

**Datatech UK Ltd**



# **Data Centre Terms and Conditions**

V13.10.15



## **Data Centre Terms and Conditions**

**These Terms and Conditions detail the expectations between Datatech UK Ltd and the Client and should read in conjunction with the Quotation[s] for Products / Services and Service Level Agreement as these documents together form the complete Data Centre Terms and Conditions.**

The Terms and Conditions have been broken down into twelve key aspects:

1. Term of Agreement
2. Scope
3. Datatech UK Ltd.'s Services
4. Committed Power
5. Committed Transit
6. Contractual Relationship, Beginning of Contract
7. Client Obligations
8. Client Responsibility and code of conduct
9. Data Centre Access
10. Datatech UK Ltd.'s Measures on Infringements of Rights and Threats
11. Payment Terms
12. Consistently Late or Non Payment
13. Datatech UK Ltd.'s Liability
14. Data Protection
15. Intellectual Property Rights
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Up-dated: October 2015

## 1. Term of Agreement

The initial Contract term of this Agreement is detailed in the Quotation[s] for Products / Services issued and signed by the Client.

## 2. Scope

- a) Datatech UK Ltd will deliver all of the Data Centre's services exclusively based on these Terms and Conditions. This document is exclusively used when a client makes use of the Terms and Conditions and these hold provisions that are contrary to or deviating from the present Terms and Conditions.
- b) The current version of the Terms and Conditions will apply during the "Minimum Contract Term" of the Agreement as per the signed Quotation Acceptance Declaration with the exception of Clause 2[g] below.
- c) At the end of the "Minimum Contract Term" the Agreement between the two parties will continue **SUBJECT** to Clause 2[d] below until such time as the Agreement is terminated either by either party giving 30 days' notice or by breach of these Terms and Conditions.
- d) At the end of the "Minimum Contract Term" the Terms and Conditions applying at the time will come into force and be applied to the continuing Agreement between the two parties including any future changes made to the Terms and Conditions.
- e) Datatech UK Ltd reserve the right to review the cost of services being provided to the Client whenever necessary. The Client will be advised of any changes in costs by Datatech giving 30 days' notice in writing to the Client.
- f) Datatech UK Ltd has the right to change this document at any time. Any changes made will be notified to the client within 10 days of the changes being made.
- g) Datatech UK Ltd will review the cost of electric on an annual basis. Should an increase be necessary Datatech UK Ltd will advise the Client of the increase by giving 30 days' notice. Any increase will apply to all Clients including those still within the "Minimum Contract Term".
- h) This document should also be read in conjunction with the Datatech UK Ltd Service Level Agreement
- i) The latest Terms and Conditions and Service Level Agreement documents are always available online by visiting [www.datatechuk.com](http://www.datatechuk.com).

## 3. Datatech UK Ltd.'s Services

- a) The scope of services provided by Datatech UK Ltd is determined and applicable at the time of the order.
- b) Internet Connectivity to the Data Centre shall be a minimum yearly average of 99.95%. Datatech UK Ltd informs all clients there may be occasions of reduced or limited connectivity due to third party actions. These reductions in service caused by a third party are not covered by Datatech UK Ltd.'s Service Level Agreement mandate; this particularly includes but is not limited to

Internet errors outside of Datatech UK Ltd.'s control and force majeure. Also client's hardware / software / infrastructure could also have an impact on the efficiency of Datatech UK Ltd.'s services, in such circumstances Datatech UK Ltd shall be deemed to be within the Terms of the Contract.

- c) Datatech UK Ltd performs maintenance work on a regular basis to ensure network security, integrity and efficiency. On some occasions it may be deemed necessary to temporarily restrict or interrupted services. All planned maintenance work will be carried out at times of low connectivity usage. On occasions of any planned maintenance when the reduction of service is going to be longer than 15 minutes all Datatech UK Ltd.'s clients will be informed. All notifications will be given a minimum of 48 hours prior to the commencement of any maintenance works. We will ensure that there are no more than three scheduled maintenance projects in any one calendar month that will cause an interruption to the client
- d) Datatech UK Ltd may, at our absolute discretion, change the infrastructure, backbone, hardware, software and third party suppliers at any time. Only if specific infrastructure, backbone, hardware, software and third party suppliers have been specified in the contractual agreement will there be no changes made without prior consent.
- e) Datatech UK Ltd has the right to modify services if in the best interests of the clients and Datatech UK Ltd.
- f) Datatech UK Ltd reserves the right to change or re-allocate IP addresses if required for technical or legal reasons. In this instance the client is required to co-operate in the changes to their systems.

#### 4. Committed Power

Power sharing between Racks within the Data Centre is **NOT** permitted under any circumstances and will be deemed to be a breach of these Terms and Conditions if it is found that power sharing has been set up.

All Clients can increase / decrease the agreed commitment on the committed power usage **SUBJECT TO** the conditions outlined below. This can be done only after a request in writing by the Client's authorised signatory has been made to and agreed by Datatech UK Ltd. Email requests from the Client's authorised signatory will be accepted as a written request.

##### a) Increase in Committed Power

Requests for an increase in committed power levels will be considered at any time during the term of the Agreement between Company and the Client.

Any agreed increase in the committed power usage will continue in force as the new monthly agreed commitment level until this Agreement is terminated.

##### b) Decrease in Committed Power

Requests for a decrease in the committed power level will **NOT** be considered until after the completion of the "initial" contract term as detailed in the signed Quotation[s] for Products / Services.

Therefore requests for a decrease in the committed power level will only be considered after the completion of the "initial" contract term

Any agreed decrease in the committed power will constitute a change to the terms of this agreement and will require the Client to formally sign a new Quotation[s] for Products / Services based upon the following terms

- i. the new committed power level will be for a minimum three month term
- ii. any request for a further decrease will only be considered by the Company after the initial three month period has been completed and upon the Client giving the required written notice as stated in the new Quotation[s] for Products / Services and signed by an authorised signatory.
- iii. at the Company's absolute discretion they may request the Client to pay a decrease charge equal to 50% of the monthly charge of the difference between the current committed power level and the new requested decreased committed power level based on a three month period.

Any agreed decrease in the committed power will continue in force as the new monthly commitment until this Agreement is terminated.

**All changes in agreement will commence after the next billing cycle.**

## **5. Committed Transit**

Committed transit is based on a per rack basis.

All Clients can increase / decrease the agreed commitment on the committed transit **SUBJECT TO** the conditions outlined below. This can be done only after a request in writing by the Client's authorised signatory has been made to and agreed by Datatech UK Ltd. Email requests from the Client's authorised signatory will be accepted as a written request.

### a) Increase in Committed Transit

Any agreed increase in the committed transit usage will continue in force as the new monthly commitment until this Agreement is terminated.

### b) Decrease in Committed Transit

Requests for a decrease in the committed transit level will **NOT** be considered until after the completion of the "initial" contract term as detailed in the signed Quotation[s] for Products / Services.

Therefore requests for a decrease in the committed transit level will only be considered after the completion of the "initial" contract term

Any agreed decrease in the committed transit will constitute a change to the terms of this agreement and will require the Client to formally sign a new Quotation[s] for Products / Services based upon the following terms

- iv. the new committed transit level will be for a minimum three month term
- v. any request for a further decrease will only be considered by the Company after the initial three month period has been completed and upon the Client giving the required written notice as stated in the new Quotation[s] for Products / Services and signed by an authorised signatory.
- vi. at the Company's absolute discretion they may request the Client to pay a decrease charge equal to 50% of the monthly charge of the difference between the current committed transit level and the new requested decreased committed transit level based on a three month period.

Any agreed decrease in the committed transit will continue in force as the new monthly commitment until this Agreement is terminated.

**All changes in agreement will commence after the next billing cycle.**

## 6. Contractual Relationship, Beginning of Contract

- a) The Commencement Service date is 20
- b) Once contracts are signed the agreement will commence from the date stated in 4a above. Failure as a result of Datatech UK Ltd not meeting those agreement dates for whatever reason, will result in the contract starting on activation of the clients connections.
- c) In certain circumstances, Datatech UK Ltd will accept confirmation of orders via email from an Authorised Person **PROVIDED** the Client is already a Data Centre Client of Datatech UK Ltd and as such is known to Datatech UK Ltd.
- d) All items detailed in this document become applicable once the contract is signed or in the case of Clause 3c an email has been received from an Authorised Person of the Client.
- e) It is agreed by both parties of any Agreement that all Dedicated Servers will carry a minimum 12 month contract period.

## 7. Client Obligations

- a) It is the client's obligation to provide all the correct information required be it email addresses, bank details etc. Failure to do so will be a breach of contract. A New Client Information Form will be provided for completion by the Client with the required information needed by Datatech UK Ltd for our records.
- b) The required Client Information Form asks the Client to appoint one or more Corporate Representatives and once appointed you agree to be bound by any decision confirmed by any named Corporate Representative.
- c) You should maintain at least one member of your operations personnel who understands this Agreement.
- d) Datatech UK Ltd sends all notifications via email. All information sent will be checked to see if the mail has been delivered. It is the responsibility of the client to check and read their emails. Delivery of emails to the nominated Client email address and / or Corporate Representative email address will be proof of notice being served.
- e) It is the client's responsibility to set up their systems so as not to restrict or impede the integrity or security of Datatech UK Ltd.'s infrastructure. Failure to conform to this may result in restriction of service or if constantly flouting the terms and conditions may result in suspension of services and cancellation of the contract.
- f) It is at the client's discretion whether they wish to disclose passwords to Datatech UK Ltd for administration purposes. Any passwords that are disclosed are not recorded for security purposes. Datatech UK Ltd recommends changing system passwords on a regular basis.

- g) Datatech UK Ltd recommends that all data stored in the Data Centre is backed up. The client can provide their own solution or chose one of Datatech UK Ltd.'s backup service solutions. Datatech UK Ltd **will not** under any circumstances be responsible for any loss of data.
- h) Datatech UK Ltd recommends that Clients supply their own firewall equipment. Datatech UK Ltd **will not** be held responsible for lack of security measures that could enable a breach of the equipment.
- i) Datatech UK Ltd recommends that Clients install their own UPS devices for added protection

## 8. Client Responsibilities and Code of Conduct

- a) The client is responsible to ensure the content and data stored on their systems are within legal restraints and third party rights. In respect of international domain laws of other countries that may apply.
- b) The clients systems must be free of any extremist, pornographic or commercially oriented erotic content. It is the Client's responsibility to check hyperlinks and third party websites for their content. Failure to do so could lead to a reduction or suspension of service.
- c) The sending of spam is strictly forbidden, this also includes unlawful and unsolicited promotional material to third parties. Failure to comply will lead to a reduction or suspension of service.
- d) The client is responsible for maintaining usage within the agreed levels as outlined in the completed and signed Quotation / Order Form. Any excess usage will be charged to the client on a monthly basis and the client agrees to the payment of any excess charges. Continued over usage may result in services being restricted and at the discretion of Datatech UK Ltd may result in the cancellation of this Agreement.
- e) If during the term of this Agreement the client commits to an increased level of usage, this commitment is for the remaining period of the Agreement until such time as there is another agreed increase or the Agreement is terminated. The committed usage once increased **cannot** be decreased.
- f) The client acknowledges that they are responsible for any damage caused to Datatech UK Ltd equipment for whatever reason and will replace the equipment at their own expense and within a reason time period of no more than 10 days.
- g) It is the client's responsibility to ensure that **ALL** their own equipment installed in the Data Centre is fully insured. Datatech UK Ltd.'s own insurance cover does **NOT** cover any client equipment. Datatech UK Ltd **will not** accept any liability for any un-insured equipment.

## 9. Data Centre Access

Access to the Data Centre is strictly controlled and only authorised persons will be allowed access. Clients are asked to nominate staff that are to be allowed access and these people are required to provide a valid Driving Licence or Passport by way of identification. It is the sole responsibility of the client to keep Datatech UK Ltd up to date on authorised people.

Clients are asked to give at **least 30 minutes** notice to Datatech UK Ltd that they require access to the Data Centre together with the name[s] of people attending and the expected time of arrival. This will allow Datatech UK Ltd to ensure that an engineer is on site to provide access as requested.

Datatech UK Ltd reserve the right to make a charge for clients not turning up at the requested time or who are more than 15 minutes late unless Datatech UK Ltd have been duly notified that the client will be late or the appointment is cancelled. The charge will be based upon a set fee of £25.00 plus VAT per fifteen minutes.

Datatech UK Ltd also reserve the right to charge the client for any assistance that is given to them in respect of work they are carrying out. The charge rate will be based upon a minimum charge rate of £75.00 plus VAT per half hour.

## **10. Datatech UK Ltd.'s Measures on Infringements of Rights and Threats**

- a) Datatech UK Ltd has the right to restrict or deny service if there is a breach of these Terms and Conditions.
- b) A restriction can be placed on services if Datatech UK Ltd believes Terms and Conditions have been ignored. It is the client's responsibility to prove that they have kept within the Terms and Conditions.
- c) It is down to the sole discretion of Datatech UK Ltd on what action to take against breaches of the Terms and Conditions.
- d) In no respects shall the client surrender the use of Datatech UK Ltd owned dedicated servers to third parties. All Agreements must be agreed with Datatech UK Ltd prior to the completion of the contract.
- e) Datatech UK Ltd has the right to restrict service if they deem that necessary to preserve the integrity of the infrastructure.
- f) If at any time the security or integrity of the infrastructure is put at risk by the client, Datatech UK Ltd has the right to restrict or deny service.
- g) For all breaches of service the client will be notified in writing, either by email to the nominated Client and / or Corporate Representative email address or by post to the Registered Office of the Client.
- h) If the contract is to be cancelled because of a breach of any Terms and Conditions then the full cost of the remaining period of the contract will be required to be paid in full within 30 days of the issue of the Invoice following the Cancellation of Contract notification to the Client.
- i) Failure to make any Termination Payment by the due date will result in Datatech UK Ltd charging a Late Payment Fee at a rate of 8.00% above the Bank of England base rate prevailing at the time until such time as payment in full is received.
- j) Datatech UK Ltd reserves the right to retain any Client equipment held in our Data Centre[s] until such time as all outstanding payments have been paid in full.

## **11. Payment Terms**



- a) The client shall pay Datatech UK Ltd on demand all applicable charges for the relevant Service[s] at rates specified in the agreed contract.
- b) Payments are taken by way of Direct Debit on or around the 15<sup>th</sup> of each month.
  - i. Where a Direct Debit payment fails because of the actions or omission of the Client Datatech UK Ltd reserve the right to charge a Late Payment Charge as detailed below
  - ii. Where Client payments fail in this way more than once Datatech UK Ltd may require future payments to be made in advance
  - iii. Repeated failure to make payments under the agreed Direct Debit is regarded as a breach of these Terms and Conditions.
- c) Non Direct Debit payments are due within 7 days of the issue of the monthly Invoice and carry a Five Pounds [£5.00] per month administration charge.
  - i. If payment is received by the due date no further fees will be added
  - ii. If payment is received after the due date Datatech UK Ltd reserve the right to charge a Late Payment Charge as detailed below
  - iii. If payment is not received within 30 days of the Invoice date Datatech UK Ltd will regard this as a breach of these Terms and Conditions
- d) Rental for the service[s] will start on the Commencement of Service Date as stated in 3a above, unless Datatech UK Ltd notify the client of a later date for the start of service when rental will be payable from the revised date.
- e) Rental is payable in advance but at our absolute discretion we may bill you in arrears. Except for temporary services. You must pay rental in accordance with Datatech UK Ltd.'s billing cycle. We will apportion rental on a daily basis for incomplete billing periods.
- f) All amounts due under this Agreement shall be paid in full without any deduction or withholding other than as required by law. The client shall not be entitled to assert any credit, set-off or counterclaim against Datatech UK Ltd in order to justify withholding payment of any such amount in whole or in part.
- g) Datatech UK Ltd reserve the right to charge interest calculated on a daily basis on any balances which remain unpaid from the due date to the date of payment at a rate of 8.00% above the Bank of England Base Rate prevailing at the time of non-payment and until such time as payment in full is received. The due date being 7 days from the issue of such Invoice.
- h) Datatech UK Ltd reserve the right to charge an administration fee of £25.00 in addition to any interest charged as outlined in clause 7e above
- i) If significant extra effort is required by Datatech UK Ltd to collect payments due, then Datatech UK Ltd reserve the right to charge additional administration fees.

## **12. Consistently Late or Non Payment**

Consistently Late payments or Non-payment of invoices due for a period of three consecutive months will result in Datatech UK Ltd issuing a 7 day Suspension Notice to the Client requesting payment in full. Failure to make the required payment will result in services being suspended **WITHOUT FURTHER NOTICE** pending payment in full being received. Whilst services are suspended no access to the Data Centre will be granted under any circumstances and any client equipment will become the property of Datatech UK Ltd until such time as all outstanding invoices have been paid in full and services have been re-instated.

In the case of Consistently Late payments or Non-payment Datatech UK Ltd reserve the right request a "security" deposit from the client equal to the last three month's invoices [including VAT] to be paid to cover any potential future non-payment. Once payments have then maintained and paid in full by the due date for a six month period we will return the "security" deposit to the client. It should be noted that the "security" deposit is **NOT** in lieu of either outstanding payment of future invoices that are issued during the six month period but in **ADDITION** to any invoices issued.

Should services remain suspended for a period of one month from the suspension date because of non-payment of the outstanding amount due to Datatech UK Ltd and then recovery action will be commenced via the Courts without any **FURTHER NOTICE** being issued to the client.

### **13. Datatech UK Ltd.'s Liability**

- a) In respect to all non-contractual and contractual claims that may arise Datatech UK Ltd shall only be liable according to the following conditions:
  - i. Full liability for intentional damage or death or bodily harm or injuries to health; if the claim is based on Product Liability the extent of the liability is determined by the national transformation of Product Liability Directive (85/374/EEC)
  - ii. Full Liability for damage caused by negligence of legal representatives, executives or persons employed in the contractual obligations
  - iii. If the client is a public law entity, an entrepreneur or a public sector special fund, Datatech UK Ltd.'s liability for damage due to gross negligence of standard employees is restricted to the damage typically foreseeable at the conclusion of the contract; Datatech UK Ltd.'s liability is restricted to the overall sum of the contractual fees that Datatech UK Ltd has received from the client in the context of the specific contract during the last two years preceding the occurrence of the action causing the damage; the liability for gross negligence towards clients is unlimited.
  - iv. In the event of negligent infringement of an obligation essential for the contract, liability is restricted to the damage that was typically foreseeable at the conclusion of the contract.
  - v. In the event of ordinary negligence, Datatech UK Ltd.'s liability is restricted to the overall sum of the contractual fees that Datatech UK Ltd has received from the client in the context of the specific contract during the last two years preceding the occurrence of the action causing the damage; liability for indirect damage due to ordinary negligence is excluded.

- b) All claims for international damage or damage due to gross negligence or death or bodily harm and/or injury to health, all damage claims are subject to a limitation period of one year from the date of the action causing the damage.

#### 14. Data Protection

Datatech UK Ltd collects and processes data based on legal provisions for Data Protection. All details can be found in Datatech UK Ltd.'s Data Protection Statement / Privacy Policy. This is available at [www.datatechuk.com](http://www.datatechuk.com). Datatech UK Ltd are registered with the Information Commissioners Office under Register Entry Z9529613

#### 15. Intellectual Property Rights

Datatech UK Ltd reserves the Intellectual Property Rights on all but not limited to any coding, scripts or services provided to the client within the Data Centre.

#### 16. Terms of Termination of Contract

- a) All termination of contract applications are to be made in writing and sent to [accounts@datatechuk.com](mailto:accounts@datatechuk.com) or by post to The Accounts Manager, Datatech UK Ltd, Prospect House, Fishing Line Road, Redditch, Worcestershire B97 6EW or by Fax to 01200 400611
- b) All applications to terminate a contract shall be signed by a nominated Corporate Representative and authorised signatory of the company applying for the termination. Applications signed by unauthorised signatories **will not** be accepted.
- c) Datatech UK Ltd reserves the right to terminate any contractual obligations due to lack or continual late payment or for any other good cause stated in the client obligations section above. Any contract terminated will be completed after reasonable written notice is given.
- d) Datatech UK Ltd reserves the right to terminate any contractual obligations should the Client Company cease to trade; file for Dissolution; enter into Administration or Liquidation. Any unpaid outstanding balances will be recoverable by way of retention of any Client equipment held by Datatech UK Ltd or by due process through the Courts of Law.
- e) If for whatever reason the contract is terminated by either party other than for a breach as stated in Clause 6, then half of the full cost of the remaining period of the contract will be required to be paid in full within 30 days of the issue of Cancellation of Contract notification and Invoice.
- f) Failure to make any Termination Payment by the due date will result in Datatech UK Ltd charging a Late Payment Fee at a rate of 8.00% above the Bank of England Base Rate prevailing at the time until such time as payment in full is received.
- g) Datatech UK Ltd reserves the right to retain any Client equipment held in our Data Centre[s] until such time as all outstanding payments have been fully paid.
- h) Should, for any reason, Datatech UK Ltd require the removal of all or any Client equipment they will give 3 months written Notice to the Client. It is agreed that under the terms of this agreement Datatech UK Ltd will not

have to provide any reason for this request and the Client agrees to comply with the request by removing all or any equipment as requested.

**17. Indemnity**

The Client shall compensate Datatech UK Ltd for any damage caused from a breach of the forgoing provisions to the extent that it is responsible for. Any compensation shall also include reasonable costs for any legal defence that may be necessary.

Datatech UK Ltd will inform the Client without delay if Datatech UK Ltd or any third parties assert such claims and shall give the Client ample opportunity to state their views.

**18. Entire Agreement**

- a) This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- b) Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding [whether in writing or not] of any person [whether party to this agreement or not] relating to the subject matter of this agreement, other than as expressly set out in this agreement.

**19. Amendment to Terms & Conditions**

These Terms and Conditions may be amended by Datatech UK Ltd at their absolute discretion and any amendments will be posted on our website [www.datatechuk.com](http://www.datatechuk.com) for client’s information.

Amended Terms and Conditions will come into force and will be binding upon both parties should the services continue beyond the initial Contract period as agreed by both parties even if no further Contract is signed to extend the period for the provision of services.

Latest Terms and Conditions apply and are available on our website [www.datatechuk.com](http://www.datatechuk.com).

**20. Governing Law**

These terms and conditions shall be governed by and construed in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English courts.

**WHEREBY IT IS AGREED as follows:**

**IN WITNESS** whereof the hands of the parties have duly agreed to the Terms and Conditions herein as at the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

**SIGNED for and behalf of DATATECH UK LTD**

**By**.....

**Name**.....

**Position**.....

**SIGNED for and behalf of the CLIENT**

**Company Name.....**

**Signature.....**

**Name.....**

**Position.....**