

# RECENT UPDATES

- Added Section 21.5 to reference TaxAssist Attachment.
- Updated copyright date.

## Cloud Service Agreement (2019-01-10)

### 1 DEFINITIONS

1.1 In this [Cloud Service Agreement](#), in addition to the terms defined in the Terms and Conditions of Sale, the following definitions shall have the following meanings:

**"ASPL Content"** means any and all content made available by Acorah Software Products Limited to the Customer onto the System, including, without limitations, data, information, software, database, documents, pictures, images, photographs, text, files, music, video;

**"Confidential Information"** means any and all information or data, in whatever form or storage medium, whether tangible or intangible, and whether disclosed directly or indirectly before or after this CSA by or on behalf of the disclosing Party (hereinafter, "Disclosing Party") to the receiving Party (hereinafter, "Receiving Party") in writing, orally, through visual means, or by the Receiving Party's evaluation, observation, analysis, inspection or other study of such information, data or knowledge, which is now or at any time after the Effective Date of this CSA, owned or controlled by the Disclosing Party. Confidential Information shall include i) the Customer Personal Data; ii) the Charge due for the Services and, iii) the trade secrets, discoveries, know how, designs, specifications, drawings, present or future products or services and markets, inventions, prototypes, algorithms, software of any kind or nature, object or machine codes, source codes, computer models and applications, developments, processes, formulae, technology, engineering, architectures, hardware configuration information, diagrams, data, computer programs, business activities and operations, customer lists, reports, studies and other technical and business information, and any other information which, by its nature, would reasonably be considered to be of a confidential nature either intrinsically or due to the context and circumstances in which it was disclosed, including, for the avoidance of doubt, information concerning the Parties' clients, which is of a confidential nature; iv) all the information under points iii) concerning or related to the Group of the Disclosing Party;

**"Charges"** means the charges due by the Customer under Section 6 (Charges);

**"Controller"** or **"Data Controller"** means the natural or legal person, public authority, organisation, agency or any other body which alone or jointly with others determines the purposes and means of the processing of Personal Data;

**"Customer Personal Data"** means any Personal Data where the Customer is the Controller;

**"Data Protection Laws and Regulations"** means all applicable laws and regulations of the European Union (including the General Data Protection Regulation (GDPR), as amended or replaced from time to time), the European Economic Area and/or the relevant implementing law of any such member state (in particular the data protection legislation of the country where the Customer is established to conduct the business to which the Services are related) and with respect to any other country, any applicable data protection or data privacy legislation;

**"Data Subject"** means an identified or identifiable person to whom the Personal Data relate;

**"Effective Date"** mean the date of enforcement of the CSA, which is to commence from point of purchase of the Service;

**"Group"** in relation to each Party, means that Party, its subsidiaries, its holding companies and every subsidiary of each such holding company from time to time;

**"Party"** means the Customer or ASPL;

**"Personal Data"** means any information relating to an identified or identifiable natural person (as defined under the GDPR, also known as Personal Identifiable Information under other legislations). This includes information that can be linked, directly or indirectly, to a natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or using all means which can reasonably be used by the Data Controller or a third party to identify a natural person (e.g. one or more factors specific to his physical, physiological, mental, economic, cultural or social identity);

**"Processing of Personal Data"** means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;

**"Processor"** or **"Data Processor"** means the natural or legal person, public authority, agency or any other body which processes Personal Data on behalf of the Controller and according to its written instructions;

**"Report"** means the report under Section 3 (Service Levels);

**"Service Credits"** means an amount in pounds sterling calculated each month in accordance with [Attachment 1](#) in respect of a failure by ASPL to meet a Service Level Objective;

**"Service Levels"** means the characteristics of the Service defined under [Attachment 1](#);

**"Service Level Agreement"** means the [Attachment 1](#) to the CSA;

**"Service Level Objectives"** means the target value of the Service Levels set out in [Attachment 1](#) to the CSA;

**"Subcontractor"** means any third party appointed by ASPL to perform some activities of the Services in accordance with Section 15 (Subcontracting);

**"System"** means the electronic information systems comprising any one or more of hardware, equipment, software, peripherals and communications networks owned, controlled, operated and/or used by ASPL to supply the Services;

**"Term"** means the term of the CSA as specified under Section 9 (Term and Termination);

**"Terms and Conditions"** means the [Terms and Conditions of Sale](#) that define the purchase of the Product or Service, as advertised on the TaxCalc Website;

**"Third Party Content"** means any and all content owned by a third party made available or provided by ASPL or the Customer, onto the System including, without limitations, data, information, software (including open source software), data-base, documents, pictures, images, photographs,

text, files, music, video;

**"Users"** means those employees, agents, subcontractors and consultants (including professional advisers) of the Customer who are entitled to use the Service;

1.2 The following interpretation rules apply in this CSA:

- a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- b) the Attachments form part of this CSA and shall have effect as if set out in full in the body of this CSA. Any reference to the CSA includes the Attachments;
- c) a reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;
- d) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- e) a reference to a statute or statutory provision is a reference to it as it is in force as at the date of this CSA;
- f) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- g) a reference to writing or written includes e-mail;
- h) any obligation on a party not to do something includes an obligation not to allow that thing to be done;
- i) a reference to this CSA or to any other agreement or document referred to in this CSA is a reference to this CSA or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this CSA) from time to time;
- j) references to Sections and Attachments are to the sections and attachments of the CSA or order (as applicable); references to paragraphs are to paragraphs of the relevant Attachments;
- k) any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the preceding phrase.

1.3 If and to the extent of any conflict or inconsistency between the terms of this CSA, the order of priority for the purposes of construction is, in descending order:

- a) the Sections of the CSA;
- b) the Attachments under Section 21 of the CSA; and the Annexes to any Attachment, if any.

## **2 PROVISION OF SERVICES**

2.1 ASPL shall make available the Services to the Customer from the Effective Date, in accordance with the Service Level Agreement in [Attachment 1](#) and the other terms and conditions of the CSA.

2.2 The Customer shall have the right to use the Services in accordance with the Acceptable Use Policy under [Attachment 2](#) and the other terms and conditions of the CSA.

## **3 SERVICE LEVELS**

3.1 ASPL shall provide the Services in accordance with the Service Levels under [Attachment 1](#) to this CSA.

3.2 Where ASPL fails to fulfil the Service Level Objectives during the Term of the CSA, Section 7 (Service Credits) shall apply.

3.3 Without prejudice to any possible rights, remedies and/or actions of the Customer in accordance with applicable law or this CSA, ASPL shall use reasonable endeavours to inform the Customer of any anticipated failure to meet any Service Level Objective and of the steps that ASPL will take (or has already taken) to prevent the failure from occurring.

3.4 During the Term of the CSA, ASPL shall make available to the Customer an annual Report including the following information, made available through the TaxCalc Website:

- a) applicable Service Levels;
- b) Service Levels Objective accomplished;
- c) Service Levels Objective not accomplished.

#### **4 VARIATION OF THE SERVICES**

4.1 Without prejudice of Section 4.2 below, material changes to the Service or to this CSA may be required as a result of:

4.1.1 the installation of any Third Party Content such as software, update or improvements or ASPL's software, update or improvements; or

4.1.2 the application of any new laws, regulations acts or orders of the authorities, whereby the effect of the implementation is not known at the date of execution of the CSA.

4.2 ASPL shall be entitled at any time to improve, update or replace the Services in case of improvements or updates necessary to fix defects, bugs, malfunctioning or errors of the Services or to cure security vulnerabilities of the System.

4.3 ASPL will provide notification of changes occurring under 4.1 and 4.2 via the TaxCalc Website and/or the Software.

#### **5 OBLIGATIONS OF THE CUSTOMER**

5.1 The Customer shall use the Services, and ensure Users use the Services, in accordance with the Acceptable Use Policy under [Attachment 2](#) to this CSA.

5.2 The Customer shall take all reasonable steps to ensure all the Users observe and fully comply with the terms of the Acceptable Use Policy when using the Services.

5.3 If any User breaches any of the terms and conditions of the Acceptable Use Policy ("AUP"), ASPL shall have the right to immediately suspend the User's access to Service and to ask the User and/or the Customer to remedy the breach within a reasonable timeframe. ASPL shall inform the Customer of the above Users' breach via email to the main account holder as soon as it becomes aware of it, subject to Section 5.4. If the Users and/or the Customer fail to remedy said breach within the

applicable timeframe, ASPL shall have the right to (i) remove the Customer Data infringing the AUP; and/or ii) immediately terminate the User's access to the Services.

5.4 If ASPL has reasonable evidence of i) possible serious risks to the System or Services provoked by the Customer Data, or ii) fraudulent or illegal activities of the Customer, ASPL is entitled to a) immediately suspend or terminate the accesses of the Users involved and b) to remove the relevant Customer Data. If the circumstances in points i) and ii) are proven to be false, ASPL shall as soon as is reasonably possible reinstate the User's access to the Services and refund You pro-rata any fees paid in respect of the period for which access to the Services was suspended.

5.5 The Customer shall co-operate with ASPL to such extent as is reasonably practicable and necessary to enable ASPL to provide the Services.

## **6 CHARGES**

6.1 As consideration for the Services, and all connected performance and obligations of ASPL under this CSA, the Customer shall pay ASPL the Charges as detailed in their Pay By Instalment Arrangement.

6.2 Charges and payment terms are described in Section 4 (Paying for Your Products) of the [Terms and Conditions](#).

6.3 By default, the Cloud Connect Pay By Instalment will be arranged to coincide with any Pay By Instalment Arrangement for the TaxCalc Product itself, forming a single combined payment schedule.

## **7 SERVICE CREDITS**

7.1 If at any time ASPL fails to meet any Service Level Objectives, ASPL shall on demand pay the Customer the appropriate Service Credits in accordance with the following Sections 7.2, 7.3 and 7.4.

7.2 The amount of any Service Credits payable under above Section 7.1, will be calculated in accordance with [Attachment 1](#). Service Credits shall be recovered by the Customer as a credit against the next invoice which may subsequently be due for issue under this CSA in accordance with above Section 6 (Charges) or, if no such invoice is due, as a debt due by ASPL and payable within 30 (thirty) days after demand.

7.3 Any demand must be made within 30 (thirty) days of the month in which ASPL fails to make the Service Level Objectives. All demands must be made by contacting TaxCalc using the contact details on the TaxCalc Website.

**7.4 The payment of the Service Credits under the above Section 7.1 states ASPL's sole and entire obligation and liability**, and Customer's sole and exclusive right and remedy for any failure to meet the Service Levels under this CSA.

## **8 INTELLECTUAL PROPERTY**

8.1 This Section only applies within the scope of this CSA. Intellectual Property Rights in regard to matters outside the scope of this CSA in Section 9 of the [Terms and Conditions](#).

8.2 The Customer hereby grants ASPL with a non-exclusive, worldwide, royalty free, non-transferable and non-sub licensable licence to use the Customer Data solely and to the extent necessary to provide the Services, to the extent such access is required, without prejudice to the Intellectual Property Rights of the Customer or any third party with respect to such Content.

8.3 All Intellectual Property Rights related to Third Party Content installed on the System and used by the Customer shall remain vested in such third party. The Customer shall not be licensed or transferred with any right on such Third Party Content unless agreed by the Customer with such third party.

8.4 The Customer may upload in the System Third Party Content only upon prior authorisation of such third party.

## **9 TERM AND TERMINATION**

9.1 The Services provided under this CSA shall be provided for a period of 12 (twelve) months commencing on the Effective Date, unless terminated in accordance with this CSA or unless this Contract is terminated.

## **10 TERMINATION AND EXPIRATION**

10.1 The Parties acknowledge and agree that in case of the expiration or termination for any cause of the CSA:

10.1.1 ASPL shall not delete the then existing Customer Data until the Retrieval Period or the Transfer Period under Sections 10.1.2 and 10.1.3 have expired;

10.1.2 upon request of the Customer to be sent prior to the termination or the expiration date (or non-payment through a Pay By Instalment Arrangement), the Customer shall be entitled to retrieve the Customer Data stored on the System for a period of 12 (twelve) months after the expiration or termination date (hereinafter, "Retrieval Period");

10.1.3 upon request of the Customer under Section 10.1.2, ASPL, at the Customer's expense, shall transfer the Customer Data to the Customer or to any third party provided by the Customer within the agreed timing (hereinafter "Transfer Period"). If the CSA has been terminated due to breach of ASPL, ASPL shall reimburse the costs borne by the Customer in relation to the above transfer of the Customer Data;

10.1.4 during the Retrieval Period or Transfer Period, ASPL reserves the right to charge an administration fee if required to facilitate the retrieval or transfer of data, as described in Section 10.1.3 of the [Terms and Conditions](#), unless the CSA has been terminated due to breach of ASPL (see 10.1.3 of this CSA);

10.1.5 once the Retrieval Period has expired, or upon completion of the Transfer Period, ASPL and its Subcontractors shall definitively destroy copies of, and erase, all Customer Data stored in the System and all storage media. The Customer has the right to ask the deletion of the

Customer Data with or without any retrieval or transfer of the Customer Data;

10.1.6 at ASPL's request, the Customer will return or erase any of ASPL Content, data or software delivered or licensed to the Customer for the purposes of providing the Services;

10.1.7 the Parties may agree any other possible activities or services connected with the expiration or termination of the CSA upon mutual agreement of the Parties on the terms and conditions of such activities;

10.1.8 the rights, remedies, obligations or liabilities of either Party which have accrued up to the date of termination or expiry, will not be affected, including the right to claim damages in respect of any breach of the CSA which existed at or before the date of termination or expiry;

10.1.9 any provisions of this CSA which expressly, or by implication, are intended to come into or remain in force on or after termination or expiry of this CSA, shall remain in full force and effect, including without limitation, Sections 8 (Intellectual Property Rights), 10 (Consequences of Termination), 11.2 and 11.3 (Warranties and Liabilities), 12 (Indemnification), 13 (Insurance Obligations); 16 (Data Protection); 17 (Notices); 18 (Governing Law); 19 (Disputes - Jurisdiction); and 20 (Final Provisions).

## **11 WARRANTIES AND LIABILITIES**

### **11.1 Warranties**

11.1.1 ASPL represents and warrants that:

11.1.1.1 the Services will be performed with reasonable skill and care in a timely and professional manner using appropriately qualified and experienced personnel and in accordance with good industry practice;

11.1.1.2 it owns or has obtained valid licences of all third party Intellectual Property Rights relating Third Party Content or which are necessary for the performance of any of its obligations hereunder;

11.1.1.3 by performing the Services under this CSA, ASPL will not infringe any Intellectual Property Rights of any third party;

11.1.1.4 it shall use its reasonable efforts to ensure that the Services, ASPL Content, the System and the relevant software are free from all viruses and other contaminants including any codes or instruction that may be used to access, modify, delete or damage any data files, or other computer programs used by the Customer from time to time, and that for this purpose, ASPL warrants and represents that it shall use at least annual checks via third party penetration tests in order to identify and address any security vulnerabilities.

11.1.1.5 it has the full capacity and authority and all necessary licences, permits and consents from third parties to enable it to enter into this CSA and perform all of ASPLs' obligations hereunder;

11.1.1.6 this CSA is executed by a duly authorised representative of ASPL.

### 11.1.2 The Customer represents and warrants that

11.1.2.1 It owns or has obtained valid licences of all Intellectual Property Rights in relation to the Customer Data uploaded on the System including possible software of third party installed, uploaded or developed on the System;

11.1.2.2 It has the full capacity and authority and all necessary licences, permits and consents from third parties to enable it to enter into this CSA and perform all of ASPL's obligations hereunder;

11.1.2.3 this CSA is executed by a duly authorised representative of the Customer.

### 11.2 ASPL's Liability

11.2.1 Liability shall be as described in Section 11 of the [Terms and Conditions](#) and Section 12 of the [EULA](#).

## 12 INDEMNIFICATION

12.1 The Customer shall defend, indemnify and hold harmless ASPL and ASPL's assignees, directors, partners, officers, employees and agents on demand from and against any and all losses, claims, damages, costs, expenses (including without limitation legal fees) and liabilities which ASPL may sustain or incur or which may be brought or established against ASPL by any third party in respect of any claim that the provision of Customer Data infringes the Intellectual Property Rights of the third party or is otherwise in breach Section 5.3.

## 13 INSURANCE OBLIGATIONS

13.1 ASPL shall maintain, during the Term of this CSA (and for a period of at least 2 (two) years after the expiration or termination of the CSA), appropriate insurance policies in relation to any liability connected with the execution of this CSA with a reputable insurance company in respect of ASPL's performance of the Services, providing for the payment of a reasonable sum for any claim or series of claims arising out of a single event occurring during such period.

## 14 SUSPENSION OF SERVICES

14.1 ASPL may suspend the provision of the Services as per [Attachment 1](#) during scheduled maintenance periods.

14.2 ASPL may suspend the provision of the Services as per Section 4 for critical or emergency work at any time.

## 15 SUBCONTRACTING

15.1 For the purposes of Section 15.1, the Customer acknowledges and agrees that the following Subcontractors may be used by ASPL in performance of the aspects of the Services specified below:



15.1.1 Mythic Beasts Limited; provide the server infrastructure for the Service, for the foreseeable future.

15.1.2 Bytemark Limited; provide the backup server infrastructure for the Service, for the foreseeable future.

15.1.3 Westpoint Limited; executes routine vulnerability scans and penetration tests in order to identify and address any security vulnerabilities in the Service, for the foreseeable future.

15.2 In regard to data control, the Subcontractors listed in 15.1 are Data Processors. The Data Controller remains the Customer.

15.3 Subject to Section 15.1 above, ASPL shall:

15.3.1 remain the Customer's sole point of contact regarding the Services, including with respect to payment of the Charges.

15.3.2 not disclose Confidential Information of the Customer to a Subcontractor unless and until such Subcontractor has agreed in writing to protect the confidentiality of such Confidential Information in a manner substantially equivalent to that required of ASPL under this CSA.

15.3.3 not, by virtue of entering into any subcontract, be relieved of its liability to the Customer for breach of its obligations under or in connection with the CSA or otherwise arising from any acts or defaults of its agents and/or Subcontractors for which it would otherwise have been liable.

## 16 DATA PROTECTION

16.1 Under this CSA, the Customer qualifies as Data Controller of the set of Processing of Personal Data carried out by ASPL on the Customer's behalf. ASPL qualifies as Data Processor and will act only in accordance with the Customer's instructions, as limited under [Attachment 3](#) to this CSA, except as required by law or regulation.

16.2 In addition, our [Information Security Policy](#) describes our approach to data security and our commitment to secure practices in general.

**16.3 The Customer is fully liable for data protection law compliance.** Therefore, the Customer must comply with the applicable Data Protection Laws and Regulations, especially, but not limited to, requirements to ensure that the Processing of Personal Data complies with the applicable legislation in relation to the nature of the Personal Data and formal requirements with the local data protection authorities in relation to the transfer of Personal Data.

16.4 ASPL shall implement and maintain appropriate technical and organisational measures to protect Personal Data against unauthorised or unlawful processing of personal data and against accidental loss, destruction or damage to Personal Data. ASPL acknowledges that failure to meet this warranty will be deemed to be a breach of this CSA.

## 17 NOTICES

17.1 All notices will be served as described in Section 17 of the [Terms and Conditions](#).

17.2 Subject to 17.1, the Customer's representative is by default considered to be the holder of the Customer account on the TaxCalc Website.

## **18 GOVERNING LAW**

18.1 Governing law and jurisdiction shall be as described in Section 15 of the [Terms and Conditions](#).

## **19 DISPUTES**

19.1 Disputes shall be handled as described in Section 16 of the [Terms and Conditions](#).

## **20 FINAL PROVISIONS**

20.1 Final provisions shall be as described in Section 18 of the [Terms and Conditions](#).

## **21 ATTACHMENTS**

21.1 The following Attachments are an integral part of this CSA:

21.1.1 [Attachment 1: Service Level Agreement](#);

21.1.2 [Attachment 2: Acceptable Use Policy](#);

21.1.3 [Attachment 3: Data Protection](#);

21.1.4 [Attachment 4: Backups](#).

21.1.5 The [TaxAssist Attachment](#) (only if the Customer is a TaxAssist Franchisee).