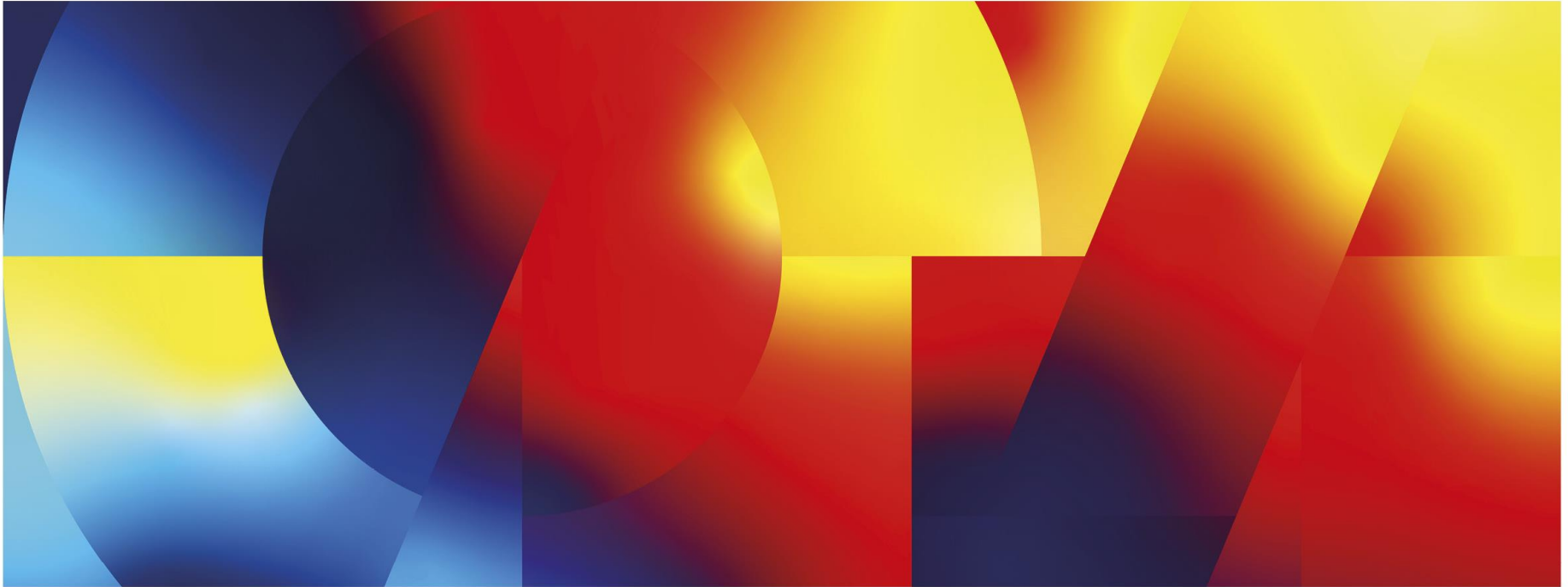


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hadaway

Leeds Digital Festival: Understanding Tech and Cloud Terms and Conditions



Types of Contracts, Agreements and Terms

Software Licensing and Cloud Computing

Main features of IT contracts

Types of Contracts, Agreements and Terms

- Hardware Purchase Agreements
- Software Licence Agreements
- IT Services Agreements (support and maintenance)
- Software Development Agreements
- Framework Agreements
- Outsourcing Agreements
- App terms (Mobile Application Licence Agreements)
- Reseller Agreements

Licensing Software

- (General) Types of software:
 - Operating system
 - Utility software
 - Application software

- Permitted use
- Users
- Pricing model
- Future proofing
- Software licensing v software as a services (“Saas”)

Cloud computing

- “*Cloud computing is the on-demand availability of computer system resources, especially data storage (cloud storage) and computing power, without direct active management by the user.*” Wikipedia
- The delivery of IT as services by the internet.
- Examples:

Web based mail



Social networking sites



Online storage



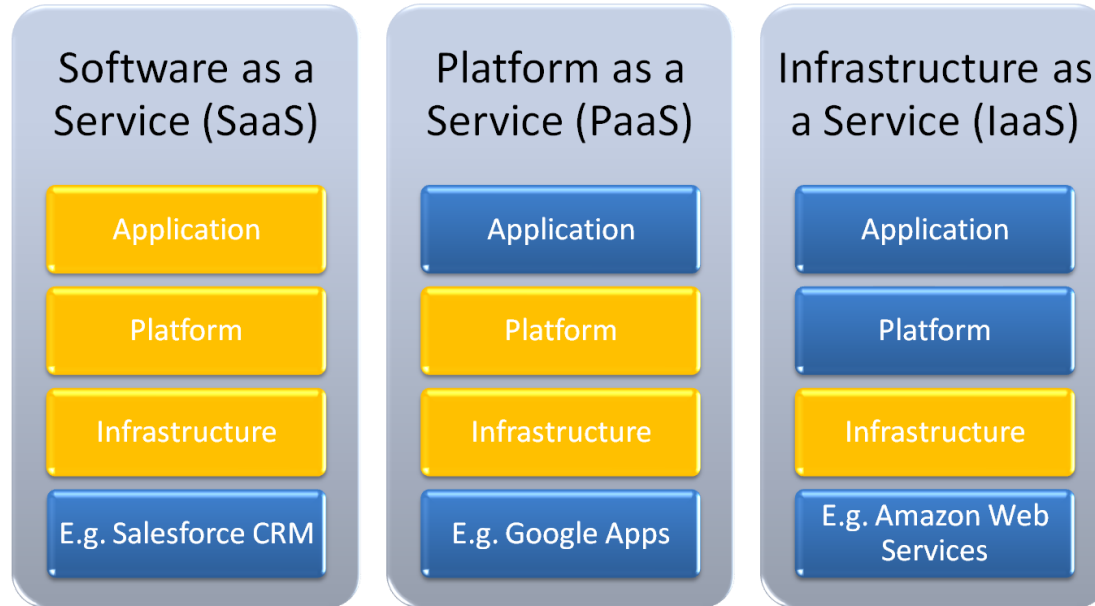
Benefits

- Minimal upfront investment in hardware and software
- Fully managed system reduces IT support and maintenance costs
- Low, fixed, periodic service charges
- Costs should reduce over time
- Low barriers to take up
- Elasticity – usage can expand and contract as required
- Anytime, anywhere access

Risks

- Less control over data and content
- Loss of internal expertise
- Standard, untailored solutions
- Risk of hidden costs for additional users, storage etc.
- Risk of “lock in”
- Need to monitor and control usage
- Reliance on online connectivity

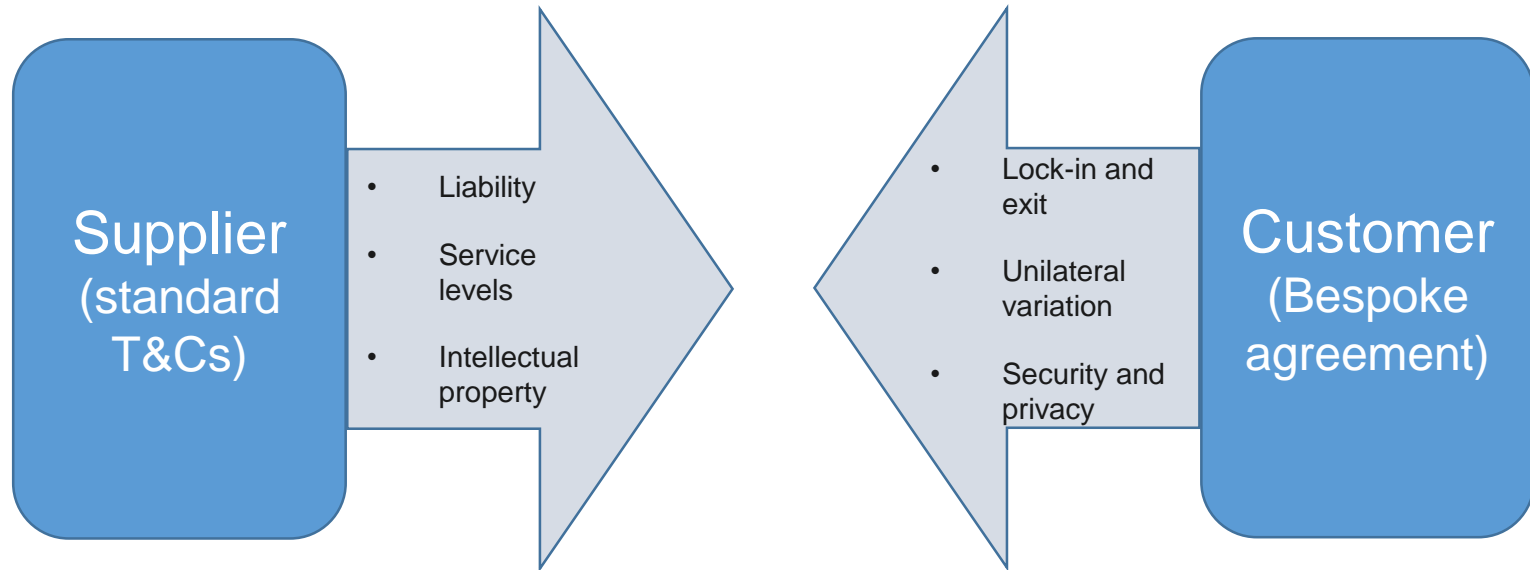
Cloud computing

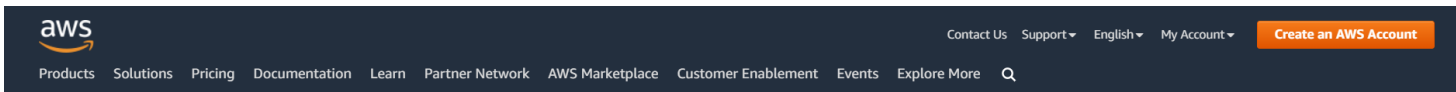


Formation of a Contract

- Supplier's standard terms
- Order forms
- Click-wrap
- Bespoke agreements
- Framework agreements
- Battle of the forms

Overview of the contracting process





AWS Service Terms

Last Updated: September 9, 2021

The Service Terms below govern your use of the Services. Capitalized terms used in these Service Terms but not defined below are defined in the [AWS Customer Agreement](#) or other agreement with us governing your use of the Services (the "Agreement"). For purposes of these Service Terms, "Your Content" includes any "Company Content" and any "Customer Content," and "AWS Content" includes "Amazon Properties."

1. Universal Service Terms (Applicable to All Services)

1.1. You may not transfer outside the Services any software (including related documentation) you obtain from us or third party licensors in connection with the Services without specific authorization to do so.

1.2. You must comply with current technical documentation applicable to the Services (including applicable developer guides) posted on the AWS Site.

1.3. You will provide information or other materials related to Your Content (including copies of any client-side applications) as reasonably requested by us to verify your compliance with the Agreement. You will reasonably cooperate with us to identify the source of any problem with the Services that we reasonably believe may be attributable to Your Content or any end user materials that you control.

1.4. In connection with your use of the Services, you are responsible for maintaining licenses and adhering to the license terms of any software you run. If we reasonably believe any of Your Content violates the law, infringes or misappropriates the rights of any third party, or otherwise violates a material term of the Agreement (including the documentation, the Service Terms, or the Acceptable Use Policy) ("Prohibited Content"), we will notify you of the Prohibited Content and may request that such content be removed from the Services or access to it be disabled. If you do not remove or disable access to the Prohibited Content within 2 business days of our notice, we may remove or disable access to the Prohibited Content or suspend the Services to the extent we are not able to remove or disable access to the Prohibited Content. Notwithstanding the foregoing, we may remove or disable access

Basic Layout of Terms / a Contract

Parties

- Who are you contracting with?
- Supplier and customer
- “Affiliates”
- Licensing – users
- Non-parties – subcontractors / subprocessors

- What are they going to do for you? / What are you going to provide to them?
- Output / “Deliverables”
- Standards of performance
- Specification
- SLAs / KPIs
- Acceptance
- Remedies
- Making changes – change control

- 6.1 The Supplier warrants to the Customer that:
- (a) the Supplier will perform the Services in accordance with Good Industry Practice;
 - (b) the Services will conform with all descriptions and specifications provided to the Customer by the Supplier, including the Project Specification and Project Plan;
 - (c) the Services will be provided in accordance with and the Supplier will comply with all applicable legislation from time to time in force and the Mandatory Policies; and
 - (d) the Services will be provided in accordance with the KPIs.

Payment Terms

- Payment terms – how many days to make payment
- “Motivation” to pay:
 - Interest
 - Suspension of services for non-payment
 - Termination
- Set off
- Credits

Intellectual Property

- IP created
- IP in output / deliverables
- When should the customers own these?
- Background IP
- Licensing
- Continuous development of IP – modifications, improvements or enhancements
- Knowledge capital
- Indemnity

- Will the supplier have access to personal data?
- Will personal data be processed?
- Are the parties controller-processor, controller-controller or joint controllers?
- Legal requirements – GDPR v. UK GDPR
- Liability for breaches of provisions

Liability

- Indemnities
- Excluding liability
- Limiting / capping liability
- Unlimited / uncapped liability
- Insurance

- 8.1 The Supplier shall indemnify and hold the Customer harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, the Customer as a result of or in connection with:
- (a) any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the products of the Services (including the Deliverables); or
 - (b) any claim made against the Customer in respect of any liability, loss, damage, injury, cost or expense sustained by the Customer's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Services or the Deliverables as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of this agreement by the Supplier.

10.1 Nothing in this agreement excludes the either party's liability:

- (a) for death or personal injury caused by that party's negligence; or
- (b) for fraud or fraudulent misrepresentation.

10.2 Subject to Clause 10.3:

- (a) Neither party shall in any circumstances be liable, whether in tort (including without limitation for breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for [loss of profits,] [loss of business] [loss of data] [any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.]
- (b) Each party's total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the agreement shall be limited to [two hundred percent of the price paid or payable for the Services] **OR** [£1,000,000].

- 10.3 The limitations of liability in this clause 10 shall not apply:
- (a) in the case of liability of the Customer, to liability for damages for any breach by the Customer of:
 - (i) its payment obligations; and
 - (ii) confidentiality under Clause 9.
 - (b) in the case of liability of the Supplier, to liability for:
 - (i) or under any indemnity in this agreement (whether in respect of performance of the indemnity or its breach);
 - (ii) any breach of any regulatory requirement by the Supplier which directly or indirectly results in the imposition of any fine or sanction on the Customer or the Customer otherwise incurring any liability;
 - (iii) any breach by the Supplier of Clause 8 (Intellectual Property Rights), Clause 9 (Confidentiality, etc), Clause 11 (Data Protection) or Clause 12 (Anti-bribery).

Duration and Termination

- Duration
- Examples:
 - Rolling
 - Initial term followed by rolling term
 - One fixed term
- Termination for convenience
- Termination for cause

Termination obligations and Exit Assistance

- Returning and destroying
- Payment of outstanding charges
- Co-operation with new supplier?
- Chargeable?

Questions and answers

Thank you

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