DataTools

Software as a Service

End User License Agreement (EULA)

30 November 2021

Ver 1.7

Parties

<u>This is an agreement between:</u>

(1) **DataTools Pty Ltd** (ABN: 21 073 541 385), with registered address at Office 310 20A Lexington Drive BELLA VISTA NSW 2153, trading as DataTools (**"DataTools"**); and

(2) the **Customer**

<u>Acknowledgment By The Customer</u>

The Customer acknowledges and agrees to the following:

- The Agreement governs the use of the Service by the Customer.

- The individual accepting the Agreement, confirms that it is authorised to do so, as an agent on behalf of the Customer.

- The Customer acknowledges that by accepting the Agreement, it will also be entering into separate licensing agreements with the respective third party Licensors (where applicable).

- The Customer acknowledges that DataTools' third party data Licensors require:

  DataTools to observe certain requirements in using their data (the Third Party Licences) to provide the Service; and DataTools' customers to comply with certain end user licence agreements (the Third Party EULAs).

  Consequently, the Customer agrees that it will not undertake any activities which would result in any of the above arrangements (the Third Party Contracts) to be breached.

- The Service and Software Materials are licensed to the Customer. The Service and Software Materials are, and remain the property of DataTools and its third party licensors.

- By in any way installing, activating, copying or otherwise using the Service or Software Materials, or any part of them, the Customer agrees to be bound by the terms of this Agreement. If the Customer does not agree to the terms of this Agreement, the Customer may not install, activate, copy or in any way use the Service or Software Materials, or any part of them.

<u>Installation And/Or Activation By An Authorised Affiliate Partner</u>

- If the Service or the Software Material is being installed and/or activated by the Authorised Affiliate Partner for the Customer's use, then the Authorised Affiliate Partner and the Customer each confirms that the Customer has appointed the Authorised Affiliate Partner as its agent to confirm acceptance of this Agreement on its behalf, and the Customer hereby agrees to be bound by this Agreement.

1. Definitions & Interpretation

<u>Definitions</u>

1.1. In this Agreement the following words and expressions shall have the following meanings:

"Account Code"	means a unique code which is used to identify and manage a Customer's account.
"Account Section"	means the Customer's account section made available to the Customer, or the Authorised Affiliate Partner on behalf of the Customer, by DataTools on the DataTools Website.
"Additional Liability Cap"	has the meaning attributed to it in Clause 9.8. 2.
"Agreement"	means this agreement.
"Authorised Affiliate Partner"	means an authorised Affiliate Partner of DataTools.
"Business Days"	means days falling within Monday to Friday (excluding Public and Bank Holidays).
"Business Hours"	means hours falling within 9am to 5pm AEST time, during Business Days.
"Commercially Reasonable Efforts"	means the same degree of priority and diligence with which DataTools meets the support needs of its other similar customers

"Credit"	means a pre-paid credit purchased by the Customer from DataTools, and which is identified by DataTools at the time of purchase as a 'credit'.
"Customer"	means the organisation named as the 'Customer' or 'Business' or 'Company' in either:
	(1) the registration form for use of the Service and Software Materials;
	(2) the DataTools Quote Sheet; or
	(3) the Agreement.
"Customer Cause"	means any of the following causes: (1) any improper use, misuse or unauthorised alteration of the Software or Service by the Customer;
	(2) any use of the Software or Service by the Customer in a manner inconsistent with the then-current Documentation or DataTools' instructions which are provided from time to time;
	3) the use by the Customer of any hardware or software not provided by DataTools or approved by DataTools in writing for use by the Customer in connection with the Software or Service; or
	(4) the use of a non-current version or release of the Software.
"Customer Hoster"	has the meaning attributed to it in Clause 3.1.2.
"Database"	means a third party database, access to the whole or part of which is made available to the Customer by DataTools.
"DataTools"	has the meaning attributed to it above.
"DataTools Hoster"	has the meaning attributed to it in Paragraph 2.2 of the SLA.
"DataTools Offering"	means that part of the Software Materials and Service which is owned and developed by DataTools or its group companies, but for the avoidance of doubt, excludes: the Database; any third party data; any third party software; any third party materials; any third party services; any third party documentation; (for the avoidance of doubt, such exclusions also include any third party software, documentation, materials, services and documentation provided or made available by the Authorised Affiliate Partner).
"DataTools Privacy Policy"	means DataTools' privacy policy, which is available from the DataTools Website, as such policy is updated from time to time by DataTools.
"DataTools Quote Sheet"	means a document, issued by DataTools to the Customer, headed 'Quote', which is intended by DataTools to be binding with regard to pricing or the types of services which are to be offered (however, for the avoidance of doubt, this excludes the details contained in any separate sales proposal documentation (whether attached or not to the document headed 'Quote')).
"DataTools Website"	means any websites operated by DataTools, which offer software or services, including the website with the urls of: datatools.com.au, expresscapture.com.au, datatoolscloud.net.au, datatools.co.nz
"Defaulting Party"	has the meaning attributed to it in Clause 10.11.
"Documentation"	means the PDF or hard copy user documentation made available to the Customer by DataTools, or the online support pages under the respective 'Support' section on the DataTools Website.
"Effective Date"	means the date that the contract formed by this Agreement comes into force, being the date that it is accepted by the Customer (whether via the Authorised Affiliate Partner or otherwise) on-line, or the date it is signed by both Parties.
"Emergency Maintenance"	means a Maintenance Event which is undertaken on less than 5 days advance notice, or with no notice at all, which is necessary to:
	(1) address a security issue;
	(2) aim to prevent, or to address, a Service disruption;
	(3) aim to prevent data corruption;
	(4) aim to prevent incorrect output from a Service; or
	(5) comply with legislative requirements.
"Enterprise Software"	means the software, databases and data made available by DataTools to the Customer for the Customer's local installation and hosting, in order for the Customer to use the Service.

"Evaluation Offerings"	has the meaning attributed to it in Clause 2.12.1.
"Fault"	means any failure of the DataTools Offering to operate in all material respects in accordance with its Documentation, including any failure or error with the DataTools Offering as referred to in the incident level table shown in Paragraph 9.1.2 of the SLA.
"Force Majeure Event"	has the meaning attributed to it in Clause 11.1.
"Help Desk Support"	means support provided, or agreed to be provided, by help desk technicians to assist with, identify and/or resolve Faults.
"Liability Cap"	has the meaning attributed to it in Clause 9.8.1.
"License Fee"	means any fee payable required in order to access the Service as determined by DataTools (which are available from the DataTools Website) .
"Licence Key"	means a licence key issued to the Customer to use the Service.
"Licensor"	means a third party licensor of the Database or any of the Software Materials.
"Maintenance Events"	has the meaning attributed to it in Paragraph 5.1 of the SLA.
"Monthly Recurring Fee"	means 1/12 of the Current Year's Subscription Fees paid by the Customer, but if the Customer has not paid any Subscription Fees during that Year, then the 'Monthly Recurring Fee' means 1/12 of the Current Year's Subscription Fees which have been agreed to be paid by the Customer during that Year.
"Monthly Subscription"	means the purchase of additional Credits automatically occurring on the same day of each subsequent month as agreed by the Customer. Where that date does not exist in a particular month, payment will be taken on the last day of the month, until such time as terminated by DataTools or in writing by the Customer.
"New Charges Date"	has the meaning attributed to it in Clause 5.7.

"Out Of Scope Support"	means:
	
	 (1) any services (including any investigational work) performed by DataTools in connection with any apparent problem regarding the Service reasonably determined by the Supplier:
	
	     a. not to have been caused by a Fault; or
	
	     b. to have been caused by a Customer Cause or a cause outside the Supplier's control;
	
	 (2) any services in relation to issues with: any software and data which do not form part of the DataTools Offering;
	
	 (3) any services in relation to issues with: any hardware or networks which are not under the direct control of DataTools or the DataTools Hoster.

"Parties"	means the Customer and DataTools.
"Party"	means the Customer or DataTools (as applicable).
"Password"	means the password selected by the Customer (or on its behalf by the Authorised Affiliate Partner) to use the Service
"Planned Maintenance"	means a Maintenance Event in respect of which DataTools has provided at least 5 days advance notice by email or by a notice on the DataTools Website.
"Premium Service"	means the ability for the Customer to have the additional arrangements referred to in the SLA, in respect of the Services in relation to which this option is made available by DataTools and accepted by the Customer.
"Service"	means the respective online service made available, or agreed to be made available, by DataTools to the Customer pursuant to this Agreement (but for the avoidance of doubt, 'Service' excludes the Premium Service).
"Service Credit"	has the meaning attributed to it in Paragraph 4.1. of the SLA.
"Service Output"	means any output response generated by the Service.
"SLA"	means the document shown in Schedule 1.
"SLA Charge"	means the annual fee for the Premium Service.
"SLA Report"	means the Uptime Service Level report.

"Software"	means the software (including any Enterprise Software) and data (including the relevant Databases) made available by or on behalf of DataTools, which enable the Customer to access or use the Service; including any updates to this which are made available to the Customer from time to time by or on behalf of DataTools; (but for the avoidance of doubt, 'Software' excludes any software, data or databases provided by the Authorised Affiliate Partner independently of DataTools, as such software, data and databases provided by the Authorised Affiliate Partner are provided pursuant to a separate contract between the Customer and the Authorised Affiliate Partner).
"Software Materials"	means the Software and the Documentation.
"Solution"	means either of the following outcomes:
	(1) correction of a Fault; or
	(2) a workaround in relation to a Fault (including a reversal of any changes to the Software if deemed appropriate by DataTools) that is reasonable in the circumstances.
"Subject Matter"	has the meaning attributed to it in Clause 17.1.
"Subscription Fee"	means a payment made by the Customer for the use of the respective Service for the respective Subscription Period, which may consist of Credits and/or Licence Fees.
"Subscription Period"	means the respective limited time period during which the Customer may use the respective Service, as determined by the payment made to the Supplier in respect of such Service.
"Supplier"	means DataTools, or if the Customer is obtaining access to the Service via an Authorised Affiliate Partner, then it means the Authorised Affiliate Partner.
"Support Hours"	means Business Hours.
"Support Period"	means the 12 month period commencing from the Support Start Date or until all provisioned credit has been used.
"Support Request"	means a request made by the Customer in accordance with the SLA for support in relation to the Service.
"Support Services"	means maintenance of the then-current version or release of the Services, including Help Desk Support, but excluding any Out Of Scope Support.
"Support Start Date"	means the date that DataTools accepts the Customer's election to have the Premium Service
"Terminating Party"	has the meaning attributed to it in Clause 10.11.
"Third Party Contracts"	means the Third Party Licences and Third Party EULAs
"Third Party Licences"	means the third party licences (which are available from the DataTools Website) imposed by the Licensors on DataTools in respect of the Software Materials and/or Service.
"Third Party EULAs"	means the third party end user licences (which are available from the DataTools Website) which are stated as being applicable to the Customer's use of the Software Materials and/or Service.
"Uptime Service Level"	has the meaning attributed to it in Paragraph 2 of the SLA.
"Year"	means a period of 12 months commencing from: the Effective Date; or from an anniversary of the Effective Date

Interpretation

1.2. The headings contained in this Agreement are for convenience of reference only and shall not affect any interpretation.

1.3. References to "person" includes an individual, company, firm, partnership, government body, public body, charity, association, or other legal entity.

1.4. Words indicating the singular shall include the plural and vice versa. Words indicating a gender shall include each gender.

1.5. The words and phrases "including" and "in particular" shall be without limitation to the generality of any preceding words and any preceding words shall not be construed as being limited to a particular class where a wider interpretation of those words and phrases is possible. Furthermore (except where already stated) such words shall be deemed to be immediately followed by the words "without limitation".

1.6. References to any statute or statutory provision shall include:

1.6.1. any subordinate legislation made under it; and

1.6.2. any provision which subsequently supersedes it or re-enacts it (whether with or without modification).

1.7. All sums payable hereunder are expressed exclusive of GST and any other applicable tax and duty payable upon such sums which shall be added if appropriate at the rate prevailing at the relevant tax point.

1.8. To the extent of any conflict or ambiguity between the provisions of the Agreement and the Third Party Contracts, the provisions of the Third Party Contracts shall prevail.

2. Subscription

Grant of Licence

2.1. DataTools hereby grants to the Customer the non-exclusive, non-transferable, revocable right for the Subscription Period to use the Service, subject to the terms and conditions referred to in this Agreement.

2.2. The Customer must pay a Subscription Fee to reflect the number of users which are going to be accessing the respective Service. It is the Customer's responsibility to ensure that the Customer licenses the correct number of users that will be accessing the Service.

Subscription Fees And Subscription Periods

2.3. The Customer may use only those Services in respect of which it has paid the respective Subscription Fees.

2.4. Subscription Fees can be paid using a Credit and/or Licence Fee, as communicated by DataTools in respect of the relevant Service at the respective time.

2.5. A Licence Fee is valid for use of the Service for the limited time period specified by DataTools at the time the Licence Fee is paid.

2.6. A Service is only accessible for a limited time period equating to the respective Subscription Period reflecting the level of Subscription Fee paid. No Service is available on a perpetual licence or perpetual subscription basis.

Prohibitions

2.7. This Agreement prohibits the Customer from re-selling (whether for free or by charging) the Service Output or Service.

2.8. The Customer agrees that it may not undertake any of the following acts (except to the extent expressly permitted by law or as expressly permitted separately in writing by DataTools):

2.8.1. use the Service to provide any software or a service which competes with the Software Materials or Service;

2.8.2. undertake any data cleansing activities other than to the extent expressly permitted by the respective Third Party Contracts;

2.8.3. make use of the Service (whether through an application or an integration or otherwise) which would adversely affect the reputation of: DataTools; the Licensors; or DataTools' or the Licensors' services or offerings; or

2.8.4. any act or omission which has the objective of circumventing the intention of any of the restrictions within the Agreement.

Retention Of Title And Ownership Of The Software Materials

2.9. DataTools and its third party licensors retain title and ownership of the Software Materials. No intellectual property rights (including without limitation copyright) are transferred pursuant to this Agreement other than the licence to use the Software Materials and Service as expressly granted by this Agreement. All rights in the Software Materials and Service not specifically granted in this Agreement are reserved by DataTools and its licensors.

Third Party EULAs

2.10. The Customer agrees that by requesting access to any third party software or data which is subject to a Third Party EULA, the Customer is entering into such Third Party EULA (where this is the intention of the Third Party EULA), and the Licensor will therefore have rights and remedies against the Customer pursuant to this Agreement and the Third Party EULA.

2.11. The Customer agrees that where it is entering into a Third Party EULA, it will bring any claims in respect of the third party software and data which is governed by that agreement, against the Licensor pursuant to the Third Party EULA and not against DataTools.

Evaluations

2.12. The Customer may be permitted to use certain software, data sets or services on an evaluation basis by DataTools. If any such evaluation is expressly permitted by DataTools, then the evaluation will be subject to the following additional conditions:

2.12.1. the Customer will not use any software, data sets or services provided for evaluation purposes (collectively known as the "Evaluation Offerings") for any commercial purpose whatsoever, nor within any form of live environment whereby the Customer or a third party could suffer any form of loss from any issues with the Evaluation Offerings;

2.12.2. Subject to Clause 9.1, DataTools will not be liable for any performance issues with such Evaluation Offerings;

2.12.3. any applicable provisions relating to the use of the Evaluation Offerings that are contained in the Third Party Contracts;

2.12.4. DataTools may be obliged to provide details in respect of the Customer's evaluation use to the Licensor of the Evaluation Offerings, and the Customer agrees to such disclosure being made by DataTools to the respective Licensor;

2.12.5. the Customer will permit the respective Licensors of the Evaluation Offerings to contact the Customer for the purpose of monitoring the Customer's use of the Licensors' intellectual property rights, as well as for checking compliance by the Customer with the Third Party Contracts and for enforcing the Licensors' rights in respect of the Evaluation Offerings;

2.12.6. the Customer will not use the Evaluation Offerings in any manner whatsoever after the expiration of any evaluation period granted by DataTools.

3. Enterprise Software

3.1. The Customer agrees to the following additional provisions in respect of Enterprise Software:

Licensing

3.1.1. DataTools hereby grants to the Customer on, and subject to, the terms and conditions of this Agreement, a non-exclusive, non-transferable licence to allow its personnel to use the Enterprise Software solely to access the respective Services for the benefit of the Customer;

3.1.2. the Customer must obtain DataTools' prior written approval (such approval not to be unreasonably withheld) if the Customer requires the Enterprise Software to be hosted by the Customer's third party (the "Customer Hoster"). If such approval is provided by DataTools, then the Customer must ensure that the same obligations which the Customer must accept in respect of the Enterprise Software pursuant to this Agreement (other than payment obligations, which will reside solely with the Customer), are also complied with by the Customer's third party;

3.1.3. the Customer will maintain accurate and up-to-date records of the number and location of all copies of the Enterprise Software, and make such records available upon request to DataTools, the Authorised Affiliate Partner and/or the Licensors;

3.1.4. the Enterprise Software does not provide the Customer with any additional rights or remedies in respect of the Services compared to the non-Enterprise Software use of the Services;

Hosting, Maintenance & Support

3.1.5. the Customer will host the Enterprise Software in an environment which complies with DataTools' minimum specification requirements, as such requirements are notified from time to time by DataTools (with DataTools acting reasonably);

3.1.6. the Customer agrees that it will be responsible for all installation, maintenance and configuration of the Enterprise Software and the Customer's infrastructure (and the Customer will likewise put in place equivalent measures with the Customer Hoster, where the Customer has obtained DataTools' consent to the use of the Customer Hoster pursuant to Clause 3.1.2);

3.1.7. the SLA will not apply in respect of any issues arising from the local hosting, installation, configuration or maintenance of the Enterprise Software, nor the effect which any of the afore-mentioned have on the Services;

3.1.8. the Customer will promptly apply to the Enterprise Software, any updates which are made available from time to time by DataTools;

<u>Return Or Destruction Of Software Materials</u>

3.1.9. within 7 days after the termination of this Agreement, or termination of DataTools' obligation to make available any part of the Software Materials or Service (including following expiration of the respective Subscription Period where access to the Service is not renewed), for whatever reason, Customer agrees to destroy or return the Software Materials (including all copies) in respect of which this Agreement has been terminated (in whole or in part), in the reasonable manner directed by DataTools, and where requested, certify this in writing to DataTools as having been completed;

<u>Prohibitions</u>

3.1.10. the Customer agrees that it may not undertake any of the following acts (except to the extent expressly permitted by law or as expressly permitted separately in writing by DataTools):

3.1.10.1. copy the Software Materials or any part of them (although the Customer may make a copy of the Software (and any Documentation provided electronically) for back-up purposes only);

3.1.10.2. translate, adapt, vary, modify the Software Materials or Services;

3.1.10.3. disassemble, decompile or reverse engineer the Software;

3.1.10.4. rent, lease, loan, resell, distribute, network or create derivative works based upon the Software Materials, Service, or any part of them.

4. Assurances

<u>Provision Of Software Materials</u>

4.1. Subject to the other provisions of the Agreement, DataTools agrees that:

4.1.1. during the respective Subscription Period, it has agreements in place with its Licensors, which confirm that it is licensed to provide access to the respective Software Materials and Services to the Customer;

4.1.2. subject to Clause 4.7.1, it will use reasonable endeavours during the respective Subscription Period to:

4.1.2.1. ensure that the Software which is made available by DataTools to be used as part of the Service is free of viruses;

4.1.2.2. allow access to the respective Service during the relevant Subscription Period, subject to any maintenance, or matters outside DataTools' reasonable control, as the Customer acknowledges that from time to time events may occur which affect the availability of the Service due to the nature of the internet, IT equipment and media;

4.1.2.3. make available updates to the Database, where such updates are provided by its Licensors.

<u>Errors In Software And Data</u>

4.2. The Customer agrees to the following:

4.2.1. that software and data in general are not error-free and agrees that the existence of such errors in the Software, Service or Service Output shall not constitute a breach of this Agreement;

4.2.2. where the software integration code which is made available by DataTools on the DataTools Website, is provided on a free of charge basis, the Customer agrees that such software integration code is provided on an 'as is' basis, without any assurance (including without limitation any warranty) whatsoever, and therefore no assurance whatsoever is provided (without limitation) in respect of its suitability, performance, functionality, quality or otherwise. The Customer agrees that its sole and exclusive remedy in respect of such software integration code is to simply cease using such software integration code;

4.2.3. where the software integration code which is made available by DataTools on the DataTools Website, is provided on a chargeable basis by DataTools to the Customer, then the Customer agrees that such software integration code is provided solely on the basis that it will materially comply with its stated description on the DataTools Website. If there is any issue with such software integration code where it fails to materially comply with its stated description on the DataTools Website, then the Customer agrees that it will inform DataTools of this fact (with reasonable details) in writing within 7 days of paying the licence fee in respect of such software integration

code, and if DataTools is unable to remedy the issue to achieve the afore-mentioned material compliance with the description on the DataTools Website within 30 days of receiving the notification from the Customer, then the Customer's sole and exclusive remedy in respect of such software integration code, is a refund of the charges which the Customer paid to DataTools in respect of such software integration code (with the Customer accepting that its licence to use such software integration code will terminate from the date of such refund);

4.2.4.   if any third party makes any updates to its software or platform, such that this causes an issue in respect of the Software or Service, then the Customer accepts that this is not an issue with the Software or Service itself, nor a breach by DataTools of any of its obligations under this Agreement. However, DataTools may at its sole discretion, choose to provide any updates to the DataTools Offering to address any compatibility issues caused by any third party changes.

Database

4.3.   The Customer acknowledges that in view of the fact that the Database contains third party data, the data in the Database is provided on an 'as is' basis, and no assurance in respect of it is provided (including without limitation any assurance with regard to its correctness, accuracy, completeness, fitness for any purpose, or otherwise). This exclusion of assurances applies only to the extent permitted by law.

DataTools Offering

4.4.   DataTools warrants for the respective Subscription Period that the respective Service is made available to the Customer, that the DataTools Offering will materially function in accordance with its Documentation. In the event that the DataTools Offering does not function in material accordance with the Documentation, and the Customer notifies DataTools of the non-compliance, DataTools shall use reasonable endeavours to correct and provide within a reasonable period of time by patch or new release (at its option) that part of the DataTools Offering which does not so comply, provided that such non compliance has not been caused by:

4.4.1.   any modification, variation, configuration or addition to the Software or Service not performed by DataTools (for the avoidance of doubt, any issues resulting from the acts or omissions of the Authorised Affiliate Partner are to be addressed by the Customer directly with the Authorised Affiliate Partner as DataTools will not be liable for such issues);

4.4.2.   its incorrect use, abuse or corruption of the Software or Service by the Customer or its third parties;

4.4.3.   use of the Software or Service with other software, data or on equipment with which it is incompatible; or

4.4.4.   as a result of the third party updates referred to in Clause 4.2.4.

IPR Warranty

4.5.   DataTools warrants for the respective Subscription Period, that such software, documentation, data and services which form the DataTools Offering, will not infringe any third party's intellectual property rights

Exclusion Of Assurances Not Contained In This Agreement

4.6.   The Customer acknowledges that DataTools has provided various express assurances in this Agreement. Therefore, to the extent permitted by law, and except as expressly set out in this Agreement, DataTools excludes all other assurances (including without limitation, warranties and conditions) with respect to the Software Materials and Service, including without limitation any assurances relating to satisfactory quality or fitness for any particular purpose.

Customer Obligations

4.7.   The Customer agrees:

4.7.1.   to have in place daily back-up and disaster recovery measures in respect of its and its third parties' (where third parties are permitted by DataTools) systems and data with which the Software Materials or Services are used, and effective firewall together with virus prevention measures (with the Customer being responsible for virus scanning all of its interaction with the Software Materials and Services; and the Customer being responsible for its own anti-virus protection measures to safeguard it against possible virus infection from use of the Software Materials and Services);

4.7.2.   to supervise and ensure use of the Services in accordance with the terms of this Agreement;

4.7.3. to ensure that no third party who is not authorised by this Agreement to access the Software Materials or Services, is provided with such access by the Customer (whether such access is provided deliberately or negligently);

4.7.4. to ensure that any of the Customer's systems that rely upon the use of the Software or Services for data entry or data lookup, also have a reasonable alternative manual means to continue to operate in the event that the Software Materials and Services are unavailable;

4.7.5. to ensure that the Customer's technical implementation to use the Services use only the provided Service endpoints (Service URL) that make use of the standard DataTools load balanced service (details of how to do this are available upon request from DataTools);

4.7.6. that DataTools may block any Service use or retrospectively apply transactional penalties, for activities that violate DataTools' fair use policy or special conditions in force from time to time;

4.7.7. not to undertake any act or omission, or use or otherwise make available the Software Materials or Service in a way, which would cause DataTools to be in breach of the Third Party Licences; and

4.7.8. not to undertake any act or omission, or use or otherwise make available the Software Materials or Service in a way, which would cause the Customer to be in breach of the Third Party EULAs.

4.8. Without prejudice to DataTools' and the Licensors' additional rights and remedies, to the extent that the Customer fails to comply with Clause 4.7.2, 4.7.3, 4.7.4, 4.7.5, 4.7.6, 4.7.7, 4.7.8, the Customer will immediately upon request pay to DataTools such amount as is required by the Licensors to be paid by DataTools for the Customer's non-compliance with the afore-mentioned provisions.

The amount to be paid to DataTools by the Customer in the event of non-compliance with the afore-mentioned provisions is the amount determined by a valuation conducted by DataTools' Accountants. Should such valuation be disputed by the Customer within ten (10) days of the issue of the Notice of failure to comply, the dispute shall be submitted to an expert in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Expert Determination Rules.

Mutual Reasonable Skill And Care

4.9. Each Party agrees to use reasonable skill and care in undertaking its obligations.

Authorised Affiliate Partner As Customer's Agent

4.10. The Authorised Affiliate Partner and Customer agree that any of the obligations of the Customer can be exercised by the Authorised Affiliate Partner on the Customer's behalf, with the Authorised Affiliate Partner acting as the Customer's agent in this respect.

5. Charges and Payment

Charges

5.1. The charges (and the basis for calculation and the respective due dates) for the Services are set out on the DataTools Website (as updated from time to time), or if different in a DataTools Quote Sheet or on a DataTools written request for payment.

5.2. The charges which are applicable and payable to DataTools in respect of the Services, are:

5.2.1. Subscription Fees for access to the respective Services; and

5.2.2. SLA Charge for the Premium Service, and

5.2.3. The fees applicable under the relevant Third Party Contract (which are collected by DataTools but governed by the Third Party Contract).

Making Payments

5.3. All payments are due in accordance with the provisions referred to in Clause 5.1.

5.4. The Customer confirms that it expressly authorises DataTools (or the Authorised Affiliate Partner at DataTools' discretion), to take payment from the Customer if the Monthly Subscription option has been set up for the Customer (the amount of a Monthly Subscription is deemed to be a new Credit) by the relevant due date, with payments being automatically debited to the respective credit card or debit card (where such payment methods are provided as part of the registration process (as such details are updated in the Account Section thereafter by the Customer from time to time)) at the respective intervals or dates, in order to meet the payment

requirements of the respective Service. For the avoidance of doubt, if the Customer's payment method cannot be debited or is declined, then the Customer will still be liable for the respective charges which are due. Subject to the other provisions of this Agreement, Credit applied by Monthly Subscription cannot be refunded.

<u>Late Or Non-Payment</u>

5.5. Without prejudice to DataTools' rights and remedies, to the extent that the Customer fails to make any payments on time, DataTools may:

5.5.1. charge the Customer interest in accordance with the applicable statutory provisions; and/or

5.5.2. suspend and/or terminate any of the Customer's Services and/or Premium Service.

5.6. If the Customer's Services are suspended or terminated for non-payment, then the Customer's Premium Service will be likewise suspended or terminated, and this will not give rise to any Service Credits, nor any other rights or remedies for the Customer pursuant to the SLA or the Agreement.

<u>Variation Of Charges</u>

5.7. The Customer acknowledges that DataTools may vary the charges applicable pursuant to this Agreement, from time to time (including without limitation, due to the ability of certain of its Licensors to vary the charges to DataTools, its customers, or its resellers, pursuant to the Third Party Licences). The Customer agrees that once it is informed of any such increase in charges and the date that the charges will be effective from (the "New Charges Date"), it will be deemed to accept such changes in the charges if it continues to use the respective Service or Premium Service affected by the change in charges from or after the New Charges Date.

<u>Refunds By DataTools & Credit Expiry</u>

5.8. Details of refunds are included in Clause 10.16.

5.9. Except as expressly stated in this Agreement, no refunds are available in respect of any Credit or other charges.

5.10. The Customer acknowledges that the Credit has an expiry date, following which any unused Credit will no longer be usable and nor will it be refunded, so it is the Customer's responsibility to use the Credit within the respective period that the Credit is valid for, as the Credit simply provides the Customer with a right to use the respective Service (subject to payment of any additional Licence Fee where applicable) prior to the expiry date for the respective Credit.

<u>Effect Of Customer Purchase Orders</u>

5.11. Where the Customer issues a purchase order to DataTools relating to the Software Materials, Service, Premium Service or this Agreement, the Customer agrees that unless otherwise agreed in writing by DataTools on DataTools' letter headed paper signed by a company director of DataTools, with express reference being made in writing to this Clause 5.11, the terms of such purchase order shall not apply and such purchase order shall be accepted by DataTools for the sole purpose of referencing a purchase order reference in any invoices in order to facilitate payment by the Customer.

<u>Credits</u>

5.12. A Credit is valid for the earlier of:

5.12.1. a maximum period of twelve months from the date of purchasing the respective Credit; or

5.12.2. when the Credit has been fully expended to purchase one or more Services; or

5.13. at the cessation of a Monthly Subscription. For the avoidance of doubt any unused Credit is forfeit at the termination of a Monthly Subscription.

5.14. Subject to Clauses 12 and 13, the Customer acknowledges that Credit is not transferrable to third parties, nor may it be used for the benefit of third parties by the Customer.

6. The Service

Account Code

6.1. Once the Customer's request to use the Services is accepted by DataTools, the Customer will be given a unique Account Code and shall be granted a non-exclusive, non-transferable, licence to download and use the respective Software Materials for the purpose of accessing and using the Services in respect of which it has agreed to pay the relevant Subscription Fees.

Customer's Confirmation of Accuracy Of Registration Details

6.2. The Customer confirms that all information which it provides to use the respective Service and any additional information which it provides pursuant to this Agreement, will at the time it is provided (and will continue to) be accurate and complete. If the information becomes inaccurate, incomplete or misleading any time thereafter, then (without prejudice to DataTools' additional rights and remedies), the Customer will promptly update its details in the Account Section, to ensure that its details remain accurate and complete. The Customer also agrees that it will promptly notify DataTools in writing if it ceases to use, or changes, its Authorised Affiliate Partner.

6.3. The Customer acknowledges, without prejudice to DataTools' additional rights and remedies, that any failure to comply with Clause 6.2 may result in DataTools exercising its rights pursuant to Clause 5.5, if payments are not made by the respective due dates.

Customer's Own Use Only & Audits

6.4. The Service and Software Materials are provided solely for the Customer's own use pursuant to this Agreement. The Customer is explicitly prohibited from reselling or attempting to resell the Service Output, or marketing or otherwise distributing the Software Materials or Service, without the explicit written permission of DataTools.

6.5. DataTools reserves the right to check the URL of the Customer's website which is using the Service to assist it in determining that the Service is being used in accordance with this Agreement.

6.6. The Customer agrees to provide: reasonable access to the premises, facilities and personnel of the Customer; and reasonable information; to allow DataTools or the Licensors to verify that the Customer is using the Software Materials and Service in accordance with the provisions of this Agreement and the requirements of the Licensors. Furthermore, the Customer acknowledges that DataTools may need to provide information in relation to the identity of the Customer and the Customer's use of the respective Software Materials and Service to the Licensors, as a requirement to allow the Customer to use the Licensor's data, software and materials. The Customer hereby expressly consents to such disclosure by DataTools to the Licensors pursuant to this Clause 6.6, and for the respective Licensors to contact the Customer in relation to the Customer's use of the Licensor's licensed data, software and other materials.

Account & Technical Changes By DataTools

6.7. DataTools (acting reasonably) reserves the right to vary the technical specifications of the Software and Service at any time, or change Account Codes, Licence Keys or Passwords, giving the Customer as much notice as is reasonably possible.

Support Arrangements

6.8. The Customer acknowledges that DataTools may provide limited free support in respect of the Software Materials or the Service. Typically, such support may consist of:

6.8.1. limited telephone advice and documentation in respect of set-up arrangements;

6.8.2. limited post set-up general telephone assistance for issues specifically caused by DataTools rather than its third parties.

If DataTools provides any such support, it will be provided on a discretionary basis by DataTools (and will give rise to no obligation for DataTools to provide such further support on any future occasion). DataTools reserves the right to charge for any support requests (at DataTools' standard rate as in force at such time) or refuse any support requests in its sole discretion, to the extent that DataTools considers that the support requests are over and above what DataTools considers would be reasonable in view of the free and limited nature of such support.

6.9. The Customer acknowledges that DataTools provides enhanced support via the Premium Service, which the Customer can elect to use, by agreeing to pay the respective SLA Charge, in which event the additional provisions contained in the SLA will also apply.

6.10. The Customer acknowledges that the SLA does not apply in respect of those services which are expressly excluded from the scope of the SLA, as stated on the DataTools Website.

6.11. The Customer also acknowledges that DataTools will not be liable for any support nor Service availability issues, unless the Customer elects the Premium Service and pays the SLA Charge for the respective Services.

6.12. If the Customer elects the Premium Service, then DataTools' liability in respect of any support or Service availability issues relating to the respective Services, will be as referred to in the SLA.

6.13. The Customer acknowledges that if the Customer does not have a valid Subscription Period (in respect of which it has paid the respective Subscription Fees) which is at least equal to the period covered by the Premium Service, no refund will be provided in respect of the Premium Service as a result.

6.14. To the extent that DataTools is held liable by a Court or similar competent body, for any support issues relating to Out Of Scope Support, then DataTools' liability will be limited in the same manner, and to the same amount, which would be applicable if the relevant issues were arising from support services delivered by DataTools which were within the scope of the Premium Service.

6.15. To the extent that DataTools is held liable by a Court or similar competent body, for any support issues or Service availability issues where this is held not to be limited or excluded by Clauses 6.11, 6.12 or 6.14, then DataTools' liability will be subject to the limitations and exclusions of liability under Clause 9 (Liability) of this Agreement.

7. Records

Visibility Of Records By The Customer

7.1. DataTools shall keep records of the Customer's usage of Credit, which information can be viewed by the Customer within the Account Section. DataTools' determination of such usage shall be definitive and final (provided that DataTools has acted reasonably).

Visibility Of Records By The Supplier

7.2. The Customer also acknowledges that DataTools will (and the relevant Authorised Affiliate Partner may) be able to view certain of the details in the Account Section, together with other information related to the Customer's use of the Service (including without limitation, the Customer's Account Code and Licence Key).

8. Password Security

Confidentiality

8.1. The Customer shall maintain the confidentiality and security of its Passwords and any Account Code and Licence Keys disclosed to it. The Customer shall notify DataTools immediately if it believes that the Account Code, Licence Key or Password has been, or is reasonably likely to be, used in any unauthorised way.

Changing The Details

8.2. If there has been unauthorised use of the Customer's account which is brought to DataTools' attention, or if the Customer has forgotten the Password, then DataTools may issue a new Account Code, Licence Key, or Password to enable continued use of the Service (or alternatively DataTools may disable the Customer's access to the Account Section and any Services and the Premium Service, if DataTools reasonably believes that the unauthorised use of the Customer's account is due to the wrongful or negligent acts or omissions of the Customer). This is without prejudice to DataTools' additional rights and remedies against the Customer.

Responsibility For Unauthorised Use

8.3. The Customer agrees that it is liable and responsible for all transactions undertaken using the Account Code, Licence Key or Password. With regard to any unauthorised transactions, these must be promptly reported to DataTools, and except to the extent that such transactions have occurred due to the wrongful acts of the Supplier, the Customer accepts full responsibility and liability for such transactions.

9. Liability

Caveat To Limitations And Exclusions Of Liability

9.1.   Notwithstanding any provision to the contrary, nothing in this Agreement shall limit or exclude DataTools' liability for: death; personal injury; fraud; fraudulent misrepresentation; and any liability which may not be lawfully limited or excluded.

Exclusions

9.2.   Subject to Clauses 5.5, 9.1 and 9.14, neither Party shall be liable in any circumstances to the other Party for consequential, special, incidental or indirect losses, or the following losses whether direct, consequential, special, incidental or indirect losses: loss of profits; loss of revenue; loss of turnover; loss of sales; economic loss; loss of business or contracts; loss of anticipated savings or goodwill; loss of software or data; (or any losses arising from a claim by a third party for any of the afore-mentioned losses); whether such losses arise under contract (including without limitation in relation to any deliberate repudiatory and fundamental breaches), statute, tort (including without limitation, negligence), or otherwise. However, Clauses 9.2 and 9.8, do not operate to negate any express refund obligations explicitly stated to be accepted by DataTools in Clause 10.16.

Liability Limits

9.3.   Where any software, data, documents or service is expressed to be provided on an 'as is' basis, or where DataTools has expressly excluded its liability for the respective issue, then subject to Clause 9.1, DataTools accepts no liability in such circumstances.

9.4.   Subject to Clause 9.1, where any remedy is expressed to be a sole and exclusive remedy, then that respective remedy applies.

9.5.   In respect of all support or Service availability issues where the Customer has not elected the Premium Service, then Clause 6.11 applies;

9.6.   in respect of all support or Service availability issues where the Customer has elected the Premium Service, then the liability amount will be as expressly stated in the SLA;

9.7.   Subject to Clause 9.1, the liability limits in Clause 9.8 apply where:

9.7.1.   the liability is not limited or excluded within the scope of any of Clauses 9.2 to 9.6 (inclusive); or

9.7.2.   Clause 6.15 is applicable (in which case Clause 9.8.1 will be applicable).

9.8.   Subject to Clauses 9.1 to 9.7 (inclusive) and 9.14, the aggregate liability of DataTools for all claims arising under or in connection with this Agreement (whether arising under contract (including without limitation in relation to any deliberate repudiatory and fundamental breaches), statute, tort (including without limitation, negligence), or otherwise) shall be limited as follows in respect of the issues for which DataTools is found liable:

9.8.1.   in respect of the totality of all issues with the Software Materials, Services, Premium Service and Service Output, where the causes giving rise to the liability on the part of DataTools occur within a particular Year, to a total aggregate amount of that respective Year's paid amounts by the Customer to DataTools (the "Liability Cap") (for the avoidance of doubt, any amount spent from a Credit whether in the same or a different Year, will not constitute an additional amount of charges for the purposes of this Clause, as the purchase of the Credit counts towards the 'paid amounts' by the Customer to DataTools, and therefore spending of Credits does not count, to avoid double-counting)), with such Liability Cap limiting DataTools' collective liability for the totality of all such issues within that Year (and for the avoidance of doubt, if there are two issues within a Year, then the aggregate liability of DataTools arising in respect of such 2 issues collectively, would equate to 100% of the charges paid in that respective Year and not 200% of the charges paid in that respective Year); or

9.8.2.   in respect of the totality of all liability for collectively all other issues arising under or in connection with this Agreement, which are not limited by Clause 9.8.1, nor limited or excluded by any other provision of this Agreement, to the aggregate amount of AU$500 (the "Additional Liability Cap").

9.9.   If the Customer has not paid any amounts invoiced in a particular Year, but suffers an issue in that Year for which DataTools is liable, then for the purposes of Clause 9.8.1, the 'Liability Cap' for the current Year will equate to the greater of:

9.9.1.   AU$500; or

9.9.2.   the total amount paid by the Customer to DataTools in the immediately preceding Year.

Customer's Acknowledgment

9.10. The Customer acknowledges that the charges in respect of this Agreement have been calculated on the basis that DataTools will exclude and limit its liability as set out in this Agreement, and that the limitations and exclusions of liability in this Agreement are therefore reasonable.

9.11. Notwithstanding any provision to the contrary (but subject to Clause 9.1):

9.11.1. the exclusions of liability in Clause 9 prevail; and

9.11.2. DataTools' liability under or in connection with this Agreement will not exceed the limits referred to in Clause 9; and

9.11.3. where the Agreement refers to any limitation or exclusion of liability of DataTools, such limitation or exclusion applies whether the respective liability arises under contract (including without limitation in relation to any deliberate repudiatory and fundamental breaches), statute, tort (including without limitation, negligence), or otherwise.

Limitation Time Period

9.12. The Customer acknowledges that any claims which it wishes to pursue against DataTools will be raised promptly. The Parties therefore agree that DataTools shall not be held liable for any liability in respect of events occurring during the term of this Agreement, where the respective claim is not brought through legal proceedings against DataTools within 12 months following the earlier of: (1) when the event giving rise to the cause of action arose; and (2) termination of the Agreement.

Consequences For Exhaustion Of Liability Limits

9.13. The Parties agree that either Party may terminate the Agreement for convenience, if the Liability Cap or Additional Liability Cap becomes exhausted by the Customer successfully bringing claims against DataTools (which are determined by a Court, or agreed between the Parties, as owing) for at least the total amount of the Liability Cap or the Additional Liability Cap. In such circumstances, such termination of itself will not give rise to any additional remedies nor refund rights.

Customer's Additional Obligations In Respect Of Wrongful Actions

9.14. The Customer agrees that it will be liable for all amounts to (whether arising in respect of any or all of the following circumstances):

9.14.1. DataTools and the Licensors in respect of, and relating to, any claim made against, or loss incurred or suffered by, DataTools and/or the Licensors where this is wholly or in part attributable directly or indirectly to the Customer breaching any of the provisions of the Third Party Contracts. Furthermore, the Customer agrees that if DataTools is required to pay any sums to any third party as a result of the Customer breaching any of the Third Party Contracts, then the Customer will, immediately upon notice, reimburse DataTools in full with the amount which DataTools has had to pay to such third party as a result;

9.14.2. DataTools in respect of any breaches of DataTools' or its third parties' intellectual property rights (including without limitation, copyright and trademarks); and

9.14.3. DataTools for any breaches of the Agreement which are undertaken with the deliberate intention of breaching this Agreement (with the Customer being deemed to be aware of all of the provisions of this Agreement).

10. Term, Termination and Suspension

Duration

10.1. The Agreement will commence on the Effective Date and continue in force until it is terminated in accordance with the provisions of the Agreement.

10.2. The licences granted to use the respective Services pursuant to the Agreement (either for use of the respective Services or any Software Materials) will be valid for the shorter of the following respective periods:

10.2.1. the expiration of the respective Subscription Period; or

10.2.2. where the use is granted subject to Credit, until such Credit expires through time or use as appropriate; or

10.2.3. the specified period in the Account Section or invoice (or as otherwise agreed between the Parties in writing); or

10.2.4. the termination of the Agreement.

Temporary Suspension Of Service

10.3.   DataTools may temporarily suspend:

10.3.1. the Service; and/or

10.3.2. making available any of the Software Materials;

for emergency or urgent operational reasons, but where reasonably practicable, it will give the Customer advance warning of such suspension.

Suspension For Abnormal Use

10.4.   If DataTools reasonably believes that the Customer's abnormal use of the Service or Software Materials is impairing the Service's performance or resulting in abnormal Credit consumption (as reasonably determined by DataTools), then DataTools may suspend the Customer's access until the cause of the impairment has been resolved (such suspension will not affect the Customer's requirement to continue paying the relevant charges for the suspended Service or Software Materials, nor will it extend the respective Subscription Period in respect of any Credit).

Termination Or Suspension by DataTools

10.5.   DataTools will have the right to suspend or terminate this Agreement immediately upon notice (however, suspension will occur automatically following email notification if any payment is not made by the respective due date by the Customer) if the Customer fails to comply with any provision of this Agreement (such suspension will not affect the Customer's requirement to continue paying the relevant charges for the suspended Service or Premium Service (as applicable), nor will it extend the respective Subscription Period in respect of any Credit; termination of the Agreement in such circumstances will also not entitle the Customer to any refund).

10.6.   DataTools may terminate the Agreement (in whole or in part) immediately upon notice to the Customer at any time, if:

10.6.1. DataTools is no longer able to make available the Service or Software Materials (in whole or in part) due to the acts or omissions of the Licensors;

10.6.2. any of the Third Party Contracts terminate for any reason;

10.6.3. the Licensors vary their terms and conditions, requirements, or pricing in a manner which adversely affects DataTools or the Customer;

10.6.4. a Licensor claims that the use of the Database or the Software Materials in the manner in which they are being used by DataTools or the Customer is not permitted; or

10.6.5. The Customer brings DataTools or the Licensors into disrepute.

10.7.   In addition to DataTools' rights under Clause 10.6, DataTools may terminate the Agreement for convenience on 90 days' notice to the Customer at any time, and in such event, DataTools will provide a pro-rata refund in accordance with Clause 10.16.

10.8.   The respective Third Party EULA will automatically terminate with immediate effect if the corresponding Third Party Licence is terminated, and consequently the respective Service which was subject to such Third Party Contracts, together with the Premium Service in respect of such Service (if applicable), will also automatically terminate immediately. DataTools will provide prompt notice of such event to the Customer.

10.9.   DataTools may terminate the Agreement in whole or in part for convenience at any time upon written notice (with such termination being effective on the date specified in the respective notice), where such termination is necessary for DataTools to comply with the Third Party Licences.

Termination By The Customer

10.10.   The Customer may terminate the Agreement for convenience by providing 90 days' written notice to DataTools.

Termination By Either Party

10.11.   Either Party (the "Terminating Party") may terminate the Agreement immediately by notice to the other Party (the "Defaulting Party") if:

10.11.1. the Defaulting Party is unable to pay its debts as they fall due or otherwise becomes insolvent, or if a receiver or an administrative receiver is appointed over any or all of the assets of the Defaulting Party, or if any arrangement, compromise or composition of the Defaulting Party's debts is proposed or made by the Defaulting

Party, or if the Defaulting Party enters or is entered into any proceedings for administration or liquidation or otherwise becomes subject to dissolution proceedings, or if any analogous event occurs in any other jurisdiction in which the Defaulting Party carries out its business;

10.11.2. the Defaulting Party unreasonably discloses any confidential information of the Terminating Party (or of the Licensor); (where any reasonable disclosure is necessary, then the disclosing Party will ensure that any such disclosure is subject to a reasonable duty of confidentiality being accepted by the third party recipient of such confidential information).

<u>SLA Consequences In Respect Of Suspensions Or Termination</u>

10.12. Suspension pursuant to Clause 10.4, or any other suspensions or terminations which are attributable to:

10.12.1. the wrongful actions of the Customer; or

10.12.2. a Force Majeure Event;

will not constitute downtime in calculating the Uptime Service Level in respect of the SLA, and will not give rise to any Service Credits, payments or other remedies to the Customer.

<u>Consequences Of Termination</u>

10.13. Pursuant to Clauses 5.12 and 5.13, where termination of this Agreement is by the Customer any unused Credit or remaining Subscription Period is forfeit.

10.14. Termination of the Agreement is without prejudice to both Parties' accrued rights and remedies.

10.15. The provisions of this Agreement which are expressed to, or intended to, survive termination, shall continue in full force and effect.

<u>Refunds On Termination</u>

10.16. Where the Agreement is terminated by DataTools pursuant to clause 10.7 (and the Customer has not breached the Agreement or any Third Party Contract or committed any other wrongful acts or omission), then the Customer will be entitled to a pro-rata refund from the date of termination of the amount of: any unused Credits; and Licence Fees; and SLA Charge; at the date of termination of the Agreement, to reflect the extent to which it is no longer able to use the respective Service for the unexpired Subscription Period or Premium Service for the unexpired Support Period, with such payment being calculated and determined by DataTools acting reasonably. The Customer agrees that this is the sole and exclusive financial remedy of the Customer in such circumstances, and that this is the only event where a refund shall be provided unless otherwise set out in this Agreement.

11. Force Majeure

11.1. If either Party is prevented from complying with its obligations due to any event beyond its reasonable control (such event being referred to as a "Force Majeure Event") (including without limitation, any issues arising from the data, software or documentation supplied by the Licensors), it shall not be in breach of this Agreement nor otherwise liable to the other Party by reason of any delay in performance or non-performance of any of its obligations due to such events. However, this Clause does not excuse the Customer from complying with its payment obligations, nor from compliance with the Third Party Contracts, by itself claiming the benefit of a Force Majeure Event.

11.2. If a Force Majeure Event continues for a period of more than 14 consecutive days, then either Party may terminate the Agreement for convenience during the continuance of such Force Majeure Event. In such circumstances, both Parties acknowledge that there will be no compensation due from either Party to the other for termination in such circumstances.

12. Assignment And Subcontracting

12.1. The Customer may not assign this Agreement (whether in whole or in part) without the prior written consent of DataTools (such consent not to be unreasonably withheld).

12.2. DataTools may subcontract and assign any or all of its obligations and rights pursuant to this Agreement, without requiring the prior consent of the Customer.

13. 3rd Party Rights & Contracts

<u>Third Party Group Company & Related Organisation Use</u>

13.1.   Where the Customer is permitted by the Agreement pursuant to Clause 13.3, to allow use of the Software Materials, Services and Premium Service by its group companies or other related organisations, then the Customer confirms that it will remain responsible for all payment obligations, and the Customer accepts responsibility for ensuring compliance by such third parties with the Agreement (with the Customer ensuring that such third parties comply with the same obligations and restrictions as those that the Customer is subject to, in relation to the Agreement). The Customer confirms that it will ensure that, such third parties and the Customer have joint and several liability to DataTools and the Licensors in respect of the Agreement.

13.2.   The Customer agrees that it is authorised to accept as agent, on behalf of its group companies and its related third party organisations, any changes made to the Agreement by DataTools and to the Third Party Contracts by the Licensors.

13.3.   Any of the Customer's third parties as referred to in a schedule of authorised third parties issued by DataTools, are hereby authorised to use the Software Materials and Service (and where the SLA Charge has been agreed to be paid in respect of the Customer and each of its third parties, the Premium Service) in accordance with the provisions of the Agreement, with the Customer acknowledging that each third party will need to pay additional charges for their use of the Services, with such payment to be made via the Customer. DataTools and the Customer may update the schedule of authorised third parties from time to time by written agreement between them (which includes agreement by email).

13.4.   The Licensors, and the Customer's third parties listed in the schedule referred to in Clause 13.3 (albeit that for conduct of claims, the Customer agrees that it will ensure that it will bring any and all claims of such third parties against DataTools, on behalf of such third parties, as the Customer will ensure than such third parties do not bring their claims direct against DataTools), shall have the right to enforce the provisions of this Agreement which are for their benefit, by virtue of applicable statutory provision. No other third party shall have the right to enforce any term of this Agreement.

13.5.   The Parties may, notwithstanding any applicable statutory provision, vary or terminate this Agreement (in whole or in part) without requiring the consent of the Licensors or any other third parties (whether referred to in Clause 13.4 or otherwise).

14. Variations

14.1.   DataTools may amend this Agreement from time to time by posting a revised version on the DataTools Website; such amended terms are effective upon posting. The Customer agrees that it is responsible for checking the DataTools Website regularly for amendments to this Agreement. The Customer agrees that if it continues to use the Services after the effective date of any amendments to this Agreement, the Customer agrees to be bound by the amended terms.

14.2.   No other variation of this Agreement shall be effective unless it is in writing and is signed by an authorised representative of each Party, although any pricing arrangements tailored to the Customer may be expressly agreed by DataTools by email.

14.3.   Any discretion exercised by DataTools from time to time, to afford the Customer any additional rights or benefits which are not afforded by the Agreement (in circumstances where such additional rights or benefits were the clear and deliberate intention of DataTools), will only operate on that occasion and not operate as a variation of the Agreement with regard to any other occasions, unless otherwise expressly stated with the provisions of Clause 14 having been complied with.

15. Severability

15.1.   If at any time any part of this Agreement becomes void or unenforceable under any applicable law it shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall continue unaffected. In such circumstances, the Parties will use reasonable endeavours to substitute the omitted provision with a valid replacement which achieves to the closest extent reasonably and lawfully possible, the intention of the omitted provision.

16. Waiver

16.1.   No provision of the Agreement shall be waived unless expressly stated otherwise in this Agreement in respect of any rights or remedies, or agreed to be waived by both Parties in writing; however, where a right must be exercised within a specified time period, then that right will be waived if it is not exercised within such time period. If any provision is waived, then that waiver shall operate for that instance only and not future instances, unless agreed otherwise by both Parties in writing.

17. Entire Agreement

17.1.   This Agreement (which includes the relevant Third Party Contracts) contains the entire agreement between the Parties with respect to the subject matter of this Agreement (the "Subject Matter") and supersedes and replaces all other written and oral communications between the Parties relating to the Subject Matter. Except for the express provisions in this Agreement (and any express provisions contained in any documentation which is expressly incorporated), all other warranties, conditions, terms, representations, statements, undertakings and obligations whether express or implied by statute, common law, custom, usage or otherwise are hereby excluded to the maximum extent permitted by law. The Parties hereby confirm that they have not relied upon any representations, communications or other matters which have not been expressly stated in this Agreement, whether as an inducement to enter into this Agreement or otherwise. This Clause 17.1 operates subject to Clauses 17.2 and 17.3.

17.2.   Notwithstanding any provision to the contrary in this Agreement, all implied: terms, conditions and warranties, (including without limitation those relating to satisfactory quality and fitness for purpose); whether:

17.2.1.   implied by statute, common law, custom, usage or otherwise; or

17.2.2.   otherwise sought to be expressly incorporated (including without limitation where sought to be incorporated by any express provision of this Agreement);

are hereby excluded to the maximum extent permitted by law. This Clause 17.2 operates subject to Clause 17.3.

17.3.   Notwithstanding any provision to the contrary, nothing in this Agreement limits or excludes either Party's liability for fraudulent misrepresentations.

18. Law And Jurisdiction

18.1.   This Agreement and any dispute or claim arising in connection with it shall be governed by the laws of New South Wales and shall be subject to the exclusive jurisdiction of the Courts of New South Wales to which the Parties irrevocably submit.

19. Notices & Privacy Policy

Notices

19.1.   Any notices to DataTools in relation to this Agreement, must be sent in writing to The Legal Department, DataTools Pty Ltd, Office 310 20A Lexington Drive BELLA VISTA NSW 2153 or by e-mail to legals@datatools.com.au. Notices will only be validly served pursuant to this Agreement by the Customer, where the notice has been sent by tracked delivery (which can be used to reasonably demonstrate that the notice was received by DataTools) or where receipt of the notice is acknowledged in writing by DataTools.

19.2.   The Customer agrees that DataTools and the Licensors may use the information gained pursuant to this Agreement in accordance with the DataTools Privacy Policy.

Schedule 1

Service Level Agreement: Premium Service

<u>Introduction</u>

This SLA only applies if the Customer has elected the Premium Service (such election means that the Customer has agreed to pay for, and DataTools has agreed in writing to provide, the Premium Service), which entitles the Customer to the following, in accordance with, and subject to, the provisions of this SLA and the Agreement:

- Support arrangements with targeted response and remedy times;

- Availability commitments in respect of Services' availability;

- Service Credits in respect of the Services' availability commitments being missed.

1. Charges

1.1 The Customer agrees to pay the SLA Charge for the Premium Service.

1.2 The Customer acknowledges that the SLA Charge entitles the Customer to the additional arrangements referred to in this SLA, but that such charge is in addition to the respective Subscription Fees.

2 Services' Availability

2.1 The Supplier shall provide at least a 99.9% average monthly uptime Services' availability level (the actual average monthly uptime Services' availability level as an aggregate of all Services, is referred to as the "Uptime Service Level").

2.2 The Uptime Service Level measures the collective Services' availability during a 24 hour day (as further elaborated in Paragraph 3 of this SLA), from DataTools' or its subcontractors' servers hosting the respective Services (such subcontractors of DataTools being referred to as the "DataTools Hoster"), to the farthest network egress point to the public Internet that is entirely under the direct control of DataTools or the DataTools Hoster.

2.3 The Uptime Service Level excludes from any measurements (and therefore the following does not constitute downtime for the purpose of calculating the Uptime Service Level):

2.3.1 any issues with: any software and data which do not form part of the DataTools Offering;

2.3.2 any issues with: any hardware or networks which are not under the direct control of DataTools or the DataTools Hoster;

2.3.3 any Planned Maintenance;

2.3.4 any Customer Causes (including a failure to adhere to implementation guidelines as specified in the Documentation, or issues resulting from account settings which are under the Customer's control);

2.3.5 any Customer caused or third party caused outages or disruptions;

2.3.6 outages or disruptions attributable in whole or in part to any Force Majeure Events; and

2.3.7 any Services which are notified as being discontinued by DataTools, with at least 30 days advance notification of such intended discontinuation being provided by DataTools;

2.3.8 any suspensions in the Service due to late payment of invoices pursuant to Clause 5.5 of the Agreement.

3 Availability Measurement

3.1 The Uptime Service Level measurement shall be carried out by DataTools and is based on the monthly average percentage availability, calculated at the end of each calendar month as the total actual uptime minutes during that calendar month divided by total possible uptime minutes in that calendar month (as visible from the SLA Report), subject to the provisions of Paragraph 2 of this SLA.

4 Service Credits

4.1 If the SLA Report shows that the Uptime Service Level for the totality of Services in a calendar month falls below 99.9%, then the Customer shall be eligible for a service credit (the "Service Credit") calculated as follows:

Uptime Service Level For Calendar Month	Service Credit
< 99.9% but ≥ 99.5%	25% of Monthly Recurring Fee
< 99.5% but ≥ 99.0%	50% of Monthly Recurring Fee
< 99.0% but ≥ 95.0%	75% of Monthly Recurring Fee
< 95.0%	100% of Monthly Recurring Fee

4.2 A Service Credit shall not be payable unless the Customer requests it in writing by Registered mail to (any emails or faxes will not be accepted): SLA Credit Team, DataTools, Office 310, 20A Lexington Drive, BELLA VISTA NSW 2153, within 30 days of the end of the respective calendar month in which the Service disruption arose (with it being the Customer's responsibility to ensure that DataTools receives such request within such time period; if the request is not received by DataTools within such time period, then the Customer waives its right to such Service Credit in respect of that occasion). The maximum Service Credit allowable in a given month is limited to an amount equal to 100% of the Monthly Recurring Fee for that month. For the avoidance of doubt, only one Service Credit in total can accrue in respect of the totality of Services in a calendar month, irrespective of whether there is a disruption in one Service or more than one Service.

4.3 The Parties agree that the Service Credits constitute a genuine pre-estimate of the loss or damage that the Customer would suffer as a result of the disruption in the Services, and therefore the Service Credit constitutes the Customer's sole and exclusive remedy for all disruptions of the Services.

5 Maintenance Activities

5.1 Maintenance of DataTools' or the DataTools Hoster's infrastructure, servers, software or other aspects of the Services (any such maintenance activities being referred to as the "Maintenance Events") may require interruption of the Services.

5.2 Subject to Paragraphs 5.3, 5.4 and 5.5 of the SLA, DataTools shall use reasonable endeavours to ensure that Maintenance Events are not scheduled to take place during Business Hours, unless Emergency Maintenance is required to be performed in circumstances where it is not reasonably possible to perform such Emergency Maintenance outside Business Hours due to the consequences which are reasonably likely to occur if the Emergency Maintenance is not performed.

5.3 Any Emergency Maintenance which occurs during Business Hours, and which has not arisen as a result of the wrongful acts or omissions of the Customer, shall be considered downtime for the purpose of the Uptime Service Level measurement. The Supplier shall use reasonable endeavours to keep any Service interruptions due to a Maintenance Event during Business Hours, to a minimum.

5.4 Although DataTools will use reasonable endeavours to undertake Maintenance Events outside Business Hours, DataTools may undertake Planned Maintenance during Business Hours.

5.5 The Customer acknowledges that maintenance of third party services are outside of DataTools' control and that maintenance of these services may be undertaken during Business Hours and shall not be considered downtime for the purpose of the Uptime Service Level measurement.

6 Support Services

6.1 During the Support Period, DataTools shall provide the Support Services during the Support Hours.

6.2 Support Services will be provided on a remote, off-site basis (such as over the telephone or by e-mail).

6.3 As part of the Support Services, the Supplier shall:

6.3.1 provide Help Desk Support by means of the telephone numbers and e-mail addresses notified to the Customer;

6.3.2 use Commercially Reasonable Efforts to correct all Faults notified under Paragraph 8.3.1 of the SLA.

6.4 DataTools may reasonably determine that any services are Out Of Scope Support. If DataTools makes any such determination, it shall promptly notify the Customer of that determination.

7 Out Of Scope Support Provision

7.1 DataTools is under no obligation to provide any Out Of Scope Support, and where provided, it will be provided on a discretionary basis by DataTools (and will give rise to no obligation for DataTools to provide such further support on any future occasion).

8 Submitting Support Requests And Access

8.1 The Customer may request Support Services by way of a Support Request.

8.2 Each Support Request shall include a description of the problem and the start time of the incident.

8.3 The Customer shall provide DataTools promptly with:

8.3.1 notice of any Faults; and

8.3.2 such output and other data, documents, information, assistance and (subject to compliance with all of the Customer's reasonable security and encryption requirements notified to the Supplier in writing) remote access to the Customer's system, as are reasonably necessary to assist DataTools to reproduce operating conditions similar to those present when the Customer detected the relevant Fault, or to respond to the relevant Support Request.

9 Service Levels

9.1 DataTools shall:

9.1.1 prioritise all Support Requests based on its reasonable assessment of the severity level of the problem reported; and

9.1.2 aim to respond to all Support Requests in accordance with the target times specified in the table set out below:

Incident Level	Description	Update Objectives
P1	The entire Service is unavailable and inaccessible. Priority 1 incidents shall be reported by telephone only	First response within 1 hour. Subsequent responses every hour, or as agreed during incident reporting. Resolution target = 4 hours
P2	Operation of the Service is severely degraded, or major components of the Service are not operational and work cannot reasonably continue. Priority 2 incidents shall be reported by telephone only.	First response within 2 hours. Subsequent responses every 2 hours or as agreed during incident reporting. Resolution target: 8 hours
P3	Certain non-essential features of the Service are impaired while most major components of the Service remain functional	First response within 4 Business Hours. Subsequent responses every 4 Business Hours or such other reasonable period as notified during incident reporting. Resolution target: 3 Business Days
P4	Errors that are, non-disabling or cosmetic and clearly have little or no impact on the normal operation of the Service	First response within 7 Business Days. Resolution target: By next major Service software update

9.2 The Parties agree that the target times in the above table are objectives, but do not give rise to any contractual consequences nor Service Credits if they are not complied with. The Customer acknowledges that it does have alternative remedies for Uptime Service Level issues, in accordance with the Service Credit regime described in the SLA.

9.3 The Supplier shall give the Customer regular progress updates of the nature and status of its efforts to correct any Fault, either by notification on the DataTools Website or by e-mail or telephone.

10 Escalation

10.1 If a Solution is not provided within the relevant target times referred to in Paragraph 9.1.2 of the SLA, the Customer may escalate the Support Request to the Parties' respective relationship managers.

10.2 The Parties agree that the provisions of the SLA do not impose any liability on DataTools, other than Service Credits in the expressly stated circumstances. All of the other provisions in the SLA are agreed to be commercial objectives,

which do not give rise to any contractual liability to the extent that there is any non-compliance with them by DataTools.

11 Communications

11.1 In addition to the mechanisms for giving notice specified in the Agreement, the parties may communicate in respect of any matter referred to in this SLA by e-mail (unless expressly specified).