

# DWCC LTD, TERMS AND CONDITIONS

Version 3.0: DWCCMSA201902

## 1. Duties

Under the term of this managed services agreement ("Agreement") by and between DWCC Ltd. ("DWCC") and any customer of DWCC ("Customer"), DWCC may perform business and sales development services ("Services") for Customer as described in any statement of work or change control ("SOW"), which is incorporated into this Agreement by reference. Each SOW and the terms of this Agreement will become binding when both parties, DWCC and Customer, have executed the SOW. Once mutually executed, then DWCC will use its best commercial efforts to perform the Services as described in the SOW.

## 2. Compensation

As consideration for this Agreement, Customer will pay compensation to DWCC in the amounts and payment schedule as described in the SOW.

## 3. Expenses

Customer will reimburse DWCC for reasonable and necessary out-of-pocket expenses that DWCC incurs in connection with the Services. As a condition of reimbursement, DWCC must obtain written approval from the Customer for such expense in advance of being incurred and then submit to Customer an actual expense receipt or costs of the amount expended by DWCC.

## **4. Foreign Currency Exchange Rates**

DWCC operates a global business and our Services are usually invoiced in Customer's local currency.

Every SOW will contain the billing currency exchange rate to GBP at the time of Agreement execution. This exchange rate will be the average foreign exchange rate of the local billing currency to GBP for the 90 days prior to Agreement execution ("Base Contract FX Rate").

To protect both parties from any currency exchange fluctuation the average 90 day foreign exchange rate at the time of any invoice will be compared to the Base Contract FX Rate. In the case of a rate variance of  $\pm 5\%$  a foreign exchange adjustment line will be added to true up the contracted rate of the invoice.

Any Customer approved travel and out-of-pocket expenses will be incurred in local currency and then converted into the currency in the SOW by applying the average daily exchange rates for the 30-day period immediately preceding the date of the expense invoice.

The record of reference for all historic exchange rates shall be:- [www.oanda.com](http://www.oanda.com)

## **5. Inflation**

DWCC provides rolling, multi-year SOWs to its Customers. As such, DWCC will review its rates on an annual basis, reserving the right to increase the SOW rates in line with the equivalent percentage of the increase of the National Consumer Price Index of the United Kingdom.

The record of reference for the Consumer Price Index shall be:-  
<https://www.ons.gov.uk/economy/inflationandpriceindices>

## **6. Terms and Termination**

The term of this Agreement (“Term”) will commence upon the Effective Date as specified in any SOW and will expire upon the termination date indicated in the SOW, or upon the completion of the Services, whichever is sooner. Any extension of the Term will be addressed in the SOW and the Term of the SOW shall control.

Either party may terminate this Agreement as provided in the SOW. In the event of any early termination as provided in the SOW, Customer will pay DWCC for Services rendered up to the date of termination.

Notwithstanding the foregoing, the Confidential Information and the Intellectual Property Rights sections in this Agreement will survive the expiration or early termination of this Agreement or any SOW.

## **7. Non-Solicitation**

Both parties agree that for a period of fifteen (15) months following expiration or termination of this Agreement, neither party will hire, solicit or encourage any current or prospective customer or employee of the other party to terminate their relationship with that party or interest in that party's products and services. In the event Customer wants to hire any employee or contractor of DWCC, DWCC must agree to such transfer in writing. In addition, Customer agrees to pay DWCC a one-time placement fee equal to 20% of the total compensation to be paid to such employee or contractor.

## **8. Independent DWCC Status**

DWCC is an independent contractor and not an employee or agent of Customer. DWCC represents that DWCC has all business permits, certificates, and licenses necessary to perform the Services. Except for the Services as provided in the SOW, DWCC is not authorized to legally bind Customer and will not represent to any third party that DWCC is authorized to do so on behalf of Customer.

## **9. Not an Employee**

DWCC understands that this Agreement does not constitute a contract of employment or obligate Customer to employ DWCC or any of DWCC's employees at all or for any stated period of time. DWCC will not be eligible for any employee benefits (except any that, by law, must be made available to independent contractor), nor will Customer make deductions from payments made to DWCC for taxes, all of which will be DWCC's responsibility.

DWCC must report as income all compensation received by Customer under this Agreement, and DWCC will pay all self-employment and other taxes. DWCC will indemnify Customer and hold it harmless to the extent of any obligation imposed on Customer (i) to  
Confidential Information - Managed Services Agreement

pay in withholding taxes or similar items or (ii) resulting from DWCC's being determined not to be an independent contractor.

## **10. Work Manner**

Both parties agree that during the term of this Agreement, they will perform Services to the best of their commercial ability and in a professional manner. Neither party should conduct Services in an unprofessional manner which shall include, but not be limited, to activity that can be deemed as: misuse of property, discrimination, harassment, sexual harassment, malicious, defamatory, illegal or activity as protected by applicable federal, state or local law.

## **11. Information Technology**

The Customer may provide DWCC access to Customer-specific email, voicemail, Internet and applications to enable DWCC to provide Services on behalf of the Customer ("Information Technology"). DWCC's use of passwords to access Information Technology must be properly maintained and secured as Confidential Information and must be periodically disclosed to Customer. Use of Information Technology should conform to the terms of this Agreement and all Information Technology should be applied solely for the purposes of providing the Services. All information established, transmitted and possibly stored within the Information Technology for the Services provided to Customer are considered the property of Customer.

## **12. Confidential Information**

The DWCC will be provided as needed access to Customer's network, resources, documentation and applications, including Customer's customer relationship management (CRM) system and electronic mail.

In the course of providing the Services, DWCC may have access to trade secrets, business practices, strategies, customer and prospect lists, leads, supplier lists, inventions, innovations, processes, information, records and specifications that are owned by or proprietary to Customer (collectively, "Confidential Information"). Customer Confidential Information will not include any information in DWCC's database, any autonomous information nor any information not specifically generated by the Customer.

DWCC will not reproduce any Confidential Information without Customer's prior written consent, will not use any Confidential Information except in the performance of the Services during the term of this Agreement, and will not disclose any Confidential Information in any form to any third party, either during or after the term of this Agreement without Customer's prior written consent.

Upon the expiration or termination of this Agreement, DWCC will promptly destroy or return to Customer all copies and derivatives of any Confidential Information, whether in DWCC's possession or under DWCC's direct or indirect control. DWCC will sign a Customer-provided disclosure agreement upon the start of the Services.

### **13. Data Protection & Compliance**

## **Data Controller**

For personal data that DWCC sources and collects for our Customers, DWCC will be deemed as the “Data Controller”. As such DWCC is accountable for ensuring that processing activities are compliant with EU data protection law. DWCC should demonstrate the data subject's consent for processing their personal data. Requests for consent will be presented in a manner clearly distinguishable from other matters and in an intelligible and easily accessible form. Consent may be withdrawn by data subjects at any time.

## **Data Processor**

Where a Customer provides data to DWCC for processing; including, but not limited to, web registrations, event data, procured data lists, historic data sets and the like, the Customer shall be deemed as the “Data Controller” and as such will be responsible for being compliant with EU data protection laws of any data provided to DWCC for processing.

## **Local Telephone / Marketing Protection Services**

In addition to data compliance there are local regulatory bodies that apply extra controls and restriction over email and phone correspondence. As a Data Processor, DWCC will comply with all such regulations, in line with the Services. Where required, DWCC reserves the right to perform screening of any data provided against these local regulatory bodies with any reasonable costs being invoiced to the Customer.

## **14. Intellectual Property Rights**

DWCC will be the sole and exclusive owner of any and all of DWCC's software and intellectual property that it owns and uses in providing the Services to Customer (“DWCC

IP"). DWCC IP will include any marketing and sales assets, market know how, company information in the DWCC database and any other autonomous data generated by DWCC during the course of any engagement with any customer of DWCC.

Except for DWCC IP, Customer will be the sole and exclusive owner of any and all inventions, discoveries, developments, designs, innovations, information and works of authorship that are conceived by DWCC under this Agreement and that (1) relate to Customer's business or its anticipated research or development, (2) are developed using Customer's equipment, resources, supplies, facilities, trade secrets, Information Technology, or time, or (3) result from DWCC's performance of the Services (collectively, the "Intellectual Products").

DWCC assigns all of DWCC's right, title, and interest in the Intellectual Products to Customer. DWCC will execute all papers, including patent applications, invention assignments, and copyright assignments, and will otherwise assist Customer (at Customer's expense) to perfect its rights to the Intellectual Products. DWCC irrevocably appoints Customer as DWCC's attorney-in-fact with authority to execute, on behalf of DWCC, all papers necessary to perfect Customer's rights in the Intellectual Products.

Unless provided in the SOW, DWCC grants to Customer a non-exclusive, perpetual, worldwide, royalty-free, irrevocable license to use any DWCC IP that DWCC uses in rendering the Services or that DWCC incorporates into any work produced in rendering the Services, including but not limited to any inventions, discoveries, innovations or works of authorship that were conceived and owned by DWCC prior to the term of this Agreement. Customer may assign this license to any subsidiary or other affiliated entity of Customer but will not market any DWCC IP separate from Customer's products.



Any Intellectual Products which is copyrightable subject matter shall be considered "works made for hire" as that term is defined in the United States Copyright Act with Customer as the sole author and owner. DWCC further irrevocably transfers and assigns to Customer without reservation all right, title and interest in the Intellectual Products throughout the universe in perpetuity in all media, whether now known or later devised, and in all copyrights, patents, mask work rights, trade secrets, database rights or other intellectual property rights, however denominated. DWCC waives any so-called "moral rights" in the Intellectual Products and agrees to waive and not assert any so-called "moral rights" against Customer.

#### **14.1 General Reference to the Customer**

The Customer agrees that DWCC may use the Customer's name and logo on DWCC's websites and as a part of a general list of DWCC's customers for use and reference in corporate, promotional and marketing material. Any specific Customer case studies or endorsements from the Customer must be agreed to by the Customer.

### **15. Third Party Rights**

DWCC represents and warrants that DWCC is not under any existing obligation in conflict with this Agreement and has not granted any rights or licenses to any intellectual property or technology that would conflict with Customer's rights or DWCC's obligations under this Agreement. DWCC warrants that DWCC has the right to disclose or use all ideas, processes, techniques, intellectual properties and other information, if any, that DWCC will disclose to Customer or use in the performance of the Services, without liability to any third party.

DWCC will not knowingly infringe upon any copyright, patent, trade secret or other property right of any third party in the performance of the Services and will not disclose or otherwise make available to Customer in any manner any confidential information received by DWCC from third parties if doing so would violate DWCC's obligations to the third parties.

## **16. Insurance**

DWCC will, at DWCC's sole expense, obtain insurance covering such risks and with such coverage limits as are reasonable and customary in view of the Services to be rendered and the risks associated with the Services. If deemed necessary by the Customer, the DWCC will provide evidence of insurance within ten business days upon the Customer's request.

## **17. Indemnification**

The DWCC agrees, to the fullest extent permitted by law, to indemnify and hold harmless Customer, its officers, directors and employees against all damages, liabilities or costs, including reasonable attorneys' fees and defence costs, to the extent caused by the DWCC's negligent performance of the Services under this Agreement.

The Customer agrees, to the fullest extent permitted by law, to indemnify and hold harmless DWCC, its officers, directors and employees against all damages, liabilities or costs, including reasonable attorneys' fees and defence costs, to the extent caused by Customer's negligent acts under this Agreement including the acts of its contractors, sub-contractors or consultants or anyone for whom Customer is legally liable.

Customer and DWCC agree that in no event shall either party's liability under this Agreement for any such claim exceed the total amount of compensation paid by Customer to DWCC under the applicable SOW of this Agreement. Under no circumstances will either party be liable for any special, consequential or indirect damages under this Agreement.

## **18. Governance; Unenforceability of Provisions**

The DWCC and Customer agree that this Agreement shall be governed under the laws of the United States of America and under the exclusive jurisdiction of the California federal and state courts located in the San Francisco County. If any provision of this Agreement is held to be invalid or unenforceable or to cause any other portion of this Agreement to become invalid or unenforceable, then that provision will be deemed to be limited, modified or stricken to the extent necessary to effectuate, as nearly as possible, the original intent of the parties and economic effect as expressed in this Agreement and any SOW and the remainder of this Agreement will continue in full force and effect.

## **19. Notices**

Any notice given under this Agreement must be in writing and will be deemed to have been given upon delivery if delivered personally or by courier; upon receipt if transmitted by email, facsimile or other electronic means with acknowledgment of receipt; three working days after it is deposited, prepaid, in the regular mail for domestic delivery; and five working days after it is deposited, prepaid, in the regular mail for international delivery; provided, in each instance, that the notice is addressed to the recipient as indicated in the applicable SOW, as that information may be updated by written notice to the other party.

## **20. Sole Agreement; Counterparts; Modifications; Waiver**

This Agreement and each SOW contain the final and entire agreement between the Customer relating to this subject matter and supersedes any prior agreement or understanding, however expressed. The terms and conditions of this Agreement are incorporated by reference into each SOW executed between DWCC and the Customer. The Customer agrees to be bound by the terms and conditions of this Agreement whenever it executes any SOW with DWCC. Each SOW may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same Agreement. These terms and conditions in this Agreement may be amended by DWCC from time to time and any such change will be posted on DWCC's website. DWCC will also notify the Customer of any such changes to this Agreement by a general notice email.