

## SaaS Agreement Online

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### Introduction

Please read these terms and conditions carefully before using the website operated by us as set out below. In particular, we draw your attention to clause 6 (Liability). By accessing or using Route Optimiser and by clicking to indicate you have read and agreed these terms when ordering, you agree to be legally bound by these terms and conditions as they may be modified and posted on our website from time to time.

Without prejudice to the above, by using or accessing our website, you agree to be legally bound by these terms and conditions of use as they apply to your use of or access to our website.

If you do not wish to be bound by these terms and conditions then to keep our insurance costs (and thus costs to you to a minimum) you may not use our website.

### Parties

(1) Distribution Planning Software Ltd a company incorporated in England, company registration number 02064379 and having its registered office at No 5 Centre Court, Vine Lane, Halesowen, West Midlands, B63 3EB England (“the Provider”) and (2) You (‘the Customer’)

### Introduction

(A) The Provider delivers and manages computer applications and technology services from data centres to multiple users via the Internet

(B) These services are designed to be appropriate for and used only by small to medium logistics businesses

(C) The Provider has agreed to provide the Services to the Customer in accordance with the terms and subject to the conditions set out below.

## Terms of Agreement

In consideration of payment of the Fees to the Provider under this Agreement,  
IT IS AGREED THAT:

### 1. Definitions

In this Agreement, the following words shall have the following meanings:

**‘Confidential Information’**

any and all information in whatsoever form relating to the Provider or the Customer, or the business, prospective business, technical processes, computer software (both source code and object code), Intellectual Property Rights or finances of provider or the Customer (as the case may be), or compilations of two or more items of such information, whether or not each individual item is in itself confidential, which comes into a party’s Provider’s possession by virtue of its entry into this Agreement or provision of the Services, and which the party regards, or could reasonably be expected to regard, as confidential and any and all information which has been or may be derived or obtained from any such information;

**‘Fees’**

Fees as set out in Schedule Two;

**‘Intellectual Property Rights’**

all copyrights, patents, utility models, trade marks, service marks, registered designs, moral rights, design rights (whether registered or unregistered), technical information, know-how, database rights, semiconductor topography rights, business names and logos, computer data, generic rights, proprietary information rights and all other similar proprietary rights (and all applications and rights to apply for registration or protection of any of the foregoing) as may exist anywhere in the world;

**‘Operating Rules’**

any Provider rules or protocols, in whatever form recorded, that affect the Customer’s access to or use of the Services, and made available by the Provider from time to time to the Customer;

**‘Services’**

The software applications services of the Provider, as specified in Schedule 1 and made available to the Customer (together with any Operating Rules) and including any computer software programs and, if appropriate, Updates thereto;

**‘Term’**

The period of twelve (12) months from first being allowed to access the Services and then a further 12 months unless terminated after the first 12 months in accordance with this Agreement; and

**'Updates'**

Means any new or updated applications services or tools (including any computer software programs) made available by the Provider as part of the Services.

**2. Services**

2.1 The Customer engages the Provider and the Provider agrees to provide the Services in accordance with the terms of this Agreement.

2.2 The Provider agrees to provide the Services until completion of the Term or sooner termination in accordance with the terms of this Agreement.

2.3 The provision of the Services may be extended or resumed from time to time by agreement of the parties in writing, whereupon the terms and conditions of this Agreement shall continue to apply subject to satisfactory renegotiation of the terms of the Schedules or equivalent documents replacing them.

2.4 The Provider warrants that by performing the Services it will not knowingly infringe the rights of any third party (including but not limited to Intellectual Property Rights) in any jurisdiction or be in breach of any obligations it may have to a third party. The Provider further warrants that it is not prohibited from providing the Services by any statutory or other rules or regulations in any relevant jurisdiction.

**3. Licences**

3.1 Subject to the Customer's payment of the Fees, the Customer is granted a nonexclusive and non-transferable licence to use the Services (including any associated software, Intellectual Property Rights and Confidential Information) during the Term. Such licence shall permit the Customer to make such copies of software or other information as are required for the Customer to receive the Services.

3.2 All Intellectual Property Rights and title to the Services (save to the extent incorporating any Customer or third party owned item) shall remain with the Provider and/or its licensors and no interest or ownership therein is conveyed to the Customer under this Agreement. No right to modify, adapt, or translate the Services or create derivative works there from is granted to the Customer.

Nothing in this Agreement shall be construed to mean, by inference or otherwise, that the Customer has any right to obtain source code for the software comprised within the services.

3.3 Disassembly, decompilation or reverse engineering and other source code derivation of the software comprised within the Services is prohibited. To the extent that the Customer is granted the right by law to decompile such software in order to obtain information necessary to render the Services interoperable with other software (and upon written request by the Customer identifying relevant details of the Services(s) with which interoperability is sought and the nature of the information needed), the Provider will provide access to relevant source code or information. The Provider has the right to impose reasonable conditions including but not limited to the imposition of a reasonable fee for providing such access and information.

3.4 Unless otherwise specified in this Agreement, the Services are provided and may be used solely by the Customer. The Customer may not (i) lease, loan, resell or otherwise distribute the Services save as permitted in writing by the Provider; (ii) use the Services to provide ancillary services related to the Services; or (iii) except as permitted in this Agreement, permit access to or use of the Services by or on behalf of any third party.

3.5 The Customer warrants and represents that it shall maintain reasonable security measures (as may change over time) covering, without limitation, confidentiality, authenticity and integrity to ensure that the access to the Services granted under this Agreement is limited as set out under this Agreement.

#### **4. Payments and Ordering**

4.1 In consideration of the provision of the Services by the Provider, the Customer shall pay to the Provider the Fees as set out under the link Prices.

4.2 The Provider shall render invoices to the Customer in respect of the Fees and such disbursements as shall have been reasonably incurred by the Provider in connection with the provision of the Services on a monthly basis or at such other times or periodical basis as agreed between the parties from time to time.

4.3 Payment by the Customer shall be without prejudice to any claims or rights which the Customer may have against the Provider and shall not constitute any admission by the Customer as to the performance by the Provider of its obligations under the Agreement.

4.4 All invoices by the Provider to the Customer shall be rendered in pounds Sterling and shall be payable in full by the customer (so that the amount billed is actually received net by the Provider) together with any Value Added Tax (if applicable) within thirty (30) business days of receipt of a properly rendered invoice but in any event initially before the Service commences. Where payment for the provision of the Services is late, the Provider reserves the right to suspend the provision of the Services by giving notice to the Customer and shall be entitled to charge interest on all overdue Fees and disbursements (including disputed amounts that are withheld) at a rate of 5 per cent above the annual base rate of HSBC plc.

4.5 For the purposes of this Agreement, 'Business Day' shall mean any day (other than Saturday or Sunday) which the cleaning banks are open for normal banking business in the city of London.

#### **5. Warranties**

5.1 The Provider warrants that it has the right to license the Services and that the Services will operate to provide the facilities and functions implemented by the Provider. The foregoing warranties shall not (i) cover deficiencies or damages relating to any third party components not furnished by the Provider; or (ii) any third party provided connectivity necessary for the provision or use of the Services. In the event of a breach of the warranties under this clause 5, the Provider shall have no liability or obligations to the Customer other than to reimburse the Fees for the Services.

5.2 Except as expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to satisfactory quality and fitness for purpose), are hereby excluded to the fullest extent permitted by law. No warranty is made regarding the results of usage of the Services or that the functionality of the Services will meet the requirements of the Customer or that the Services will operate uninterrupted or error free. This clause shall survive the termination of this Agreement.

## **6. Limitation of Liability**

6.1 The Provider does not exclude or limit its liability to the Customer for fraud, death or personal injury caused by any negligent act or omission or wilful misconduct of the Provider in connection with the provision of the Services.

6.2 In no event shall the Provider be liable to the Customer whether arising under this Agreement or in tort (including negligence or breach of statutory duty), misrepresentation or however arising, for any Consequential Loss.

'Consequential Loss' shall for the purposes of this clause mean (i) pure economic loss; (ii) losses incurred by any client of the Customer or other third party; (iii) loss of profits (whether categorised as direct or indirect); (iv) losses arising from business interruption; (v) loss of business revenue, goodwill or anticipated savings; (vi) losses whether or not occurring in the normal course of business, wasted management or staff time and; (vii) loss or corruption of data.

6.3 Subject to clauses 6.1 and 6.2, the total liability of the Provider (whether in contract, tort or otherwise) under or in connection with this Agreement or based on any claim for indemnity or contribution shall not exceed one hundred (100) per cent of the total Fees (excluding any VAT, duty, sales or similar taxes) paid or payable by the Customer to the Provider during the preceding twelve (12) month period or, if the duration of the Agreement has been less than twelve (12) months, such shorter period, as applicable.

6.4 In no event shall the Customer raise any claim under this Agreement more than [two (2) years after (i) the discovery of the circumstances giving rise to such claim; or (ii) the effective date of the termination of this Agreement. This clause shall survive the termination of this Agreement.

6.5 The Customer hereby acknowledges and agrees that in entering into this Agreement, the Customer had recourse to its own skill and judgement in deciding that the solution is suitable for the task for which the customer intends it to be used and has not relied on any representations made by the Provider, any employees or agents of the Provider.

## **7. Intellectual Property Indemnification**

7.1 The Provider, at its own expense, shall (i) defend, or at its option, settle any claim or suit brought against the Customer by a third party on the basis of infringement of any Intellectual Property Rights by the Services (excluding any claim or suit deriving from any Customer provided item); and (ii) pay any final judgement entered against the Customer on

such issue or any settlement thereof, provided that: (i) the Customer notifies the Provider promptly of each such claim or suit; (ii) the Provider is given sole control of the defence and/or settlement; and the (iii) Customer fully co-operates and provides all reasonable assistance to the Provider in the defence or settlement.

7.2 If all or any part of the Services becomes, or in the opinion of the Provider may become, the subject of a claim or suit of infringement, the Provider at its own expense and sole discretion may:

- (i) procure for the Customer the right to continue to use the Services or the affected part thereof; or
- (ii) replace the Services or affected part with other suitable non-infringing service(s); or
- (iii) modify the Services or affected part to make the same non-infringing.

7.3 The Provider shall have no obligations under this clause 7 to the extent that a claim is based on:

- (i) the combination, operation or use of the Services with other services or software not provided by the Provider, if such infringement would have been avoided in the absence of such combination, operation or use; or
- (ii) use of the Services in any manner inconsistent with this Agreement; or
- (iii) the negligence or wilful misconduct of the Customer.

7.4 The Customer shall indemnify and hold the Providers and its suppliers or agents harmless from and against any cost, losses, liabilities and expenses, including reasonable legal costs arising from any claim relating to or resulting directly or indirectly from

- (i) any claimed infringement or violation by the Customer of any Intellectual Property Rights with respect to the Customer's use of the Services outside the scope of this Agreement;
- (ii) any access to or use of the Services by a third party, and
- (iii) use by the Provider of any Customer provided item.

## 8. Indemnity

8.1 Subject to clause 7 each party ('the first party') indemnifies and undertakes to keep indemnified the other party, its officers, servants and agents ('the second party') against any costs or expenses (including the cost of any settlement) arising out of any claim, action, proceeding or demand that may be brought, made or prosecuted against the second party by any person arising out of or as a consequence of an unlawful or negligent act or omission of the first party, its officers, servants or agents in any way connected with this Agreement whether arising from any failure by the first party to comply with the terms of this Agreement or otherwise.

8.2 The indemnity contained in clause 8.1 above extends to and includes all costs, damages and expenses (including legal fees and expenses) reasonably incurred by the second party in defending any such action, proceeding claim or demands.

## 9. Termination

9.1 The Provider may immediately terminate this Agreement or the provision of any Services provided pursuant to this Agreement if the Customer has used or permitted the use of the Services otherwise than in accordance with this Agreement.

9.2 The Customer shall be entitled to terminate this Agreement at any time without notice if the Provider is prohibited, under the laws of England or otherwise, from providing the Services.

9.3 Either party shall be entitled to terminate this Agreement at any time without notice if:

- (i) the other party ceases or threatens to cease to carry on business; or (ii) the other party is unable to pay its debts or enters into compulsory or voluntary liquidation (other than for the purpose of effecting a reconstruction or amalgamation in such manner that the company resulting from such reconstruction or amalgamation shall be bound by and assume the Provider's obligations hereunder);
- (iii) the other party compounds with or convenes a meeting of its creditors or has a receiver, manager or similar official appointed in respect of its assets; or
- (iv) the other party has an administrator appointed or documents are filed with the court for the appointment of an administrator or notice is given of an intention to appoint an administrator by such party or its directors or by a qualifying floating charge holder (as defined in the Insolvency Act 1986, paragraph 14 schedule B1); or
- (v) any similar event occurs under the law of any other jurisdiction in respect of that party.

9.4 Either party shall be entitled to terminate this Agreement on written notice to the other party if the other party commits a material breach of any term of this Agreement which, in the case of a breach capable of remedy, shall not have been remedied within five (5) business days of receipt by the other party of a notice from the non-defaulting party specifying the breach and requiring it to be remedied.

9.5 Either party shall be entitled to terminate this Agreement on 3 months written notice to the other given after the end of the initial 12 month term.

9.6 On request, and in any event on termination of this Agreement for whatever reason, each party shall deliver up all Confidential Information and (to the extent not so comprised therein) all correspondence, documents and other property belonging or relating to the other party, and neither party shall, without the prior written consent of the other, make or retain copies of any such documents.

9.7 Termination of this Agreement for whatever reason shall not affect the accrued rights of the parties arising in any way out of this Agreement as at the date of termination and, in particular but without limitation, the right to recover damages against the other. Clauses 4, 7, 8, 9, 10, 11 and 12 shall, for the avoidance of doubt, survive the expiration or sooner termination of this Agreement and shall remain in force and effect.

## **10. Confidential Information**

10.1 Each party may use the Confidential Information of a disclosing party only for the purposes of this Agreement and must keep confidential all Confidential Information of each disclosing party except to the extent (if any) the recipient of any Confidential Information is required by law to disclose the Confidential Information.

10.2 Either party may disclose the Confidential Information of the other party to those of its employees and agents who have a need to know the Confidential Information for the purposes of this Agreement but only if the employee or agent executes a confidentiality undertaking in a form approved by the other party.

10.3 Both parties agree to return all documents and other materials containing Confidential Information immediately upon completion of the Services.

10.4 The obligations of confidentiality under this Agreement do not extend to information that:

- (i) was rightfully in the possession of the receiving party before the negotiations leading to this Agreement;
- (ii) is, or after the day this Agreement is signed, becomes public knowledge (otherwise than as a result of a breach of this Agreement); or
- (iii) is required by law to be disclosed.

## **11. Data Protection**

Each party undertakes to comply with its obligations under the Data Protection Act 1998.

## **12. Third parties**

Nothing contained in this Agreement or in any instrument or document executed by any party in connection with the provision of the Services is intended to be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **13. Force Majeure**

13.1 Except with respect to obligations to pay the Fees or other charges, 'Force Majeure' means anything outside the reasonable control of a party, including but not limited to, acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, labour dispute, labour shortage, power shortage, [including without limitation where Provider ceases to be entitled to access the Internet for whatever reason, server crashes, deletion, corruption, loss or removal of data], transportation embargo, failure or delay in transportation, any act or omission (including laws, regulations, disapprovals or failures to approve) of any government or government agency.

13.2 If a party is wholly or partially precluded from complying with its obligations under this Agreement by Force Majeure, then that party's obligation to perform in accordance with this Agreement will be suspended for the duration of the Force Majeure.

13.3 As soon as practicable after an event of Force Majeure arises, the party affected by Force Majeure must notify the other party of the extent to which the notifying party is unable to perform its obligations under this Agreement.

#### **14. Dispute Resolution Procedure**

14.1 In the event of any disputes, controversy or claim arising out of or in relation to this Agreement and subsequent amendments of this Agreement, the Provider and the Customer will:

14.1.1 discuss the same through their MDs or other such officers informally and without prejudice to any later matters

14.1.2 if not resolved, one will send to the other a written note of the issue and the other will reply to that within 14 days

14.1.3 the respective MDs or other such officers shall then meet to discuss the issues arising and will seek a compromise

14.1.4 if thereafter still not resolved either party may elect to proceed to arbitration by a single arbitrator appointed by the Law Society of England. The place of arbitration shall be Birmingham, England. The language to be used in these proceedings shall be English. The dispute, controversy or claim shall be resolved in accordance with the laws of England. The parties will ensure that the resolution or disposition is fully and promptly carried out.

#### **15. Misc provisions**

15.1 In the event that any of these terms, conditions or provisions or those of any schedule or attachment hereto will be determined by any competent authority to be invalid, unlawful or unenforceable to any extent such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

15.2 The parties hereby agree that this Agreement and the provisions hereof will be construed in accordance with the laws of England and Wales.

#### **Schedule 1**

##### **Services -**

The service provided from time to time by the provision referred to as logixcentral and shown on the website [www.logixcentral.com](http://www.logixcentral.com)