

# Progress DMS Limited - Terms & Conditions

These Terms and Conditions cover the following products and services of Progress DMS Limited:

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These Terms shall be governed by and interpreted in accordance with the laws of England and Wales without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the courts located in England and Wales.

## Website and Bespoke Application Design & Development

### Website and Web Application Design and Build Services

By placing an order with Progress DMS Limited, you confirm that you are in agreement with and bound by the terms and conditions below.

#### Definitions:

The Client: The company or individual requesting the services of Progress DMS Limited  
Progress DMS Limited: Primary designer/website owner & employees or affiliates.

#### General

Progress DMS Limited will carry out work only where an agreement is provided either by email, telephone or post. All agreements will be confirmed by email with a full copy of our terms and conditions of contract attached.

Whilst every endeavor will be made to ensure that the website and any scripts or programs are free of errors, Progress DMS Limited cannot accept responsibility for any losses incurred due to malfunction, the website or any part thereof.

Progress DMS Limited retains title and copyright to all website designs and their source code written by Progress DMS Limited unless agreed in writing with the Client.

The placing of an order by the client or other person/Agency on behalf of the client constitutes a guarantee that all necessary authority and permissions have been obtained in respect of the artwork, design and photographs, for use in the website. The Client must indemnify Progress DMS Limited in respect of all actions; proceedings; costs demands and claims arising from any such breach.

Progress DMS Limited cannot take responsibility for any copyright infringements caused by materials submitted by the client. Progress DMS Limited reserves the right to refuse any material of a copyrighted nature unless adequate proof is given of permission to use such material.

Any additions to the brief will be carried out at the discretion of Progress DMS Limited and where no charge is made by Progress DMS Limited for such additions, Progress DMS Limited accept no responsibility to ensure such additions are error free and reserve the right to charge an amount for any correction to these or further additions.

The client agrees to make available to Progress DMS Limited as soon as is reasonably possible all materials required for the completion of the site to the agreed standard and within the set deadline.

Progress DMS Limited will not be liable for costs incurred, compensation or loss of earnings due to the failure to meet agreed deadlines.

Progress DMS Limited will not be liable for any costs incurred, compensation or loss of earnings due to the work carried out on behalf of the client or any of the clients appointed agents.

Progress DMS Limited will not be liable for any costs incurred, compensation or loss of earnings due to the unavailability of the site, its servers, software or any material provided by its agents.

A deposit of 50% is required with any projects before any work will be carried out.



Once a website or application has been designed and completed the final balance of payment is then due in accordance with our payment terms.

#### **Applications, Databases and E-Commerce Developments**

Progress DMS Limited cannot take responsibility for any losses incurred by the use of any software created for the client. Whilst every care has been taken to ensure products are problem free and accurate, the ultimate responsibility lies with the client in ensuring that all software is functioning correctly before use.

Any scripts, applications or software written by Progress DMS Limited remain the copyright of Progress DMS Limited and may only be reproduced or resold with the written permission of Progress DMS Limited.

The Client is expected to test fully any application or programming relating to a site developed by Progress DMS Limited before being made generally available for use. Where "bugs", errors or other issues are found after the site is live, Progress DMS Limited will endeavor to correct these issues to meet the standards of function outlined in the brief

#### **Website Hosting and Domain Names**

Whilst Progress DMS Limited may recommend hosting companies to host websites, no guarantees can be made as to the availability or interruption of this service by Progress DMS Limited. Progress DMS Limited cannot accept liability for losses caused by the unavailability, malfunction or interruption of this service, or for loss of turnover, sales, revenue, profits or indirect, consequential or special loss.

In placing an order for the supply of hosting, domain name registration or other services, which Progress DMS Limited may source from third party Internet Service Providers, the Client agrees to be bound by the terms and conditions of the Third Party Service Provider.

Progress DMS limited makes no representation that the domain name that the Client may order to register is capable of being registered by or for the Client or that it will be registered in the Client's name. The Client should therefore not assume registration of the ordered domain name(s) until the Client has been notified that it has or they have been registered. Any action taken by the Client before such notification is at the Client's own risk. The registration and use of the domain name is subject to the terms and conditions of use applied by the relevant Registry; the Client shall ensure that he is aware of those terms and conditions and that the Client complies with them. By registering a UK domain name, the Client enters into a contract of registration with Nominet UK on the terms and conditions published at <http://www.nominet.org.uk>. The Client shall have no right to bring any claim against Progress DMS Limited in respect of any refusal to register a domain name by the relevant registration authority. Any administration charge paid by the Client to Progress DMS Limited shall be non-refundable notwithstanding refusal by the Registry to register the desired name. Progress DMS limited shall have no liability in respect of the use by the Client of any domain name; any dispute between the Client and any other person must be resolved between the parties concerned in such dispute. If any such dispute arises, Progress DMS Limited shall be entitled, at our discretion and without giving any reason, to withhold, suspend or cancel the domain name. Progress DMS Limited shall also be entitled to make representations to the relevant Registry but will not be obliged to take part in any such dispute. Progress DMS limited shall not release any domain to another provider unless full payment for that domain has been received.

Progress DMS limited will not be responsible for spelling mistakes entered by the Client when ordering a domain name. The domain name will be ordered as entered by the Client and if the Client subsequently considers it to be wrong, it can only be changed by the Client purchasing the correct domain name from the Progress DMS limited. There can be no refunds given as a result of Client spelling errors.

Progress DMS Limited will notify the Client by letter and supply an invoice when the domain name and/or hosting is due for renewal. The notification will be made approximately 60 days prior to the expiration of the hosting agreement or domain name registration. It is the Clients responsibility to settle the renewal invoice within 30 days of the invoice date or notify Progress DMS Limited in writing that the Client wishes to discontinue the registration of the domain name or hosting agreement. Immediately upon settlement of the renewal invoice, Progress DMS Limited will renew the hosting agreement or domain name registration with the Service Provider.

Progress DMS Limited accepts no responsibility whatsoever for any loss of profits, costs or damages that the Client incurs as a result of the lapse of the domain name or hosting agreement due to non-payment of the renewal invoice or if payment of the invoice is not received in time to avoid lapse.

Progress DMS Limited reserves the right to refuse to handle in any way, material which may be deemed offensive, illegal or in any way controversial, and also to terminate the hosting service should the necessity arise.

#### **Payment of Accounts**

A deposit is required from any new client before any work is carried out. It is the Progress DMS Limited policy that any outstanding accounts for work carried out by Progress DMS Limited or its affiliates are required to be paid in full, no later than 30 days from the date of the invoice unless by prior arrangement with Progress DMS Limited.

Once a deposit is paid and work completed you are obliged to pay the balance of payment in full. We will contact clients via email and telephone to remind them of such payments if they are not received when due.



If accounts are not settled or Progress DMS Limited has not been contacted regarding the delay, access to the related website or application may be denied and web pages removed.

## Website and Web Application Hosting

Progress DMS Ltd provides a range of web hosting Services to its Customers subject to the terms and conditions of the Progress DMS Ltd Hosting Terms, which include these General Terms as well as the Specific Terms and the Acceptable Use Policy. These documents can be found at [www.progressdms.co.uk](http://www.progressdms.co.uk) under their respective headings.

### 1. Interpretation

In the Progress DMS Ltd Hosting Terms, unless a contrary intention appears –

1.1 the clause headings in the Progress DMS Ltd Hosting Terms have been inserted for purposes of convenience only and will not be taken into consideration in its interpretation;

1.2 any reference to (i) the singular includes the plural and vice versa, (ii) any gender includes the other genders and (iii) a natural person includes a juristic person and vice versa;

1.3 the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this Agreement and the Parties waive any rights they have to rely on such rules;

1.4 unless the context indicates a contrary intention, the words and expressions defined in clause 2 shall, throughout the Progress DMS Ltd Hosting Terms, bear the meanings assigned to them in that clause 2 and similar expressions shall bear corresponding meanings;

1.5 any reference to "days" shall be construed as being a reference to "business days" shall be any day other than a Saturday and a Sunday and/or a public holiday as gazetted by the Government of the United Kingdom from time to time. Any reference to "business hours" shall be construed as being the hours between 08h00 and 18h00 on any business day;

1.6 the word "include" and "including" means "include without limitation" and "including without limitation". The use of the word "including" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it;

1.7 terms other than those defined within these General Terms will be given their plain English meaning, and those terms, acronyms, and phrases known in the Information Technology industry will be interpreted in accordance with their generally accepted meanings;

1.8 defined terms appearing in these General Terms in title case shall be given the meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with the ordinary meaning as qualified by clause 1.7 and shall, unless the context otherwise indicates, include the term as defined.

### 2. Definitions

In the Progress DMS Ltd Hosting Terms, unless inconsistent with or otherwise indicated by the context, the following terms will have the meanings assigned to them in this clause:

2.1 "Agreement" means the contract entered into between Progress DMS Ltd and the Customer consisting of, inter alia, the Progress DMS Ltd Hosting Terms and any application form, or addendum thereto, completed by the Customer;

2.2 "Commencement Date" means the date when a customer profile is created and Progress DMS Ltd furnishes the Customer with the Customer Data;

2.3 "Customer" means (i) the party identified on the application form or in any addendum thereto, relating to the relevant Service subscribed for by the Customer and in the case of a Domain Name, means the registered holder of the Domain Name (as defined in the Specific Terms) and (ii) a Reseller enrolled under the Progress DMS Ltd Reseller programme who hosts directly with Progress DMS Ltd;

2.4 "Customer Data" means the username/s, password/s or e-mail address/es provided by Progress DMS Ltd to the Customer as part of the Services, but expressly excluding Customer Domains managed by Progress DMS Ltd as part of the Services;



2.5 "General Terms" means these terms and conditions;

2.6 "Progress DMS Ltd Hosting Terms" means the General Terms, the Specific Terms and the Acceptable Use Policy;

2.7 "Intellectual Property Rights" means all patents, trademarks, service marks, design rights, copyright, trade or business name, know-how, concepts, ideas, methods, procedures, processes, techniques, models, reports, templates, software or any changes or additions thereto (if any) and other similar rights or obligations, whether or not registerable, registered or application for registration thereof has been made in any party of the world;

2.8 "Marks" means any trademarks, logos, brand names, domain names or other marks of either of the Parties;

2.9 "Party" and "Parties" means Progress DMS Ltd and the Customer;

2.10 "Services" means the services provided by Progress DMS Ltd to the Customer;

2.11 "Service Fees" means fees and charges payable by the Customer to Progress DMS Ltd in respect of the Services, which Service Fees are dealt with in clause 7 hereunder and are set out in the application form/s, and any addenda thereto, completed by the Customer in respect of the Services;

2.12 "Specific Terms" mean the terms and conditions which supplement the General Terms and govern the use of individual Services selected by the Customer;

2.13 "Website" means the website from which the Services are provided, currently being <http://www.progressdms.co.uk>

### **3. Progress DMS Ltd Hosting Terms**

3.1 Progress DMS Ltd provides the Services to its Customers subject to the terms and conditions of the Progress DMS Ltd Hosting Terms, which include these General Terms, the Specific Terms, the Acceptable Use Policy and Privacy Policy, all of which are published at <http://www.progressdms.co.uk> under their respective headings.

3.2 These General Terms set forth the general terms and conditions governing the contractual relationship between the Parties, duly supplemented by the Specific Terms.

3.3 To the extent that:

3.3.1 any individual Service selected by the Customer is not dealt with in the Specific Terms, such individual Service shall be governed by the General Terms and Acceptable Use Policy;

3.3.2 any Specific Terms are binding upon the Customer, those Specific Terms are deemed included in the Progress DMS Ltd Hosting Terms.

3.4 The Acceptable Use Policy represents the terms and conditions pertaining generally to the Customer's use of the Services and specifies the activities prohibited by the Customer and is intended to enhance the use of the Internet by preventing unacceptable use. The Customer is required at all times to comply with the Acceptable Use Policy, which is deemed to form part of the Progress DMS Ltd Hosting Terms. The Acceptable Use Policy, as amended from time to time, is posted on the Website.

3.5 Save as expressly provided to the contrary in the Progress DMS Ltd Hosting Terms, in the event of a conflict between the provisions as stated in these General Terms and those stated in the Specific Terms and Acceptable Use Policy, the following precedence ranking shall apply (from highest to lowest): (i) these General Terms; (ii) the Specific Terms; (iii) the Acceptable Use Policy; (iv) the Privacy Policy and other policies that may be introduced from time to time and notified to the Customer as well documents incorporated by reference in this Agreement.

### **4. Amendment to Progress DMS Ltd Hosting Terms**

4.1 Progress DMS Ltd reserves the right, at any time, to amend any of the Progress DMS Ltd Hosting Terms to which the Customer is bound without specific notice to the Customer. An updated version of the Progress DMS Ltd Hosting Terms will be posted on the Website.



4.2 The Customer agrees that it is their responsibility as a diligent user to peruse any amended Progress DMS Ltd Hosting Terms posted on the Website and the Customer undertakes to regularly visit the Website so as to remain advised of such amended Progress DMS Ltd Hosting Terms.

4.3 If the Customer objects to any amended Progress DMS Ltd Hosting Terms which are binding upon it or are to become binding upon it, the Customer is entitled to terminate its relationship with Progress DMS Ltd upon the terms and conditions set forth in clause 14.1 below.

## **5. Customer Status**

5.1 It is recorded that the Customer may be an incorporated entity (such as a company or close corporation), trust, partnership or individual.

5.2 To the extent that a person enters into the Agreement in a representative capacity on behalf of a Customer who is an incorporated entity or on behalf of an unincorporated entity, or in any other representative capacity recognised in UK based law, the Customer hereby warrants that:

5.2.1 such person is legally authorised to do so and indemnifies Progress DMS Ltd against any loss or damage that Progress DMS Ltd may sustain resulting from such person's lack of authority;

5.2.2 all the information relating to the entity, trust, partnership, association or other person who he/she represents and which he/she has supplied to Progress DMS Ltd at any time will be true, accurate and complete.

5.3 Progress DMS Ltd reserves the right to treat all misrepresentations by the Customer or its representative as fraud and such person indemnifies Progress DMS Ltd against any loss or damage that Progress DMS Ltd may sustain resulting from such person's lack of authority.

5.4 If Progress DMS Ltd discovers that the Customer has fraudulently contracted for the receipt of Services or that its representative has contracted without contractual capacity to do so, Progress DMS Ltd will be entitled to terminate the Progress DMS Ltd Hosting Terms and/or Service/s immediately without any further liability to the Customer whatsoever and the Customer shall not be entitled to claim any restitution or refund of any amount already paid, regardless of whether the Customer has used the Services or not.

5.5 The Customer shall, if requested by Progress DMS Ltd, furnish Progress DMS Ltd with sufficient evidence of the authority of the person who shall, on behalf of the Customer, take any action or execute any documents required or permitted to be taken or executed by such person under the Agreement. This would include providing proof of permission to debit from the authorised signatory of the Customer's bank account.

5.6 In the event of a dispute between individuals or entities involved with the Customer (including partners, shareholders, trustees, employees), Progress DMS Ltd shall be entitled to act on the representation of a person claiming to be duly authorised to represent the Customer, without being obliged to obtain independent verification of such authority and the Customer indemnifies Progress DMS Ltd from any action or inaction based on such representation. However, should Progress DMS Ltd, in its sole and absolute discretion, require independent verification of the authority of any individual, the Customer shall provide same in a format reasonably acceptable to Progress DMS Ltd.

## **6. Commencement and Duration**

6.1 The application form submitted by the Customer to Progress DMS Ltd will be treated as an offer by the Customer to make application for the Service/s. The Customer's offer shall only be deemed to have been received by Progress DMS Ltd once this has been confirmed to the Customer by Progress DMS Ltd. Although the Website is configured to confirm receipt of any offer ("Confirmation"), technical or other problems may delay or prevent such Confirmation. The Customer should contact Progress DMS Ltd if it does not receive Confirmation from Progress DMS Ltd shortly after having sent the offer. Confirmation shall not mean that a transaction has been concluded. It merely serves to confirm that the application has been received by Progress DMS Ltd. Confirmation is deemed to have been sent by Progress DMS Ltd as soon as this is reflected in Progress DMS Ltd's log files.

6.2 The Progress DMS Ltd Hosting Terms shall commence and become binding on the Customer with effect from the Commencement Date.

6.3 The Progress DMS Ltd Hosting Terms shall endure for an indefinite period until terminated in terms of the provisions of clause 14 below.

## **7. Service Fees**



7.1 All Service Fees payable by the Customer in terms of the Progress DMS Ltd Hosting Terms for Services are payable in advance.

7.2 The Service Fees shall be payable either on a monthly, quarterly, bi-annual or annual basis as are agreed from time to time

7.3 The Service Fees shall be paid to Progress DMS Ltd by way of standing order, cheque or BACS payment by the Customer at the beginning of each period for which the money is due, for the continued duration of the Progress DMS Ltd Hosting Terms.

7.4 The Customer shall only be entitled to pay cash for the Services in circumstances where the Service Fee is payable on an annual basis. This would exclude any incremental over-usage charges.

7.5 Where the Customer's use of any service commences during a month rather than at the start of that month, the Customer will be charged on a pro rata basis for those Services provided during that month.

7.6 Progress DMS Ltd reserves the right to amend or vary the Service Fees from time to time and any amendment or variation of such Service Fees will be deemed to be an amendment of the Progress DMS Ltd Hosting Terms. In the event that Progress DMS Ltd does amend its Service Fees, it will give the Customer at least thirty (30) days prior notice of such amendment to the Service Fees. If the Customer objects to any amended or varied Service Fees which affect it, it shall be entitled to terminate its relationship with Progress DMS Ltd upon the terms and conditions set forth in clause 14.1 below.

7.7 The Customer acknowledges that it is not entitled to withhold any payment of any Service Fees due to Progress DMS Ltd by reason of any alleged breach of the Progress DMS Ltd Hosting Terms by Progress DMS Ltd or for any other reasons whatsoever. In addition, the Customer acknowledges that it is not permitted to apply set-off to or demand any discount, refund (other than in terms of clause 7.10 below) or reduction in respect of any Service Fees owed to Progress DMS Ltd.

7.8 The Customer acknowledges that the Service Fees stipulated are based on a price exclusive of value added tax (VAT) and any increases in Value Added Tax shall be borne by the Customer.

7.9 In the event of a dispute arising between the parties, the Customer shall be obliged to continue paying the Service Fees as and when they become due and payable in terms of the Progress DMS Ltd Hosting Terms.

7.10 The Customer may terminate the Service within:

7.10.1 seven (7) days after the Commencement Date should the Customer decide not to continue subscribing for the Service/s; or

7.10.2 within thirty (30) days after the Commencement Date should Progress DMS Ltd fail to meet the service levels for hosting services and e-mail services as specified in the Specific Terms, provided that the Customer's right to terminate shall be exercised by notice from the Customer to Progress DMS Ltd transmitted via e-mail to [accounts@progressdms.co.uk](mailto:accounts@progressdms.co.uk). In the event of the Customer terminating the Service for the aforesaid reasons, the Customer shall be entitled to a refund of any Service Fees. Progress DMS Ltd shall not, however, be obliged to refund the Customer with any third party costs already incurred by Progress DMS Ltd directly or indirectly as a result of the initial request for the Service. The Customer remains responsible for any third party costs.

## **8. Monitoring**

8.1 Whilst Progress DMS Ltd monitors its Services to determine that its facilities are operating satisfactorily, Progress DMS Ltd does not, as a general practice, monitor its Customers activities.

8.2 With specific regard to the monitoring of content which is found on a website belonging to a Customer and which is hosted by Progress DMS Ltd, the Customer acknowledges that Progress DMS Ltd has no knowledge of, nor interest in, Customer content hosted by Progress DMS Ltd or published by Progress DMS Ltd on the Customer's behalf using the Services and further that Progress DMS Ltd does not in any way contribute or approve such content.

8.3 Notwithstanding this, the Customer agrees that if Progress DMS Ltd, in its sole and unfettered discretion determines that the Customer's content is in violation of any law or of the Acceptable Use Policy, it may (i) forthwith request the Customer to remove such content; and/or (ii) forthwith require the Customer to amend or modify such content; and/or (iii) without notice terminate access to any Services and/or suspend or terminate any Services; and/or (iv) without notice, delete the offending content; and/or (v) notify the relevant authorities of the existence of such content (if required by law or otherwise), make any back-up, archive or other copies of such material as may be required by such authorities, disclose such elements of the Customer data as may be requested by such authorities and take such further steps as may be required by such authorities.

8.4 The Customer specifically agrees that it shall have no recourse against Progress DMS Ltd in the event of Progress DMS Ltd acting in terms of clause 8 and accordingly waives its right to make any claim or demand or to institute any legal proceedings against Progress DMS Ltd.

## 9. Security

9.1 All Customer Data allocated to the Customer is personal to the Customer and the Customer shall be liable for any loss or damage sustained by the Customer, Progress DMS Ltd or any third party as a result of any actions by the Customer or any other person to whom the Customer has disclosed its Customer Data.

9.2 The Customer authorises Progress DMS Ltd to act on any instruction given by and/or purporting to originate from the Customer, even if it transpires that both Progress DMS Ltd and the Customer have been defrauded by someone else, unless the Customer has notified Progress DMS Ltd in terms of clause 9.3 below prior to Progress DMS Ltd acting on a fraudulent instruction.

9.3 If any security violations are reasonably believed to have occurred in connection with the Customer's account, Progress DMS Ltd will investigate forthwith and, if necessary, change the relevant Customer data, including access codes and passwords and give the Customer immediate notification. A copy of the results of any investigation will be provided to the Customer at no cost.

9.4 The Customer shall advise Progress DMS Ltd immediately should any other person gain access to its Customer Data following the Progress DMS Ltd procedures relating to reporting misuse [www.progressdms.co.uk](http://www.progressdms.co.uk) and shall give its full co-operation to Progress DMS Ltd in any investigation carried out by Progress DMS Ltd.

9.5 The Customer hereby indemnifies Progress DMS Ltd against any claim howsoever arising from (i) the Customer's disclosure of its Customer Data to a third person, (ii) the use of such Customer Data by a third person and/or (iii) any action by the Customer or third party as a result thereof.

9.6 Progress DMS Ltd reserves the right to take whatever action it may deem necessary at any time to preserve the security and reliable operation of its infrastructure and the Customer undertakes that it will not do or permit anything to be done which will compromise Progress DMS Ltd's security.

9.7 Although Progress DMS Ltd applies reasonable endeavours to provide disaster recovery, Progress DMS Ltd does not specify any recovery time, nor is Progress DMS Ltd liable for any loss or damage of whatever nature incurred or suffered by the Customer arising from or in connection with any cause whatsoever as a result of its failure to provide, or delay in providing, or providing only partial disaster recovery. The Customer is required to make back-ups of its data. Nothing contained in the Progress DMS Ltd Hosting Terms shall be construed as a representation that any back-ups of data implemented by Progress DMS Ltd will be successful or in any way will avoid disaster.

## 10. Warranties

10.1 Progress DMS Ltd warrants that it has the facilities, infrastructure, capacity and capability to provide the Services.

10.2 Save for the foregoing warranty, the Services are provided "as is" and "as available" and without any further warranty of any nature whatsoever, whether express or implied, including without limitation warranties of merchantability, fitness for purpose, title or non-infringement.

10.3 Under no circumstances shall any advice or information furnished by Progress DMS Ltd, its agents or employees be construed as a warranty of any kind.

## 11. Intellectual Property Rights

11.1 The Customer is obliged to comply with all laws applicable to any Intellectual Property Rights in respect of any data and/or information accessed, retrieved or stored by the Customer through the Customer's use of the Services.

11.2 The Customer is prohibited from using any of the Progress DMS Ltd logos without the prior written approval of Progress DMS Ltd.

11.3 The Customer hereby grants Progress DMS Ltd a non-exclusive licence for the limited purposes of enabling Progress DMS Ltd to exercise its rights or to fulfil its obligations under the Progress DMS Ltd Hosting Terms.

11.4 Other than as specifically provided for in the Progress DMS Ltd Hosting Terms, Progress DMS Ltd will wholly and exclusively retain all existing, and become the exclusive and unencumbered owner of all Intellectual Property Rights employed in or otherwise



related to its network infrastructure, business and the provision of any of the Services in terms of the Progress DMS Ltd Hosting Terms.

## 12. Customer Indemnities

12.1 The Customer acknowledges that the Services are provided subject to all applicable laws and the Customer accordingly hereby indemnifies Progress DMS Ltd from any liability attributable to any regulatory body or civil or criminal proceedings instituted against Progress DMS Ltd or for any loss or damage suffered by the Customer or any third party as a consequence of any interruption or unavailability of the Services.

12.2 The Customer hereby unconditionally and irrevocably indemnifies Progress DMS Ltd and agrees to hold Progress DMS Ltd free from and harmless against all losses suffered or incurred by the Customer or Progress DMS Ltd or instituted against Progress DMS Ltd by any third party as a direct or indirect result of the Customer's use of the Services, the Customer's failure to comply with any Progress DMS Ltd Hosting Terms, or any downtime, outage, degradation of the network, interruption in or unavailability of the Services. Included, but without limitation, within the ambit of downtime, outage, degradation of the network, interruption, or unavailability of the Services is any of the following: (i) software or hardware service, repairs, maintenance, upgrades, modification, alterations, replacement or relocation of premises affecting the Services, (ii) non-performance or unavailability, of whatever nature and howsoever arising, of any of the services provided by a electronic communications network or service provider, including, but not limited to, line failure, or in any international Services or remote mail servers, (iii) non-performance or unavailability, of whatever nature and howsoever arising, of external communications networks to which the Customer or Progress DMS Ltd's network infrastructure is connected and (iv) repairs, maintenance, upgrades, modifications, alternations or replacement of any hardware forming part of the Services or any faults or defects of whatever nature in such hardware.

12.3 The Customer shall defend Progress DMS Ltd against any claim against which Progress DMS Ltd is indemnified in terms of clause 12.2 and elsewhere in the Progress DMS Ltd Hosting Terms ("indemnified claim") and pay any and all costs, damages and expenses (including attorneys fees on the attorney and own client scale) finally awarded against Progress DMS Ltd by a court of competent jurisdiction or agreed to in a written settlement agreement signed by the Customer directly arising out of such indemnified claim, provided that (i) Progress DMS Ltd shall notify the Customer in writing as soon as Progress DMS Ltd becomes aware of the indemnified claim to enable the Customer to take steps to contest it, (ii) the Customer may assume sole control of the defence of such claim and/or related settlement negotiations and (iii) Progress DMS Ltd shall provide the Customer, at the Customer's expense, with the assistance, information and authority necessary to enable the Customer to perform its obligations under this clause.

12.4 The Customer shall pay to Progress DMS Ltd the amount of an indemnified claim forthwith upon receipt of request for payment unless the Customer contests the indemnified claim in which case the Customer shall pay to Progress DMS Ltd the amount of the indemnified claim forthwith after any judgment or order is granted, provided that in those circumstances where the Customer does not at any time proceed with the contest of the claim timeously and promptly, Progress DMS Ltd shall be entitled to require the Customer either to pay the amount of the claim in question in trust to its attorneys pending the outcome of the proceedings, or Progress DMS Ltd shall be entitled to require the Customer to give proper and adequate security therefore.

## 13. Suspension of the Services

13.1 Progress DMS Ltd is entitled to temporarily suspend its obligations in terms of the Progress DMS Ltd Hosting Terms (i) in order to give effect to the provisions of clauses 8.3 and/or 9.5, (ii) in order to service, repair, maintain, upgrade, modify, alter, replace or improve any of the Services and/or (iii) where third parties have alleged that the Customer has engaged in unlawful activities arising from or connected to the Services.

13.2 Where circumstances permit, Progress DMS Ltd will use its best endeavours to provide prior notice of any such suspension to the Customer and Progress DMS Ltd shall not be liable for any loss or damage of whatever nature incurred or suffered by the Customer arising from or in connection with or from any cause whatsoever as a result of such suspension.

## 14. Termination

14.1 Termination by either Party: Either party may terminate the Progress DMS Ltd Hosting Terms together with all Services, or individual Services, on ninety (90) days written notice accounts@progressdms.co.uk) to the other Party at their chosen domicilium citandi et executandi in terms of clause 18.

14.2 All purported terms of termination communicated to Progress DMS Ltd in any manner other than as specified above may, at Progress DMS Ltd's sole discretion, be deemed to have been invalidly given and without force and effect.

14.3 Breach: Should the Customer breach any of the Progress DMS Ltd Hosting Terms, then Progress DMS Ltd shall be entitled, without prejudice to any other rights that Progress DMS Ltd may have and without notice to the Customer, to (i) forthwith claim immediate payment of all outstanding charges due to Progress DMS Ltd, (ii) terminate or suspend the Customer's use of any or all of

the Services, (iii) terminate its relationship with the Customer and/or (iv) list the Customer with any credit bureau or Internet service provider list or the UK based Fraud Prevention Service which the Customer hereby expressly consents to. In all instances, Progress DMS Ltd shall be entitled to retain all Services Fees already paid by the Customer and recover all of its costs associated with the Customer's breach, including without limitation, legal costs on an attorney and own client scale, whether incurred prior to the institution of, or during legal proceedings, or if judgment has been granted, in connection with the satisfaction of such judgment.

14.4 Retention of hardware or software: The Customer acknowledges that where Progress DMS Ltd is in possession of any hardware or software belonging to the Customer as a result of Progress DMS Ltd's provision of the Services to the Customer, and the Customer is in default of its payment obligations to Progress DMS Ltd, Progress DMS Ltd shall be entitled to retain such hardware and/or software pending the Customer's settlement of all amounts owed by the Customer to Progress DMS Ltd. In addition, where the Customer fails to make payment of all amounts owed to Progress DMS Ltd within sixty (60) days of any notice by Progress DMS Ltd to the Customer in that regard, Progress DMS Ltd shall be entitled, but not obliged, to dispose of such property in order to defray any expenses as well as any amounts owed by the Customer to Progress DMS Ltd.

14.5 Return of hardware or software: Where the Customer is in possession of any Progress DMS Ltd hardware or software in consequence of the provision of a Service and the Service to which that hardware or software relates is terminated, the Customer will immediately return such hardware or software to Progress DMS Ltd and shall not be entitled to retain such hardware or software for any reason whatsoever.

## 15. Force Majeure

15.1 On the happening of a Force Majeure Event, any delay or failure in performance or breach by Progress DMS Ltd occasioned thereby or resulting therefrom will not be deemed to be a breach of the Progress DMS Ltd Hosting Terms by Progress DMS Ltd, nor shall it subject Progress DMS Ltd to any liability whatsoever.

15.2 For purposes of clause 15.1, a "Force Majeure Event" means any act of God, of public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil strike, riot, blockage, embargo, sanctions, epidemics, act of any Government or other authority, compliance with Government orders, failure of any supplier of electricity, including Eskom, and telecommunications infrastructure and/or telecommunications lines provided by any third party, including, but not limited to, the Telkom Limited group of companies, or any circumstances of like or different nature beyond Progress DMS Ltd's reasonable control.

## 16. Dispute Resolution

16.1 Any dispute which may arise between the Parties shall be referred to arbitration and resolved in accordance with the Rules of the United Kingdom by an arbitrator.

16.2 The arbitrator shall be agreed upon between the Parties and failing such agreement, and within a period of ten (10) days after the arbitration has been demanded by either the Parties, either of the Parties shall be entitled to request the chairperson for the time being of UK to make the appointment who, in making the appointment, shall have regard to the Party's requirement of speedy arbitration.

16.3 Clauses 16.1 and 16.2 shall not preclude either Party from obtaining interim relief on an urgent basis from a Court of competent jurisdiction pending the decision of the arbitrator.

16.4 The arbitration shall be held (i) in UK at a venue agreed to between the Parties in writing, (ii) as soon as practically possible and with a view to it being completed within twenty one (21) days after it has been demanded.

16.5 The Parties irrevocably agree that any award that may be made by the arbitrator (i) shall be final and binding, (ii) will be carried into effect and (iii) may be made an order of any Court to whose jurisdiction the Parties are subject.

16.6 The provisions of this clause 16 (i) constitute an irrevocably consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to withdraw therefrom or to claim at any such proceedings that it is not bound by such provisions and (ii) are severable from the other provisions of the Progress DMS Ltd Hosting Terms and shall remain in effect notwithstanding the termination of, or invalidity for any reason, of any of the Progress DMS Ltd Hosting Terms.

## 17. Exclusion and Limitation of Liability

17.1 Neither Progress DMS Ltd, its directors, employees, agents, consultants and advisers shall be liable for any indirect, extrinsic, special, penal, punitive, exemplary or consequential loss or damage of any kind whatsoever or howsoever caused (whether arising, or may arise out of the Services and/or the use thereof, under contract, delict including negligence and / or gross negligence or

otherwise), sustained by the Customer, its directors and/or servants, including but not limited to any loss of profits, loss of operation time, corruption or loss of information and/or loss of contracts and/or profits.

17.2 Progress DMS Ltd's total liability to the Customer shall accordingly be limited to the payment of direct damages only, which direct damages shall be limited to a maximum amount of (i) three months of the Customer's base hosting fee or (ii) £2,500.00 (Two Thousand Five Hundred UK Pounds), whichever is the lesser.

17.3 Progress DMS Ltd's liability for direct damages under clause 17.2 shall be excluded where such liability results or may result from the Customer's use of any third party Services or products accessible or used in conjunction with the Services, but which are not provided by Progress DMS Ltd.

17.4 The exclusion of liability under clauses 17.1 and 17.3 and limitation of liability under clause 17.2 shall apply notwithstanding the fact that Progress DMS Ltd may have been advised of the possibility of such loss or damage being incurred prior to its occurrence.

## **18. Domicilium Citandi Et Executandi**

18.1 Addresses: The Parties choose as their domicilia citandi et executandi for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses:

18.1.1 Progress DMS Ltd: 1 Northbrook Court, Park Street, Newbury Berkshire, RG14 1EA

18.1.2 The Customer: The physical address furnished to Progress DMS Ltd on the application form when the Customer first subscribed for the Services, as amended in writing pursuant to any change of address, which the Customer is hereby required to furnish to Progress DMS Ltd within ten (10) days of the change of such address.

18.2 Notice or communication to be in writing: Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing.

18.3 Requirements for notices: Any notice to a Party (i) sent by prepaid registered post in a correctly addressed envelope to it at an address chosen as its domicilium citandi et executandi to which post is delivered shall be deemed to have been received on the 10th (tenth) business day after posting, (ii) delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its domicilium citandi et executandi shall be deemed to have been received on the day of delivery, or (iii) sent by telefax to its chosen telefax number stipulated in clause 18(a), shall be deemed to have been received on the date of despatch.

## **19. General**

19.1 Whole Agreement: The Agreement, together with the other documents making up the Progress DMS Ltd Hosting Terms constitutes the entire agreement between the Parties in respect of the subject matter hereof and neither Party shall be bound by any undertakings, representations, warranties or promises not recorded in the Agreement.

19.2 No Variation: No variation or consensual cancellation of the Agreement and no addition to the Agreement shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives.

19.3 Waiver: No waiver of any of the terms and conditions of the Agreement will be binding or effectual for any purpose unless expressed in writing and signed by the Party hereto giving the same, and any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party hereto in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

19.4 Severability: Should any of the terms and conditions of the Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms and conditions, which will continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the Parties agree to negotiate an amendment to remove the invalidity.

19.5 Applicable Law: The Agreement will be governed by and construed in accordance with the law of the United Kingdom and all disputes, actions and other matters relating thereto will be determined in accordance with such law.

19.6 Survival: Notwithstanding termination of the Agreement, any clause, which, from the context, contemplates ongoing rights and obligations of the Parties, shall survive such termination and continue to be of full force and effect.

# The Progress DMS Web Applications & Services

Please see details here: <http://live.progressdms.co.uk/licenses/ProgressSystemTerms.pdf>

## Equipment Sales

**Definitions:** In this agreement the terms have the following meanings;

PDMSL means Progress DMS Limited of No 1 Northbrook Court, Park Street, Newbury, Berkshire, RG14 1EA 'Software' means the computer software supplied by PDMSL to the Customer. 'Business Days' means Monday to Friday (inclusive) in any week excluding any day that is a public holiday throughout England. 'Customer' means any person entering into a contract for the purchase from PDMSL of computer or associated equipment 'Equipment' means the Hardware and Software 'Event of Default' means any act or omission on the part of PDMSL or its employees agents or sub-contractors 'Hardware' means the computer hardware and associated equipment supplied by PDMSL to the Customer 'Insolvent' means the Customer becoming unable to pay its debts within the meanings of Section 123 (Company) or Section 268 (Individual) of the Insolvency Act of 1986 or the Customer ceasing to pay its debts in the ordinary course of business or being unable to pay its debts as they become due or the Customer ceasing or threatening to cease to carry on its business

2. These are the Standard Terms and Conditions of supply of PDMSL and they shall govern all agreements for the sale of Equipment by PDMSL to the Customer ("the Agreement"). Acceptance of the Equipment by the Customer shall constitute acceptance by it of this Agreement.

2.1. The invoice price of the Equipment shall be the price specified in any quotation or order confirmation and is exclusive of VAT.

2.2. Payment shall be due and payable within 14 (fourteen) days of the date of PDMSL's invoice.

2.3. PDMSL will endeavor to effect delivery of the Equipment by any delivery date requested by the Customer in writing in any order but time of delivery shall not be of the essence of any Agreement. PDMSL shall not be liable for any loss arising directly or indirectly from any failure to affect delivery on or by such date or otherwise whether such delay is caused by the negligence of PDMSL or otherwise.

2.4. PDMSL shall deliver or produce delivery of the Equipment to the address specified in the Customer's order. Unless otherwise expressly agreed in writing the price of the Equipment excludes all costs of packing, delivery and any equipment disposal charges, which shall be charged to the Customer in addition to the price of the Equipment.

2.5. The Customer shall examine the goods immediately on receipt. PDMSL reserves the right to reject claims in respect of shortages or damage in transit or non-delivery unless notified within 1 (one) business day after delivery of the goods or in the case of non-delivery, 7 (seven) days after the due date for delivery.

2.6. The Equipment shall be deemed delivered on the earlier of: (i) unloading at the Customer's premises; or (ii) the date of the invoice for the Equipment.

3.1. Risk in the Equipment will pass to the Customer on delivery.

3.2. Until all payments due from the Customer to PDMSL under this Agreement or otherwise have been received in full the Customer shall hold the Hardware in a fiduciary capacity or otherwise as bailee for PDMSL and the title to the Hardware shall remain with PDMSL and the Customer shall store the Hardware in such a way that it can be identified as the property of PDMSL;

3.3. PDMSL reserves the right to dispose of the Hardware and may retake possession thereof at any time and for that purpose may by its servants or agents enter upon any land or premises occupied or under the control of the Customer.

4.1. The Customer undertakes forthwith to enter into a separate license for the use of the Software and any associated documentation with the ultimate proprietor of the Software (the 'Proprietor') as appropriate on the Proprietor's standard terms and conditions from time to time and the Customer further undertakes to comply with any restrictions placed upon it by the terms of such license in relation to the use of the Software or the operation of the Equipment.

5.1. The Customer will indemnify and keep indemnified PDMSL against all claims losses damages costs (including legal costs on an indemnity basis) incurred awarded against or agreed to be paid by PDMSL resulting whether directly or indirectly from any breach by the Customer of clause 5.

6.1. A returns authorisation number to be provided by PDMSL customer service department is required for any Equipment returned to PDMSL regardless of the reason for return. Equipment returned without a returns authorisation number will be rejected.

6.2. A request for a returns authorisation number requires: (i) Equipment make and type (ii) Serial number (iii) Full description of the problem (iv) PDMSL's invoice number.

6.3. Equipment returned must be: (i) in approved supplier's packaging. Failure to comply may void the manufacturer's warranty, (ii) have the returns authorisation number clearly marked on the packaging (iii) be accompanied by evidence of prior PDMSL authorisation if a credit or refund is sought.

6.4. The cost and risk of delivery on returned goods will be borne as follows: (i) By the Customer when returning Equipment to PDMSL, (ii) On the return of the Equipment to the Customer: (a) If covered by manufacturer's warranty; by PDMSL to UK mainland addresses only. (b) If not covered by manufacturer's warranty or to addresses outside of the UK mainland, by the Customer

6.5. The return of Equipment to the Customer is conditional upon payment by the Customer of repair or replacement charges not covered by manufacturer's warranty.

7.1. The following provisions set out PDMSL's entire liability to the Customer in respect of any breach of its contractual obligations arising under this Agreement and any representation statement or tortious act or omission including negligence arising under or in connection with this Agreement.

7.2. Nothing in this Agreement will exclude or limit PDMSL's liability to the Customer for fraud or death or injury resulting from PDMSL's own, or that of its employees' agents' or subcontractors', negligence.

7.3. PDMSL's entire liability in respect of any Event of Default shall be limited to damages of an amount equal to: (i) £1,000,000 in the case of an Event of Default;

7.4. PDMSL shall not be liable to the Customer in respect of any Event of Default for loss of profits, loss of revenue, loss of business, loss of goodwill, loss or damage to or corruption of data, loss of opportunity, or any type of special indirect or consequential loss

even if such loss was reasonably foreseeable or if PDMSL had been advised of the possibility of the Customer incurring such loss or damage.

8.1. This Agreement shall be considered as an Agreement made in England and according to English Law and, shall be subject to the non-exclusive jurisdiction of the English Courts to which both parties hereby submit.

9.1. During the term of the contract and for 12 months thereafter the Customer will not without the consent of PDMSL employ or attempt to employ any employee or former employee of PDMSL to perform computer maintenance, information technology or computer related services (otherwise than through PDMSL pursuant to this Agreement or any Agreement in continuation or substitution of it) if that employee or former employee has had a direct involvement with the Customer during the period of the Agreement.

10.1. The Customer shall provide an environment which: (i) complies with all current Health and Safety requirements; (ii) allows safe access and working of PDMSL employees, agents and contractors; (iii) provides adequate service access space for use by delivery people, engineers, or others, whether directly employed by PDMSL or not, who may require access to the Customer's premises.

## Email and SMS Text Messaging Services

Acceptance of Conditions: The placing of an order for Email and SMS Text Messaging Services on Progress DMS Limited will confirm acceptance of these terms and conditions.

**Definitions:** In this agreement the terms have the following meanings; (a) "The Client" means any person, company, partnership, organisation or body at whose application, Progress DMS Limited agrees to provide the services under the terms of the agreement. (b) "The Agreement" means the contract between Progress DMS Limited and the Client to which these conditions will apply. (c) "Order" is the request by the Client for the services in the Agreement.

### 1. Email and SMS Text Messaging Services

Progress DMS Limited (PDMSL) provides an Email and SMS Text messaging service which enables clients to conduct their own bulk Email and SMS message campaigns.

### 2. Message Content

PDMSL processes messages on an automated basis. PDMSL is not responsible for the contents of a message or of its accuracy. PDMSL transmits messages in good faith and cannot be held responsible for the views or opinions of any message content, save for administrative messages generated by PDMSL.

### 3. Appropriate Usage of Service

It is not permitted to use any of the PDMSL services for illegal or unreasonable activities. Customers who send threatening or demeaning messages will have their account at PDMSL closed. PDMSL does not permit SMS "spam" and will close the account of any person or organisation who engages in unsolicited bulk messaging. Deliberate misuse of the PDMSL service, including obtaining message credits by deceit, will cause the customer account to be closed immediately. In the event of closure of the account any outstanding monies will fall due immediately. If you have not followed the above guidelines, you agree to indemnify us against any costs or losses we may incur as a result of any claims or legal proceedings that are brought or threatened against us by any third party.

### 4. Limitation of Liability

We do not limit our liability if you die or are injured as a result of our negligence or you suffer loss as a consequence of any fraud by us.

We shall not be liable to you in contract, tort (including negligence) or otherwise for any damage or loss arising from the consequences of viruses received by you via the Services or of our failure to provide the Services in accordance with these Terms and Conditions; or any economic losses (including loss of business, contracts, profits, revenues, capital or anticipated savings), any indirect, special or consequential loss, loss of data, goodwill or reputation or for any wasted expense including but not limited to the cost of using any other service or losses caused by viruses. Except for our liability for death or injury as a result of our negligence any liability we may have to you whether in contract, tort (including negligence) or otherwise for any loss or damage suffered by you in relation to the provision of the Services is limited to £500 in any 12 month period.

### 5. Force Majeure

We are not liable for any failure to perform our obligations if we are prevented from doing so by an event beyond our reasonable control (which may include, without limitation, strikes; labour disputes; acts of God; war; riot; civil action; malicious acts or damage; compliance with any law, governmental or regulatory order, rule, regulation or direction; any act or omission of any government or other competent authority; accident; equipment or services failure, including the unavailability of third party telecommunications services, lines, or other equipment; fire; flood or storm).

### 6. Data protection and privacy

PDMSL undertakes to comply with all applicable UK Data Protection legislation. We operate a privacy policy and reserve the right to publish the names and logos of our customers in our marketing material. We do not pass on your organisation's details to others except where necessary for the purpose of credit checking and setting up continuous payment authority.

### 7. Complaints/customer service

We care about our customers and endeavour to provide a complaints process that is fair, confidential and effective. PDMSL strives to provide a quality service to its clients at all times. If, however, we fail to meet our obligations or we disappoint you in some way, we encourage you to share with us our failings as soon as you are able to. We will then make all reasonable efforts to address your concerns within one working day.

### 8. Variation

PDMSL reserves the right to vary the terms of this Agreement or the nature of the Service at any time. PDMSL will inform you of any such changes through email, or such other medium, as PDMSL considers appropriate.

### 9. Copyright

Any web page or email design or entire site designed by PDMSL carries a copyright, and cannot be reproduced without written consent. The placing of an order by the client or other person/Agency on behalf of the client constitutes a guarantee that all

necessary authority and permissions have been obtained in respect of the artwork, design and photographs, for use in the advertisement. The Advertiser/customer must indemnify PDMSL in respect of all actions; proceedings; costs demands and claims arising from any such breach.

#### **10. Precautions**

Advertisements must comply with the Business Advertisements (Disclosure) Order 1997 and the Trade Descriptions Act 1968. Orders are accepted on condition that the wording complies with current legislation and conforms to the provisions of the British code of Advertising Practice.

## Onsite Equipment Installation, Service and Repair

These terms and conditions cover onsite equipment installation, service and repair ("Onsite Service") when purchased through Progress DMS Limited. Onsite Services will be provided between 8:00am and 6:00pm local time, Monday through Friday, excluding holidays.

#### **Customer Responsibilities**

The customer must place an order and make an appointment for delivery of Onsite Services and must have an adult of 18 years of age or older, with knowledge of the issues pertaining to the request for Onsite Service, present and available during the Onsite Service call by an engineer. If the customer fails to have such an adult present or misses an appointment, the customer will be charged with the loss of the onsite visit as if the visit were completed. The customer shall ensure that functioning power outlets, coaxial cables and other such wiring has been installed if necessary. The Customer undertakes to provide full and free access to the Equipment and working space and adequate facilities including electrical outlets within a reasonable distance from the Equipment. The Customer shall obtain, keep and make available to the Provider machine readable copies of all programs, data files and operating systems relating to the Equipment. The Provider does not take any liability for the Customer's inability to use its machine readable data.

The customer is responsible for ensuring that prior to receipt of Onsite Services all NORMAL PRECAUTIONS TO BACKUP SYSTEMS TO SAFEGUARD AGAINST ANY ACCIDENTAL LOSS OF DATA are taken. Progress DMS Limited will have no liability for loss of data or computer programs.

#### **Disclaimer**

Progress DMS Limited makes no warranty concerning onsite services, either express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose. Progress DMS Limited's liability is limited to the fees paid to Progress DMS Limited for onsite services. Progress DMS Limited is not responsible for any consequential, incidental, indirect or special damages loss, including but not limited to lost profits, loss of use of software, hardware or any other software or data and losses arising from delays in providing onsite services or inability to achieve any particular result, even if Progress DMS Limited is advised of the possibility of such damages or even if the damage is the direct result of an instruction or suggestion made by Progress DMS Limited.

## Technical and Web Application Support

These terms and conditions cover Technical and Web Application Support provided over the telephone ("Technical Support") when purchased through Progress DMS Limited.

The customer agrees to and is bound by these Technical Support terms and conditions for any purchase of Technical Support including purchases made at the time a system or application or other product is purchased from Progress DMS Limited. The scope of Technical Support is expressly limited to those statements set forth in the description of the purchased Technical Support stated in the Technical Support Agreement.

Standard Technical Support shall be available during the normal operating hours of Progress DMS Limited.

#### **Disclaimer**

Progress DMS Limited makes no warranty concerning Technical Support services, either express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose. Progress DMS Limited's liability is limited to the fees paid to Progress DMS Limited for Technical Support services. Progress DMS Limited is not responsible for any consequential, incidental, indirect or special damages loss, including but not limited to lost profits, loss of use of software, hardware or any other software or data and losses arising from delays in providing Technical Support services or inability to achieve any particular result, even if Progress DMS Limited is advised of the possibility of such damages or even if the damage is the direct result of an instruction or suggestion made by Progress DMS Limited.

## Software Consultancy Services

**Definitions:** In this agreement the terms have the following meanings;

"PDMSL" means Progress DMS Limited of No 5 Kingfisher Court, Hambridge Road, Newbury, Berkshire. RG14 5SJ. "Customer" means the Company to whom invoices are addressed. "Requirement" means the booking for the supply of personnel on a time and materials basis. "Deliverable" means the item (solution, body of work or document) to be supplied by PDMSL. When a Deliverable is to be supplied by PDMSL an appendix will be attached to the Consultancy Services Form describing / defining the Deliverable. "Consultant(s)" means the individual(s) being supplied for the Requirement or provision of a Deliverable. "Working Day" means any day from Monday to Friday (inclusive), which is not a statutory bank holiday. PDMSL's working hrs is 9AM - 5.00PM.



2.0 These terms and conditions shall apply to either:

- a) The fulfillment of a Requirement through the provision of Consultants on a time and materials basis. The same terms apply to external sub contractors and PDMSL's own employees. A contract will be formed between PDMSL and the Customer when a request to PDMSL is confirmed via the completion and return of an email or letter by the Customer which details the Requirement and confirms acceptance of these terms and conditions.
- b) the presentation of a defined Deliverable. A contract will be formed between PDMSL and the Customer when a request to PDMSL is confirmed via the completion and return of an email or letter by the Customer which details the Deliverable and confirms acceptance of these terms and conditions. For the avoidance of doubt, the email or letter confirmation will clearly state whether the booking is being made for a Requirement OR Deliverable OR both.

Cancellation of bookings

Cancellation of bookings made by the Customer must be presented in writing. The Customer may cancel a confirmed Requirement or Deliverable booking in accordance with the following charges: Cancellation period Charge More than 10 working days prior to commencement of the booking No Charge. Between 10 – 5 working days of commencement of the booking Charge equal to fifty percent (50%) of total price stated upon the booking form. Within 5 working days of commencement of the booking Charge equal to the full amount of the total price stated upon booking form.

Notification of cancellation shall be delivered personally, sent by e-mail, sent by fax or sent by first class post. Notice is deemed to have been served as follows: if personally delivered, sent by e-mail or sent by fax: at the time of delivery save that if it is served after 5pm it is deemed to have been served at 9am the next Working Day. if posted: one Working Day after the envelope containing it is delivered into the custody of the postal authorities. For all Requirements and Deliverables, the Consultant(s) will record hours of work upon time sheets. These time sheets will be made available to the Customer upon their request.

## Invoices

Invoices for work performed by Consultants representing PDMSL will be levied as follows: a) in the case of the provision of personnel, all work performed by Consultants will be invoiced upon completion of the Requirement when shorter in duration than 1 week. When the Requirement is longer than 1 week in duration, invoices will be raised on a weekly basis. The invoice will include the agreed rate for the Consultant and any subsequent expenses incurred. b) In the case of the provision of a Deliverable, all work performed by PDMSL will be invoiced in accordance with the agreed payment schedule stated in the email confirmation. For work performed on behalf of UK registered companies all amounts invoiced will be subject to VAT payable at a rate of 15%. Payment of invoices for Consultancy Services must be received in full by PDMSL within 30 days of the invoice date unless stated otherwise within the payment schedule for a Deliverable. PDMSL reserves the right to recover on a full indemnity basis any costs incurred collecting overdue payments. Prior to confirming a Requirement for the provision of a Consultant, the Customer shall have the opportunity to consider the background and experience of the Consultant, as well as the right to interview him or her. Once the Requirement is confirmed the responsibility for the quality and performance of the Consultant rests solely with the Customer at all times. In the event that the Customer is dissatisfied with the quality or performance of personnel provided, the Customer must state in writing, the basis for dissatisfaction. If, in the view of PDMSL, the situation merits it, PDMSL will withdraw the Consultant in question immediately and will use its reasonable endeavors to provide a replacement. Any complaint by the Customer in respect of work performed by a Consultant in respect of the techniques and methodologies that he has employed, shall be notified to PDMSL immediately and by no later than 5 working days after the completion of the Requirement. Failure to do so shall absolve PDMSL from any liability in respect of the Consultant provided. PDMSL accepts no responsibility for hardware or software provided by the Customer for a Consultant to work upon. It is the Customer's responsibility to ensure that the hardware and software has been installed and configured correctly for the purpose of the Requirement or Deliverable, unless installation and configuration of the items in question is an inherent function of the Requirement or Deliverable. When it is an inherent function of the Requirement / Deliverable to install and configure hardware and software supplied by the Customer, PDMSL cannot accept any responsibility for the quality and performance of the items in question. For such items Warranties and Service Agreements must exist directly between the Customer and the supplier. If the Customer requests that PDMSL's Consultant(s) deal directly with a 3rd party supplier due to a Warranty or Service issue OR if the activities of the consultant(s) are delayed as a result of problems with the items in question, all such time will be deemed as chargeable beyond any time / prices quoted regardless of whether a quote was for a Requirement (time and materials) OR Deliverable (fixed price). When commissioning PDMSL to produce a Deliverable, the Customer accepts responsibility for ensuring any text or image (either electronic or printed) provided to PDMSL, does not infringe copyright or any other laws. The Customer accepts that if the use of any text or images provided by the Customer results in PDMSL infringing copyright or any other laws, the Customer will be legally liable to pay any fees, fines or other costs associated with their use and publication. Upon receipt of Sign Off from the Customer for a Requirement or Deliverable, the Customer accepts that PDMSL have satisfactorily fulfilled their responsibilities. Any additional Support and Maintenance that is then required by the Customer will be beyond the scope of the booking in question. All such Support that is required will be chargeable as a separate booking for Consultancy Service OR via separate contractual mechanism for the supply of Support Services from PDMSL. In no circumstances shall the liability of PDMSL to the Customer exceed the cost of the Requirement or Deliverable. PDMSL reserves the right to cancel at short notice or substitute a Consultant with another of commensurate skill and certification if necessitated by circumstances beyond reasonable control. The Customer will make no approach or offer relating to employment to the Consultant during the period of the Requirement or production of a Deliverable. Upon completion of the Requirement or Deliverable, the Customer agrees not to engage a Consultant introduced by PDMSL in any form without the written consent of PDMSL. PDMSL reserves the right to charge the Customer accordingly for services required by the introduced Consultant. If a Consultant is engaged in full time employment by a Customer or by any 3rd party introduced by the Customer, it is agreed the Customer shall pay an introductory fee to PDMSL the equivalent of 40% of the annual remuneration package (including benefits and commission). Any variation of these Terms and Conditions shall be ineffective unless made in writing and signed by a senior representative of the Customer and PDMSL.

