. Email Use

The Internet community does not welcome unsolicited email and DCS support this stance, and will investigate any complaints based on the rules stated below.

- The DCS Platform must not be used by anyone to send junk email, commonly known as 'SPAM'. This includes unsolicited messages of any kind, whether commercial advertisements or informational. Chain letters are defined as unsolicited mail and may not be distributed via DCS systems.
- DCS systems cannot be used to RELAY bulk mailings or unsolicited messages.
- Customers must not use false headers or amend the headers of an email to conceal their identity. Customers must not send email from another users address, unless said user has granted them permission.

6. Usenet News Usage

DCS Customers can access many Usenet discussion groups. DCS do not monitor content or access to Usenet newsgroups and are therefore not responsible for the content of any postings. Customers using Usenet are advised to comply with the written charter/FAQ or the newsgroup they are posting to. If a newsgroup does not have a written charter/FAQ Customers must determine the rules of the newsgroup before posting. Therefore Customers must only post advertisements in newsgroups that permit them.

Convention states that most Usenet newsgroups will have prohibited types of postings such as chain letters, personal advertisements, job listings/offers or binary files. Again Customers are advised to refer to and must keep themselves updated in respect of the written charter/FAQ's of the site for guidance on what is permitted to post.

Customers must not alter headers of posts to Usenet newsgroups, to conceal their email address or prevent replies to posts submitted, other than adding a clause or character a to the email address/domain name to avoid programs that farm email addresses from Usenet posts.

7. Reports of Abuse

Once a formal concern has been raised with DCS, DCS reserve the right to investigate the matter, gaining information from the concerned Customer and any other Customer involved. DCS reserves the right to terminate or suspend all or part of the Customers services with immediate effect.