

Terms & Conditions

1. Parties

The parties to this agreement are:

(a) the business named in the quotation hereto, be it a sole trader or partnership trading under a business name or in their own names or a company, and if a company whether in its own right or a trustee of a trust (the "Client"); and

(b) Tekheds Pty Ltd ABN: 38 523 587 392 as trustee for the Dutton Family Trust trading as Datamerge of Suite 2, 7 Hardy St, South Perth, Western Australia 6151 P O Box 356, Como, Western Australia 6952 ("Datamerge")

2. Provisions of Support Services & Supply of Equipment

2.1 Upon acceptance by Datamerge of a request to render Support Services and/or supply Equipment of the kind described in this agreement and payment in accordance with clause 2.2, Datamerge agrees to provide Support Services and/or supply the Equipment to the Client on the terms of this Agreement during the Term.

2.2 The Client shall pay Datamerge the invoiced sum for Support Services performed and Equipment supplied cash on delivery, unless otherwise agreed in writing in a formal credit application ("Payment Terms").

2.3 The Client may prepay any part or the entire invoiced sum at any time.

2.4 Datamerge may use any payment received from the Client in satisfying money due from the Client in any way Datamerge determines.

2.5 Datamerge may suspend the provision of Support Services in the event that the Client is in default of the Payment Terms. The suspension shall continue until such time as the Client makes the payment to Datamerge. Any period of suspension of the Support Services will not affect the amounts due and payable under this Agreement, and any Support Services foregone during the period of suspension will be forfeited.

2.6 If payment is made by cheque, the cheque shall be collateral only and shall not discharge the Client's obligation to pay under this Agreement until the cheque has been cleared by the drawer's bank. If the Client's cheque is dishonoured or if money owing pursuant to this Agreement remains unpaid after the due date, Datamerge may refuse to provide further services or goods until full payment is made.

2.7 The Client shall pay:

(a) interest on the overdue amounts at the National Australia Bank's Standard Credit Card Rate, as published by it from time to time; and

(b) an administrative fee of \$25.00 for each reminder letter sent by Datamerge seeking payment of an overdue account.

3. The Client's Obligations

3.1 The Client agrees to provide all necessary access to the Client's Hardware and premises generally and all

instructions, information and materials that are reasonably necessary and in a reasonable time so that Datamerge can carry out its obligations to the Client, including: a suitable environment for carrying out the Support Services, descriptions or instructions about business processes or transactions to be modelled, images, text, content, authorisations, third party requirements, documentation, graphs and schematics.

3.2 For the purpose of compliance with clause 3.1, the Client shall:

- (a) appoint a Client Contact(s) who must be: familiar with the Client's business processes; reasonably contactable and available; and able and authorised to follow Datamerge's instructions regarding issues that arise;
- (b) keep Datamerge informed of full contact details for the Client Contact(s) for the purpose of dealing with Datamerge;
- (c) provide Datamerge with any cooperation or information that it reasonably requires to provide the Support Services;
and
- (d) back up all its data so that no hardware or software error, defect or malfunction, nor any other event, will cause data loss.

4. The Client's representations and warranties

4.1 The Client represents and warrants to Datamerge that, except as disclosed in writing to Datamerge and dispensed with in writing by Datamerge:

- (a) it owns or leases the Hardware;
- (b) it has obtained and will maintain all necessary licences (including those relating to software), permits, consents, authorisations and approvals necessary to operate the Hardware and to permit Datamerge to perform the Services in respect of the Hardware; and
- (c) it has the legal authority to enter into this Agreement and all resolutions, authorities and consents required to enable the Client to enter into this Agreement have been passed or obtained.
- (d) entering this agreement will not conflict with, or result in any breach of, or require any consent or approval under, any mortgage, contract or other undertaking or instrument to which the Client is a party.

5. Retention of Ownership by Supplier

5.1 Ownership of the Equipment supplied by Datamerge does not vest in the Client until the Client has performed all its obligations under this Agreement.

5.2 In the event that the Client obtains possession of any Equipment before ownership has passed to the Client, the Client shall:

- (a) hold any goods supplied as bailee for Datamerge;
- (b) hold the proceeds of sale of any goods on-sold by it on trust for Datamerge in a separate account; and
- (c) surrender the goods to Datamerge on demand,

and if the Client fails to surrender any Equipment on demand, Datamerge may enter the premises of the Client, or such premises where any Equipment may be found, and retake possession.

6. Lien Over Hardware and Equipment

6.1 The Client acknowledges that Datamerge may exercise a lien over any of the Client's Hardware or Equipment that are in Datamerge's possession until all monies due and payable by the Client to Datamerge are paid.

6.2 The lien shall not be extinguished if the Client temporarily retakes possession of any Hardware or Equipment and the lien also extends to cover all monies owing by the Client to Datamerge, not just the money owing in respect of the services, goods supplied by Datamerge since Datamerge last obtained possession of the Hardware or Equipment.

7. Collection, Storage Fees & Disposal of Uncollected Hardware or Equipment

7.1 The Client shall collect any Hardware or Equipment that is not to be delivered to the Client's premises by Datamerge within seven (7) days of notification that the Hardware or Equipment is ready for collection.

7.2 Datamerge may charge the storage fees of \$5.00 per day if the Client fails to take delivery within seven (7) days of notification by Datamerge that any Hardware or Equipment is ready for collection.

7.3 If the Client fails to collect any goods within thirty (30) days of receiving notice that any Hardware or Equipment is ready for collection, Datamerge may sell any Hardware or Equipment and apply the proceeds of the sale in satisfaction of any outstanding money owed to Datamerge by the Client without the need to advise the Client.

7.4 Datamerge shall make reasonable efforts to sell the goods for their market value. Any monies in excess of the outstanding debt shall be held in trust for the Client.

8. Limitation of Liability

8.1 Datamerge cannot and does not warrant that the operation of the Hardware serviced or Equipment supplied by Datamerge will be continuous, uninterrupted or that it will be error free or that any data stored on Hardware serviced or Equipment supplied by Datamerge will be able to be restored.

8.2 Support Services that are rendered by Datamerge may not resolve the problems experienced by the Client, but the Client will nevertheless be liable for Datamerge's fees for providing the Support Services.

8.3 The Client acknowledges that no promise, representation or warranty or undertaking has been made or given by Datamerge, or any person or company on its behalf, in relation to the profitability of, or any other consequences or benefits to be obtained from the use or operation of any Equipment supplied by Datamerge.

8.4 Save and except to any rights and warranties not permitted to be excluded by law, the liability of Datamerge, at Datamerge's option, shall be limited to either:

(a) in the case of goods to any one or more of the following at the option of Datamerge:

(i) the replacement of the goods, or the supply of equivalent goods, or

- (ii) the repair of the goods, or
- (iii) the payment of the cost of replacing the goods or of acquiring equivalent Goods, or
- (iv) the payment of the cost of having the goods repaired, or
- (b) in the case of services to any one or more of the following at the option of Datamerge:
 - (i) re-provision of the services; or
 - (ii) payment of the cost of re-provision of the services,

and in either case, to any lesser liability permitted by the relevant law.

8.5 Subject to the law, Datamerge shall not be liable for any consequential damage that may result from a breach of this contract by Datamerge.

9. Fees, Charges & Enforcement Expenses

9.1 The Client shall reimburse Datamerge for all reasonable fees and expenses incurred by Datamerge in connection with the recovery of overdue accounts and/or the sale of Equipment in the event of failure to collect Equipment, including legal fees on a solicitor and client basis.

9.2 In addition to Datamerge's rights in clause 9.1, Datamerge may sue for any loss of profits and consequential damage it has suffered as a consequence of the Client's refusal or failure to perform its obligations under this Agreement.

10. Variation

10.1 The Parties may agree by mutual written consent at any time to vary this Agreement. No such variation shall take effect unless signed by both Parties and dated to record the commencement of the Agreement then in force.

10.2 The client may request by written notice to Datamerge, additions to the Support Services. Datamerge will use its best endeavours to provide any such increase in Support Services and any corresponding increase in Support Hours, but the Client acknowledges that it may not be possible or practical for Datamerge to provide the additional Support Services requested.

10.3 Datamerge may advise by notice in writing to the Client the removal of any Support Services and make a commensurate reduction in the number of Support Hours in the event that it is no longer practical or possible to provide the Support Services.

11. Confidential Information

11.1 "Confidential Information" means all information pertaining to the Support Services and the Agreement and includes all the ideas upon which the Support Services are based and materials provided by the Client or Datamerge in relation to the provision of the Support Services. It does not include any information which either party can prove was:

- (a) in the Public domain otherwise than as a result of the breach of this agreement;

- (b) received from a third party;
- (c) required, by law, to be disclosed; or
- (d) already known to it prior to receiving information.

11.2 Datamerge and the Client acknowledge that the Confidential Information is given and received in strict confidence.

11.3 Datamerge and the Client agree to:

- (a) take reasonable steps to secure all Confidential Information from unauthorised use, access, copying or disclosure and take reasonable steps to ensure that each employee to whom Confidential Information has been disclosed, keeps that information confidential and complies with such security measures at all times;
- (b) immediately notify the other party of any suspected or actual unauthorised access, use copying or disclosure of Confidential Information, and
- (c) provide such assistance as is reasonably requested by the other in relation to any proceedings that the other may take as a result of such suspected or actual breach of this agreement.

11.4 Datamerge and the Client agree not to disclose any Confidential Information to any person, other than their employees and contractors, without the consent in writing of the other party.

11.5 Datamerge and the Client agree not to, without the written consent of the other party:

- (a) reproduce any part of the Confidential Information;
- (b) describe verbally or in writing any part of the Confidential Information to a potential competitor of the other party; or
- (c) carry on or be directly or indirectly concerned or interested in any business that does anything specified in paragraphs (a) or (b) above,

except to the extent necessary or expedient to carry out the Services and back up material in the ordinary course of business of the parties.

12. Termination

12.1 Datamerge may replace these terms at any time, however, agreements to provide Support Services that are already underway shall be subject to these terms and the replacement terms will only affect Support Services not yet agreed to be provided by Datamerge.

12.2 Datamerge may cease providing Support Services if the Client is in default under this Contract or any other contract it has with Datamerge.

12.3 Any agreement to provide Support Services by Datamerge shall terminate immediately if the Client is in default of this Agreement and fails to remedy the default within 7 days of written notice being given to the Client of the default.

12.4 This Agreement terminates automatically:

(a) if a party:

(i) is in liquidation or in provisional liquidation or under administration;

(ii) is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved, in each case, other than for the purpose of a solvent reconstruction, amalgamation or reorganisation; or

(iii) becomes insolvent or is otherwise unable to pay its debts as they fall due, or

(b) at the end of the Term.

12.5 Termination of this Agreement shall be without prejudice to any rights or obligations which may have arisen.

12.6 Within 7 days of termination, each party shall return to the other party all Confidential Information it holds that belongs to the other party.

13. Recruitment of Employees and Contractors

13.1 During the Term and for a period of 18 months following its termination the Client shall not directly or indirectly do any of the following:

(a) solicit or encourage any employee or contractor of Datamerge, to leave the employ of or cease working for Datamerge.

(b) hire or contract any employee or Contractor of Datamerge.

13.2 The Client acknowledges that Datamerge invests substantial time and resources in its Employees and Contractors and accordingly the Client agrees that in the event that it breaches clause 13.1, it will pay Datamerge its loss and damage which the parties estimate is 18 months' average income of that employee or Contractor when last working with Datamerge, and the Client agrees to pay that amount as liquidated damages.

14. The Client as a Trustee

14.1 The sub-clauses of clause 14 apply if the Client is a trustee.

14.2 This Contract is binding upon the Client personally and in its capacity as trustee of the trust.

14.3 The Client warrants that:

(a) the trust is properly constituted as at the date of application and will continue to be so during the Term;

(b) the Trustee in entering this agreement is acting within the scope of its authority under the trust deed; and

(c) it will not permit any amendment or variation to the trust (to the extent that it is able), without the prior written consent of Datamerge.

15. Piracy

15.1 It is the Client's responsibility to ensure all computer software used by the Client is licensed to cover the Client's use.

15.2 It is the responsibility of Datamerge, as an agent of various computer software companies, to advise those companies of any licensing breach by a third party.

15.3 In the event that any unlicensed computer software is used by the Client, the Client acknowledges to Datamerge that Datamerge is not required to provide Support Services in respect of this computer software, notwithstanding any other provision in this Agreement.

16. Ownership, Copyright and Licences

16.1 The parties acknowledge that IP Rights subsist separately at the following different levels:

(a) the compilation of material that makes up the Software as a whole;

(b) the underlying components that make up the Software (the "Components") some of which may exist prior to the date of this agreement and which.

16.2 Except as otherwise specified in this Agreement, ownership of all IP Rights associated with any customised Software also vests in Datamerge.

16.3 Where IP rights vest in the Client, the Client will be given copies of the source code for all the client specific components, but not Datamerge's standard code libraries.

16.4 In so far as Datamerge develops or provides material for the use in the Software in which IP Rights remains with Datamerge, Datamerge hereby grants to the Client a license to use that material, for all intended purposes but the Client may not sub-license, copy, use or otherwise permit any third party to use or modify the Software or part thereof, except and for the purpose of ongoing development of the Software, without the written consent of Datamerge.

16.5 Ownership of all IP Rights associated with materials created by the Client and provided to Datamerge for use by it in providing the Services remain vested in the Client.

16.6 Each party warrants to the other that the other will not breach any IP Rights by using or reproducing material provided to it by the other party.

17. Miscellaneous Provisions

17.1 Assignment: Neither party may assign its rights and obligations under this Agreement without the prior written consent of the other party.

17.2 Sub-Contracting: Datamerge may sub-contract any or all of the Services to be performed, but shall retain prime responsibility for the Services under the terms of this Agreement.

17.3 Severability: The invalidity or enforceability of any one or more of the provisions of this Agreement will not invalidate, or render unenforceable, the remaining provisions of this Agreement.

17.4 Relationship between the Parties: Except as expressly stated to the contrary, each party enters this Agreement as an independent contractor and neither party is the partner, agent, employee or representative of the other party and neither party has the power to incur any obligations on behalf of, or pledge the credit of, the other party.

17.5 Jurisdiction: This Agreement is governed by the laws of the State of Western Australia and the Commonwealth of Australia as applicable and the parties hereby submit to the jurisdiction of the Courts of the State of Western Australia and the Commonwealth of Australia, as applicable.

17.6 Entire Agreement: This Agreement supersedes all previous agreements in respect of its subject matter and embodies the entire agreement between the parties. This Agreement incorporates by reference documents listed in the Agreement which Datamerge may amend from time to time in writing.

17.7 Waiver: No failure to exercise and no delay in exercising any right, power or remedy under this Agreement will operate as a waiver, nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

17.8 Notices: Any notice required to be served on either of the parties may be served personally or be left at or sent by letter addressed to the other party at the party's address specified in the Schedule. If posted, the notice shall be deemed to be served 48 hours after posting. Notices sent by facsimile shall be deemed to be duly given within 24 hours of receipt by the sender of a transmission control report from the dispatching machine indicating that successful transmission.

17.9 Force Majeure: No failure or omission by the parties to perform any of their obligations under this Agreement, except a failure to pay money: will be a breach of this Agreement; or will create any liability, if such failure or omission arises from any cause or causes beyond the control of the relevant party, including but not limited to acts of god, fire, storm, lightning, flood, earthquake, acts of the public enemy, war, rebellion, insurrection, riot, invasion, strikes and lockouts. A party seeking to rely upon this clause must promptly advise the other party by notice in writing of the details of the relevant event.

18. Definitions

Unless the context otherwise requires, the following terms have the following meanings:

Agreement means this agreement between Datamerge and the Client of which these terms and conditions form part, together with the any annexures to the agreement.

Equipment means any equipment supplied by Datamerge pursuant to this Agreement.

Hardware means the Client's hardware.

IP Rights means the following intellectual property rights in relation to Software:

(a) any patent, trade marks, copyright, registered design or other design right, electronic or circuit layout right and any corresponding property or right under the laws of any jurisdiction throughout the world;

(b) any right under the laws of Australia, or of any other jurisdiction throughout the world, to apply for the grant of registration of a patent, trade mark, copyright, design, electronic or circuit layout right or any corresponding property or right; and

(c) any rights throughout the world in respect of an invention, discovery, trade secret, know-how, concept, idea, information, data, source code, algorithm or formula.

Support Services means the Support Services provided by Datamerge to the Client.

Software means any Software developed pursuant to this agreement but also includes other materials in which copyright subsists.

Term means the term of this Agreement.

19. Datamerge Supplied Equipment Warranty Information

What is covered:

New equipment sold by Datamerge is covered by a manufacturers warranty where offered by the manufacturer. Depending on the manufacturer, the warranty generally covers parts and labour to repair or replace the equipment only. Refer to the specific warranty for the equipment you are purchasing for full details of warranty coverage.

The warranty covers only the equipment.

Subject to the foregoing, to the extent permissible by law, Datamerge excludes all liability for materials and replacement parts and any such manufacturers warranties.

What is not covered:

- Datamerge labour to reinstate any data / software / programs after equipment repair or replacement.
- Recovery and installation of system and application software and data.
- Cost of transporting the equipment to / from Datamerge's workshop where or the cost of Datamerge travelling to and from site.
- Any consequential or indirect loss or damage.

- Any accessories connected to or associated with the equipment (unless covered by the specific manufacturers warranty).
- Damage arising during transportation, installation, or while moving the equipment.
- Any work completed outside of business hours (8.30am - 5.00pm Monday to Friday).