

Designed To Talk (the “Provider”) Master Services and Service Level Agreement

Private & Confidential. Version: 1.1

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1. Definitions

In this Master Services Agreement for Service (this “MSA”), the following definitions shall apply.

Term	Definition
Acceptable Use Policy	The Provider’s acceptable use policy in respect of Service, as notified to the Customer and as The Provider may update it from time to time in accordance with its terms.
Activation Date	The date from which The Provider considers that the Services started to be used
Business Days	9.00 a.m. to 5.30 p.m. Monday to Friday excluding public holidays in England and Wales.
Cancellation Charge	An amount equal to 50% of the remainder of the agreed term as authorized in the proposal or any subsequent orders payable within 7 days of cancellation (i) if the cancellation takes effect after the later of the Proposal, order or contract Start Date and the Activation Date, the fees that would otherwise have been payable from the date the Service is cancelled to the date such Service was scheduled to expire in accordance with the orders or proposals (ii) if the cancellation takes effect before the later of the Contract Start Date and the Activation Date, any non- recurring charges payable pursuant to clause 10.6 plus 50 per cent. of the other fees payable during the Initial Term, plus in each case any other amounts specified as payable as part of the Cancellation Charge in the Proposal or subsequent Order(s)
Change Control	The procedures for changing the Service Specification
The Provider	The Provider part of the Virso Ltd Group of Companies (UK Company number 05888290) and any successor or assignee thereof.
The Provider’s System	The information and communications technology system to be used by The Provider in performing the Services, including the Hardware, the Software, the Customer Site Equipment and communications between the Hardware and the Customer Site Equipment and the Customer’s Operating Environment.
Confidential Information	Information that is designated in writing as “confidential” at the time of disclosure, or which constitutes the trade secrets of a party under the governing law of this Agreement. Confidential Information also includes the Object Code of the Software, the pricing structure for the Software and Services provided to Licensee, and any other proprietary information owned by The Provider and which is provided or disclosed to Licensee at any time. Notwithstanding the foregoing, Confidential Information does not include information that the receiving party can demonstrate: (a) is in the public domain or is generally publicly known through no improper action by the receiving party; (b) was rightfully in the receiving party’s possession or known by it prior to receipt from the disclosing party; (c) is rightfully disclosed without restriction to the receiving party by a third party without violation of any confidentiality covenant by such third party; or (d) is independently developed by the receiving party without use of the Confidential Information of the disclosing party
Contract	The Agreement between The Provider and the Customer comprising this MSA and the Proposal.
Contract Start Date	The date specified as such in the Proposal.
Customer	The person identified as such in the Proposal.
Customer Data	Any data uploaded to, stored on or processed using the The Provider or by the Customer, any and all of Licensee’s and its User’s data, information, and materials that are uploaded by the customer or that are accessed by The Provider.
Customer’s Operating Environment	The Customer’s computing environment (consisting of hardware, software and telecommunications networks) that is to be used by the Customer in connection with its use of the Service and which interfaces with The Provider’s System in order for the Customer to receive the Service, but excludes the Customer Site Equipment

Customer Representative	The contact defined in the Proposal or such other person notified in writing by Customer to The Provider who shall be the Customer's main technical contact.
Customer Site	Any premises occupied by the Customer at which it receives the Service from The Provider, as detailed in the Proposal.
Customer Site Equipment	Any equipment located or to be located on a Customer Site but controlled or to be controlled exclusively by The Provider as part of the Service.
Data Controller	Has the meaning given to it in the DPA.
Data Processor	Has the meaning given to it in the DPA.
DPA	The Data Protection Act 1998.
Documentation	Any documentation distributed by The Provider or its partners pertaining to the Software and Services, including, without limitation, any accompanying or online user guides, technical information relating to the Software or Services, user documentation. Documentation also includes any applicable Proposals and SOW or SLA's
Excused Outage	Any outage, unavailability, delay or other degradation of Service related to, associated with or caused by: Planned Maintenance events; any Service not supported by a The Provider traversing Hardware component; any third party plugin or ancillary equipment not supplied by The Provider; a Customer application running on a server (virtual or physical) which is not supported by The Provider; the Customer actions or inactions or those of any third party excluding any sub-contractor or IT Partner of The Provider directly involved in the performance, operation or maintenance of the Customer's Service
Fees	All of the fees payable to The Provider by the Customer in respect of the Software or Services, whether one-off or recurring, as set out in the Proposal in respect of the Initial Term, and thereafter as revised by The Provider prior to each Renewal Term and or any amendments
Hardware	All physical telecommunications, networking and computer equipment (including switches, routers, cables, servers, racks, cabinets and peripheral accessories) provided and used by The Provider to deliver the Service to the Customer.
Initial Term	The initial term of the Contract specified in the Proposal, measured from the later of the Contract Start Date and the Activation Date.
Initial Proposal	The first document entitled "Proposal" issued by The Provider in response to the Customer's request for Service, setting out at least a high level description of the Service to be provided by The Provider, and the corresponding Fees payable by the Customer.
Intellectual Property Rights	Any and all Intellectual Property Rights of any nature, whether Registered, Registerable or Otherwise, including Patents, Utility models, Trademark, Registered Designs and Domain Names, Applications for any of the foregoing, Trade or Business names, Goodwill, Copyright and rights in the nature of Copyright, Design rights, rights in Databases, Moral Rights, Know-how and any other Intellectual Property Rights that subsist in Computer Software, Computer Programs, Websites, Documents, Information, Techniques, Business methods, Drawings, Logos, Instruction Manuals, Lists and Procedures and Particulars of Customers, Marketing methods and Procedures and Advertising literature, including the "look and feel" of any Websites, and in each case all Rights and Forms of protection of a similar nature or having equivalent or similar effect to any of these that may subsist anywhere in the world, in each case for their full term, together with any future rights and renewals or extensions.
Order	Any order placed by the Customer or its employees on MAP
Partner	An alternate party used by either party in the provision of any Service.
Maintenance Contract	Hardware or Software support contracts held on supported devices and supplied by the manufacturer or recognized vendor support partner.
MAP	Managed Automation Platform created and supported by The Provider
Services	The services to be provided to the Customer by The Provider, as set out in the Proposal.

Personal Data	Has the meaning given to it in the DPA.
Proposal	Any The Provider process detailing an order which is incorporated into and becomes a part of this Agreement. Depending on the Software and Services ordered, the Proposal may be completed online or may take the form of a written order form, invoice, quote, billing statement, or SOW. In the event of any discrepancy between this Agreement and a Proposal, this Agreement shall prevail.
Provider	The Provider is the company that provides the professional, technical or software products and services.
Proposal	Collectively, the Initial Proposal and any Supplementary Proposal, and all documents scheduled or attached to them.
Renewal Term	A period of 12 months from the expiry of the Initial Term or the previous Renewal Term, as the case may be
Service Credit	Any credit given to the Customer in accordance with the Service Level Arrangements.
Service Levels	The metrics for measuring the performance of the Service as set out in the SLA.
Software	Any software used by The Provider or its Partners to provide the Services to the Customer.
Supplementary Proposal	Any document issued by The Provider and entitled "Proposal" which, notwithstanding that it may be a separate document and/or delivered at a later date, supplements an Initial Proposal and, once accepted by the Customer in accordance with clause 2.2, forms part of the Proposal.
Term	The Initial Term and each Renewal Term.
TUPE	The Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014.
User	An individual, collective or organization, who is authorized by Licensee to use the Software and if applicable, within a multi-tenant or Service environment.

2 Interpretation

- 3.1 Clause, schedule and paragraph headings shall not affect the interpretation of this MSA.
- 3.2 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 3.3 Any phrase introduced by the words "including", "includes", "in particular" or "for example", or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.
- 3.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.
- 3.5 If there is a conflict between this MSA and the Proposal, the former shall prevail

3 Ordering Services

- 3.6 In response to a request by the Customer, The Provider will prepare and send to the Customer an Initial Proposal. If the Customer wishes to contract with The Provider to provide the Services set out in that Initial Proposal, it will indicate its acceptance of the initial or subsequent Proposal by authorising it and returning whereupon the Contract will come into existence.
- 3.7 Depending on the nature of the MAP Services, the Customer recognises that it may be necessary for The Provider to perform additional preparatory design or specification work before proceeding to installation, provisioning and/or "go live", in which case The Provider will provide to the Customer upon completion of that additional preparatory work a Supplementary Proposal setting out further detail on how the Services will be provided. The Customer may request reasonable changes to the Supplementary Proposal, and The Provider will use reasonable efforts to accommodate such changes within the scope of the Fees set out in the Initial Proposal, failing which The Provider and the Customer, each acting reasonably, will agree such changes to the MAP Services and the corresponding fees as may be required to give effect to the Customer's request. The Customer can accept a Supplementary Proposal in writing, by email, or by requesting through any medium that The Provider proceed with providing the Services, and in the absence of a written indication to the contrary will be deemed to have accepted a Supplementary Proposal 7 days after The Provider sends it to the Customer. Once accepted, a Supplementary Proposal forms part of the Proposal (and, therefore, part of the Contract) in respect of the relevant Services.

- 3.8 Following acceptance of the Proposal (including, where applicable, any Supplementary Proposal), will initiate the provisional Activation Date for each of the ordered Services. The Provider will use reasonable efforts to begin delivering the relevant Services by such provisional Activation Date, subject to payment by the Customer of any fees which are payable in advance and the Customer's compliance with the terms of the Contract (and in particular its obligations in clause 8), but time shall not be of the essence in this regard and the Customer acknowledges that the actual Activation Date may differ.
- 3.9 If The Provider has agreed with the Customer that any fees will be payable in arrears, the delivery of the Services is subject to credit approval at the beginning of the Term.
- 3.10 The Customer acknowledges that The Provider provides, and prices the Services only on the basis of this MSA and agreed Proposals. In addition the customer may order and be liable for supplementary charges and services ordered from The Provider Platform or The Provider's partners on the platform
- 3.11 No other terms will apply, regardless of the form or timing of delivery.

4 Service Provision

- 4.1 Any applicable Service Level Arrangements shall apply with effect from the start of the first complete month occurring after the Activation Date.
- 4.2 The Customer is responsible for the use to which it puts the Services under its control, including any use by third parties (whether fraudulent or invited by the Customer). In particular, the Customer acknowledges that the Services are not designed to be used in circumstances in which errors or failures in the Services could lead to personal injury or severe physical or environmental damage. Therefore, unless expressly agreed otherwise in the Proposal, the Customer will not use the Services for such purposes.
- 4.3 The Customer Site Equipment is at the Customer's risk from the point of installation.
- 4.4 The Customer shall not provide the Services to third parties or permit any third party to access or benefit from the Services, nor to access the Customer Site Equipment, unless otherwise expressly agreed to in writing by The Provider.
- 4.5 The Provider reserves the right to:
 - 4.5.1 Modify, its network, system configurations or routing configuration;
 - 4.5.2 Modify or replace any Hardware or Software in its network or in equipment used to deliver any Service over its network, provided that so doing will have no material adverse effect on either party's ability to perform its obligations under the Contract. If such changes will have such a material adverse effect, the affected party will notify the other and the parties will follow the Change Control Procedure.
- 4.6 If a Service to be delivered by The Provider is no longer readily available or is in short supply at the agreed time of delivery, The Provider may substitute another product or service in its place. The substituted product will have equivalent or better performance and function and will be provided at no additional cost to the Customer.
- 4.7 If the Customer uses the Service, in a manner contrary to the Documentation or The Provider's reasonable recommendations, The Provider's obligation to provide that Service will be limited to reasonable endeavors.
- 4.8 The Service Level Agreement in the SLA section of this Agreement shall at all times govern all the tasks that we shall carry out for you under this Master Services and Service Level Agreement.

5 Disaster Recovery, Customer Data and Data Protection

- 5.1 The Customer acknowledges that certain risks, such as data loss, are an inherent part of using the services, therefore, with the Customer, The Provider will provide backup and restore services as part of the Service, which can form part of a Customer's wider business continuity and recovery strategy. However, The Provider does not provide general business continuity planning and execution services. Business continuity planning, and the execution and testing of such plans, is the responsibility of the Customer, and the Customer acknowledges that The Provider's backup and restore services are not a complete substitute. Therefore, if backup and restore services are not included in the Service, The Provider will have no liability for any loss of or damage to Customer Data, however caused. If backup and restore services are included in the Service, The Provider will perform such backup and restore services as are set out in the Proposal to the appropriate Service Level and in accordance with Good Industry Practice. However, the Customer acknowledges that:
 - 5.1.1 The Provider is not in a position to develop, evaluate or test the Customer's wider business continuity or disaster recovery arrangements, and can only provide such backup and recovery services as form part of the contracted Service, and the selection and testing of appropriate backup and recovery solutions and strategies is therefore the Customer's responsibility; and
 - 5.1.2 The Provider is not in a position to verify the accuracy, completeness or integrity of the Customer Data, and can only back up the Customer Data as of its then-current state. Therefore, The Provider will not be liable if any Customer Data backed up or restored by The Provider is inaccurate, incomplete or corrupted, provided that the restore and corresponding backup job was completed without error.
- 5.2 Notwithstanding clause 5.1, The Provider will not itself delete any Customer Data unless specifically permitted to do so by the Contract or instructed to do so by the Customer.
- 5.3 The Customer acknowledges that The Provider is not an insurer. Therefore, where Customer Site Equipment must be replaced in the course of a disaster recovery, The Provider can provide assistance in doing so, and will provide break/fix services to the extent that such services are within the scope of the Service, but all replacement, relocation and/or reinstallation costs in respect of Customer Site Equipment will otherwise be borne by the Customer.
- 5.4 Each party warrants that it shall comply with the DPA when performing its respective obligations under the Contract.
- 5.5 To the extent that The Provider (as Data Processor) processes Personal Data on behalf of the Customer (as Data Controller), The Provider will:
 - 5.5.1 process such Personal Data only in accordance with the Customer's instructions or as required by law or regulation;
 - 5.5.2 take appropriate technical and organisational measures to protect such Personal Data against unauthorised or unlawful processing and accidental loss, destruction, alteration or disclosure;

- 5.5.3 ensure that, having regard to the state of technological development and their cost of implementation, those measures ensure a level of security appropriate to (1) the harm that might result from such processing, loss, destruction or damage; and (2) the nature of such Personal Data; and
- 5.5.4 promptly inform the Customer if it receives a request or notice from a data subject seeking to exercising his or her rights under the DPA in respect of such Personal Data, and (at the Customer's cost) comply with the Customer's reasonable instructions with respect to that request or notice.
- 5.6 The Customer instructs The Provider to take such steps in the processing of Personal Data on its behalf as The Provider reasonably considers necessary to the performance of its obligations under the Contract, irrevocably authorises The Provider to give equivalent instructions to any relevant subcontractor on its behalf, and warrants that it is and will remain entitled to give the instruction and authorisation in this clause.
- 5.7 The Provider will ensure that any subcontractor to which it delegates the processing of Personal Data on behalf of the Customer is bound by a written agreement imposing on the subcontractor obligations equivalent to those set out in clause 4.5.

6 Security

- 6.1 The Provider will operate safety and security measures and procedures consistent with Good Industry Practice for the prevention of unauthorised access or damage to any and all Service.
- 6.2 The Provider and the Customer will promptly inform each other if either of them suspects or uncovers any breach of security in respect of the Service, and The Provider will use all commercially reasonable endeavours to verify and, if verified, promptly remedy such breach.

7 Customer Obligations

To assist The Provider to fulfil its obligations under the Contract, the Customer will:

- 7.1 provide The Provider promptly with any information and assistance it may reasonably require from time to time;
- 7.2 afford The Provider full and safe access to the Customer Site(s) and the Customer Site Equipment during normal working hours;
- 7.3 provide at the relevant Customer Site(s) all suitable computer hardware, software and telecommunications equipment (other than those specified to be provided by The Provider in the Proposal);
- 7.4 where applicable, install the correct software and agents for the Customer's Operating Environment, or if The Provider installs software, or agents as part of the Service, not interfere with such software or agents;
- 7.5 provide The Provider with copies of all policies that The Provider is expected to observe at the Customer Sites;
- 7.6 appoint a Customer Representative who will be The Provider's primary contact at the Customer and who must have or promptly be able to obtain sufficient authority to make all necessary decisions in relation to the Contract. The Customer will use reasonable endeavours to ensure continuity of the Customer's Representative.
- 7.7 comply with all applicable laws and regulations with respect to its activities under the Contract;
- 7.8 carry out its responsibilities to The Provider in a timely and efficient manner. In default of such obligation, The Provider may adjust any timetable or delivery schedule as reasonably necessary;
- 7.9 use, and ensure that its officers, employees, workers and subcontractors use the Service only in accordance with the Acceptable Use Policy;
- 7.10 ensure that the Services are not used to receive, transmit, host or otherwise process any material and/or communication (other than entirely unsolicited inbound communications) that is menacing, of a junk-mail or spam-like nature, illegal, obscene, threatening, defamatory, discriminatory, actionable, or in violation of (or which would place The Provider in violation of) any rules, regulations or laws to which the use of the Service are subject, or infringe the Intellectual Property Rights of The Provider or any third party;
- 7.11 inform The Provider of any new applications and or services brought onto the Service and ensure that such applications or services are licensed and compliant;
- 7.12 where relevant, properly train, supervise and manage its personnel in the use and application of the Service; and
- 7.13 implement effective and appropriate backup and other procedures for the protection of its data where backup and restore services are not part of the Service.
- 7.14 Additionally, and notwithstanding the above, The Provider will not be responsible for any failure to provide the Service unless the Customer has met or observed the following requirements:
 - 7.14.1 all Customer hardware and software configurations to be supported by The Provider have been installed by The Provider or have been reviewed by both parties and agreed that the solution presented is both suitable for purpose and within the ability of both parties to sustain;
 - 7.14.2 the Customer has assumed responsibility for the purchase of associated hardware and software Maintenance Contracts. Where any related Maintenance Contract has been arranged directly with a vendor or 3rd party by the Customer, the Customer shall be responsible for advising that party that The Provider will be assisting in managing the Customer's systems from the applicable start date and, to the extent required, procuring for The Provider a right to use the services provided under such Maintenance Contract;
 - 7.14.3 the Customer has ensured that the performance or operation of any Customer installed applications have no direct impact upon The Provider's ability to deliver the agreed Service Levels; and
 - 7.14.4 the Customer has advised The Provider of its internal procedures of internal escalation and systems maintenance.
 - 7.14.5 If the Customer wishes to make any alterations, additions, or maintenance that will or may impact upon The Provider's ability to deliver the Service, then the Customer will inform The Provider in writing of such works prior to their commencement.
 - 7.14.6 In the event that the Customer, or any third party who is not a sub-contractor of The Provider, omits or commits anything that prevents or delays The Provider from undertaking or complying with any of its obligations under the Contract, then The Provider shall notify the Customer as soon as possible and The Provider will have no liability in respect to any delay in the provision of the Service that results from such act or omission.
- 7.15 The Provider may charge the Customer for any additional reasonable costs and expenses properly incurred by The Provider caused by

variation in the Customer's instructions, any failure on the part of the Customer to provide instructions in a reasonable and timely manner, or other failure to comply with this Clause 6.

8 Warranties

- 8.1 The Provider warrants that:
 - 8.1.1 it will provide the Service in accordance with Good Industry Practice and substantially in accordance with the Service Specification and the Contract; it has the full capacity and authority to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of The Provider;
 - 8.1.2 it will comply with all applicable laws in performing its obligations under the Contract; and
 - 8.1.3 all personnel and sub-contractors used by The Provider in the performance of the Contract are adequately skilled and experienced for the activities they are required to perform.
- 8.2 The warranties in clause 8.1 shall not apply to the extent of any non-conformance caused by use of the Service contrary to The Provider's instructions.
 - 8.2.1 if the Service do not conform with any of the warranties in clause 8.1 as a result of a breach by The Provider of such warranty, The Provider will use reasonable commercial endeavours to correct such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the warranties in clause 8.1.
- 8.3 The Provider does not warrant that the Customer's use of the Service will be uninterrupted or error-free.
- 8.4 The Customer warrants that:
 - 8.4.1 it has the full capacity and authority to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Customer;
 - 8.4.2 it has the authority to grant any rights granted to The Provider under the Contract;
 - 8.4.3 it will comply with and use the Service in accordance with the Contract and all applicable laws;
 - 8.4.4 it has and shall maintain all necessary licences, permits, rights, consents, registrations, approvals and titles necessary for The Provider to use or host any software, hardware, documentation or other materials provided by the Customer for use in the provision of the Service to the Customer; and
 - 8.4.5 The Provider's use of any third-party materials supplied by the Customer in connection with the Contract, shall not cause The Provider to infringe the rights, including any Intellectual Property Rights, of any third party.
- 8.5 Disclaimer. Except as expressly provided in this Agreement, THE PROVIDER DOES NOT MAKE ANY ADDITIONAL WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES OR THE DELIVERABLES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

9 End user License Agreements, (EULA) Partners and other Agreements

- 9.1 The Customer may contract directly with a Partner for provision of software or services which are separate to the CloudActiv8 Services. Unless managing such contracts falls within the scope of the CloudActiv8 Proposal and Services, the Customer will be solely responsible for all matters arising out of such services.
- 9.2 Where The Provider provides to the Customer access to or use of partner Software in the course of providing the Services, the Customer agrees to comply with the terms of the relevant End User License Agreements applicable. Where required by a partner, the Customer agrees to provide to partner sufficient access to relevant systems and records to allow them to verify compliance with agreements.
- 9.3 The Customer shall licence or procure a licence for the use of any software, programs and/or applications used by the Customer and not supplied by The Provider (including the Customer's Operating Environment). These may or may not be directly related to the Service.
- 9.4 Grant of Limited License (the "License"). Subject to the terms of this Agreement, including any restrictions set forth in the applicable Proposal and the payment of Fees in accordance with the applicable Proposal, The Provider grants Licensee during the Term, a non-sublicensable, nonexclusive, revocable, non-transferable right to use the Software in Object Code as provided by The Provider or the Service as made available by The Provider, for the number of authorized Users (or "Seats") as specified on the applicable Proposal. Such use shall be limited to authorized Users, shall not exceed the number of purchased Seats, and shall be used for Licensee's internal business purposes only. If the Software is authorized to be used in a multi-tenant environment or as part of a Service solution (a "Service"), then Licensee hereby agrees that the Software will be used solely in furtherance of Licensee's provision of the Service and not for any other purpose by any unauthorized third party and, if required by The Provider from time to time in The Provider's sole discretion, each User shall accept the terms of an End User License Agreement for the Software.
- 9.5 Except for one copy made solely for back-up or test purposes with respect to on-premises Licenses, Licensee may deploy or possess only the number of copies of the Software as expressly specified on the Order Form, and only in accordance with the applicable Documentation; otherwise, Licensee shall not copy or distribute the Software, the Documentation or any other written materials accompanying the Software. Licensee will be responsible for ensuring that any and all use of the Software by its Users, Partners and customers is permitted by this Agreement. The Software licensed or the Service provided hereunder is licensed or provided, as applicable,

solely for use in connection with Licensee's internal business requirements, or the provision of any permitted MSP services provided by Licensee to its customers (the "Licensee's Customers") and may not be used for any other purpose, and any and all such uses shall be subject to all of the terms and conditions of this Agreement applicable to Licensee.

- 9.6 Restrictions. Licensee will not remove, alter, or obscure proprietary notices that appear on or in the Software and Documentation, and will reproduce them on or in any copies. Licensee will not (and will not allow any User or other third party, including Licensee's Customers, to) (i) decompile, disassemble, reverse compile, or reverse engineer or attempt to discover any source code or underlying ideas or algorithms of any Software (except to the extent that applicable law prohibits such restrictions), (ii) modify, or create derivative works based on the Software (iii) provide, sell, give, rent, lease, lend, loan, distribute, transfer, use for timesharing or service bureau purposes or otherwise

use or allow others to use the Software for the benefit of any third party (except to the extent that the Software forms part of the services being provided by Licensee to Licensee's Customers), (iv) use any Software, or allow the transfer, transmission, export, or re-export of any Software or portion thereof, in violation of any UK, EU, U.S. or any other applicable export control laws or regulations, (v) develop keys or license codes other than license keys provided by The Provider for the Software or attempt to defeat or circumvent any such keys or any other access restrictions included in the Software or determine how any such keys are developed, or (vi) use or copy the Software. All the limitations and restrictions on Software in this Agreement also apply to Documentation.

- 9.7 Usage Limits. Licensee's usage of the Software is subject to usage limits, including, for example, the quantities specified in an Order Form. Unless otherwise specified, (a) a quantity in an Order Form may refer to sets, users, devices, storage or other metrics as applicable to the Software or Service, and such usage of the Software or Service may not exceed the applicable usage metric, (b) a User's password may not be shared with any other User or person, or used simultaneously with multiple instances of the Software, and (c) a User identification may be reassigned to a new individual replacing one who no longer requires use of the Software or Service. If Licensee exceeds a contractual usage limit, Licensee will execute an Order Form for additional quantities of the applicable Software promptly upon The Provider's request, and/or pay any invoice for excess usage in accordance with the payment terms and pricing set forth in this Agreement and any Order Form.
- 9.8 Responsibilities. Licensee will (a) be responsible for its Users' compliance with this Agreement, (b) be responsible for the accuracy, quality and legality of the Data and the means by which Licensee acquires and uses any Data, (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Software, Services and Data, and notify The Provider promptly of any such unauthorized access or use, (d) use the Software only in accordance with its Documentation and applicable laws and government regulations, and (e) comply with terms of service of The Provider as published from time to time on The Provider's website(s).
- 9.9 Third Party Materials. Some Third-Party Materials may be subject to other terms and conditions, which may be found in a "Read Me" or "About" or similar file in the Software or Software documentation. If Licensee does not agree to such terms, Licensee agrees not to use the Software or any Third-Party Materials.
- 9.10 Customer Data. Licensee hereby grants to The Provider a nonexclusive, worldwide, royalty-free, fully-paid, transferable license to host, cache, record, copy, view, and display Customer Data for the purpose of providing the Software and Services to Licensee: (a) internal use by The Provider and its affiliates; (b) any purpose related to the billing, activation, provision, maintenance, upgrades, updates, deactivation and/or use of the Service or the Software and/or related products and/or services; (c) any purposes permitted by any applicable law. Except as set forth in this Agreement, as between The Provider and Licensee, Licensee retains all right, title, and interest in and to Customer Data. Licensee shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and right to use Customer Data, and Licensee agrees that, except for The Provider's gross negligence or wilful misconduct, The Provider shall not be responsible or liable for the unauthorized access to, alteration of, or deletion, correction, destruction, corruption, damage, loss or failure to secure or store Customer Data. Licensee acknowledges and agrees that it bears sole responsibility for adequately controlling, processing, storing and backing up its Customer Data. The Provider reserves the right, but not the obligation, to refuse to post or to remove any information or materials, in whole or in part, that The Provider believes to be unacceptable, undesirable, or in violation of this Agreement or the rights of third parties. Licensee represents, warrants, and covenants that: (a) it is the owner or authorized licensee of Customer Data and has the right to grant the rights set forth herein; (b) it has obtained all consents necessary under applicable law to disclose Customer Data to The Provider; and (c) it will not publish, post, upload, record, or otherwise distribute or transmit any data or other material that: (i) infringes or would infringe any Copyright, Patent, Trademark, Trade Secrets or other proprietary right of any party, or any rights of publicity or privacy of any party; (ii) violates any law, statute, ordinance, or regulation; (iii) is inappropriate, profane, defamatory, libelous, obscene, indecent, threatening, harassing, or otherwise unlawful; (iv) is harmful to minors or otherwise pornographic; (v) contains any viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other similar software, data, or programs that may damage, detrimentally interfere with, surreptitiously intercept, or expropriate any system, data, Personal

Information, or property of another; (vi) is materially false, misleading, or inaccurate; and/or (vii) contains information for which Licensee does not have the right to permit The Provider to access and process any Customer Data.

- 9.11 Support and Maintenance. While the license for Software remains effective and the applicable fees have been paid in accordance with this Agreement, The Provider or any of its affiliates will use commercially reasonable efforts to provide the Licensee with the support and maintenance services for the Software or the Service as described in The Provider's then-current support and maintenance program, a copy of which is located on The Provider's web site ("Support Services"). The Provider may elect to change the fees for and the terms of its Support Services or terminate Support Services for the Software or the Service.
- 9.12 Proprietary Rights. The Software is licensed, not sold, to Licensee. Similarly, the Services are provided on a subscription basis only, and are not sold to Licensee. The Provider and its affiliates, suppliers and licensors own and retain all right, title and interest in and to: (a) the Software, Service, and Documentation (including all copies, components thereof and all upgrades, modifications, enhancements and derivative works thereof); and, (b) all Copyrights, Patent rights, Trade Secret rights, Trademark and other intellectual property and other proprietary rights embodied in or relating to the Software, Service or Documentation. Licensee acknowledges and agrees that it shall have no rights with respect to any of the foregoing other than the limited rights expressly set forth in this Agreement. The Provider expressly reserves all rights in the Software, Service and Documentation not specifically granted to Licensee. It is acknowledged that all right, title and interest in and to the Software, Service and Documentation will remain vested exclusively with The Provider.

10 Invoicing and Payment

- 10.1 Until the Contract comes into existence, all fees are subject to change without prior notice. The Provider will notify the Customer of any changes to fees set out in a draft Proposal before such Proposal comes into effect.
- 10.2 The Customer acknowledges that the fees chargeable in respect of certain Service (for example but not limited to, AWS, Azure, GCP, E-commerce, cloud backup etc.) are based on the Customer's actual usage, and that the level of usage of such Service(s) is controlled by the Customer. The Customer therefore agrees in respect of such Service to pay such fees as the Customer may incur as a result of its actual usage, without the requirement for any additional purchase order or authorisation. The Customer further acknowledges that fees

- charged by suppliers of additional or other Services will vary from time to time during the Term. The Customer therefore agrees that The Provider may vary the fees to reflect such changes in upstream fees. The Provider will use reasonable endeavours to provide reasonable notice of such variations.
- 10.3 The Provider will invoice the Customer for its fees for the Service monthly or quarterly in advance as specified in the Proposal and unless the Proposal specifies otherwise, provided that in respect of the Service of the type referred to in clause 10.2 The Provider will invoice monthly in arrears. The Customer will pay The Provider in full within seven (7) calendar days from receipt of invoice unless otherwise specified in the Proposal.
- 10.4 Funds shall automatically be collected for the month in arrears as per 10.3 from a pre-authorized Direct Debit mandate with a valid credit card as secondary payment option if the direct debit authorization is unsuccessful.
- 10.5 If the Proposal provides that the Fees or any part of the fees are payable in arrears, then The Provider may withdraw or vary such arrangements at any time if:
- 10.5.1 The Provider serves a notice of termination of the Contract;
 - 10.5.2 there is (in the sole opinion of The Provider) a material adverse change in the creditworthiness of the Customer; or
 - 10.5.3 the Customer fails to pay any amount which is due and payable.
- 10.6 Applicable third-party support and licensing fees will be payable at initial purchase and any subsequent renewal dates.
- 10.7 When the Customer first orders a Service not previously supplied, or it is agreed by the parties as being either an addition to, or change to an existing Service being supplied, then a non-recurring charge may be specified as part of the Fees. Non-recurring charges are payable by the Customer of the relevant Service and will be billed in arrears. If the Customer fails to pay such non-recurring charges within seven (7) calendar days following The Provider's invoice for such non-recurring charges then:
- 10.7.1 such failure to pay shall be an Excused Outage for the purposes of provisioning and/or installation of the Service;
 - 10.7.2 The Provider may issue a revised Contract Start Date and/or Activation Date; and
 - 10.7.3 The Provider may suspend installation of the Service until receipt of such non-recurring charges.
- 10.8 If the Customer reasonably disputes any portion of an invoice, the Customer must submit a written claim for the disputed amount within thirty (30) calendar days after delivery of the relevant invoice and shall at all times remain liable for the payment of all items not disputed or not validly disputed as reasonably determined by The Provider. Where such dispute turns upon level of usage of the Service, Cloud The Provider's records of such usage shall be presumed to be accurate unless proved otherwise by an independent expert appointed by The Provider or appears to be contrary to Customer's written purchase order for such Services.
- 10.8.1 The Customer waives the right to dispute any fees not disputed within thirty (30) days of receipt of the relevant invoice.
 - 10.8.2 When a dispute regarding amounts payable under the Contract is resolved to the Customer's reasonable satisfaction, the Customer will immediately pay any amounts that were the subject of such dispute.
 - 10.8.3 The Provider reserves the right to charge interest to the Customer on any sums, fees or other charges which are not paid on the due date and that interest may be charged from the date such payment falls due at the statutory rate of two per cent (2%) per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 10.9 On expiry or termination of the Contract for any reason, any fees incurred but unpaid shall become immediately due and payable and shall represent a debt due from the Customer to The Provider.
- 10.10 All charges for the Service are net of VAT and other taxes. Except for taxes based upon The Provider's net income, the Customer will be responsible for payment of all applicable taxes that arise in any jurisdiction, including but not limited to, VAT, sales, use, excise, access, bypass, franchise or other taxes, fees, charges or surcharges, however designated, imposed on or based on the provision, sale or use of the Service.

11 Change Control Procedure

- 11.1 The Customer acknowledges that changes to services such as the Service must be carefully managed. Therefore, if either party wishes to change the scope of any of the Service (including Customer requests for additional services), it shall submit a change request to the other party and the parties will then proceed according to The Provider's change control procedure as it may be amended from time to time (the "Change Control Procedure").

12 Intellectual Property

- 12.1 Nothing in the Contract will change the ownership of any of the Intellectual Property Rights of either party.
- 12.2 Each party grants to the other a non-exclusive, limited, revocable licence to use its Intellectual Property Rights solely to the extent necessary for that party to perform its obligations under the Contract.
- 12.3 The Customer will indemnify The Provider against any claim brought against The Provider by a third party that the Customer Data or the Customer's use of the Service infringes such third party's Intellectual Property Rights or other rights, provided that The Provider will provide reasonable assistance in the defence and/or settlement of such claims, and provided that the Customer will have on request sole authority to defend or settle any such claim.
- 12.4 The Provider will indemnify the Customer against any claim brought against the Customer by a third party that the Service infringe such third party's Intellectual Property Rights or other rights, provided that the Customer will provide reasonable assistance in the defence and/or settlement of such claims, and provided that The Provider will have on request sole authority to defend or settle any such claim

13 Confidentiality

- 13.1 Each party undertakes to the other that, except as provided by clause 12.4 or as authorised in writing by the other, it shall, at all times:
 - 13.1.1 keep confidential all Confidential Information disclosed to it by the other party;
 - 13.1.2 not disclose any such Confidential Information to any other person;
 - 13.1.3 not use any such Confidential Information for any purpose other than as contemplated by the Contract; and
 - 13.1.4 ensure that none of its directors, officers, employees, agents or advisers does any act which, if done by that party, would be a breach of this clause 13.1.
- 13.2 The Customer acknowledges that The Provider's Confidential Information includes any designs, plans, software or other materials created by The Provider in connection with the Service.
- 13.3 The Provider acknowledges that the Customer's Confidential Information includes the Customer Data.
- 13.4 Notwithstanding clause 13.1, either party may disclose the Confidential Information of the other to:
 - 13.4.1 any sub-contractor, supplier or professional adviser of that party;
 - 13.4.2 any governmental or other authority or regulatory body; or
 - 13.4.3 any employee or officer of that party, or of any of the aforementioned persons,
 - 13.4.4 in each case only to such extent as is necessary for the purposes of performing or enforcing the Contract, or as required by law, and in each case (unless prohibited by applicable law) subject to that party first informing the person in question that the Confidential Information is confidential and (except where the disclosure is to any such body as is mentioned in clause 12.4.2 above or any employee or officer of any such body) obtaining and submitting to the other party a written undertaking from the person in question, as nearly as practicable in the terms of this clause, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made.
- 13.5 The provisions of this clause 13 shall continue notwithstanding the termination of the Contract for any reason.

14 Term, Renewal and Cancellation Charges

- 14.1 The Contract will continue for the Initial Term and will thereafter automatically renew for successive Renewal Terms unless:
 - 14.1.1 either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Term or the then-current Renewal Term, in which case the Contract will terminate upon the expiry of the Initial Term or then-current Renewal Term, as the case may be; or
 - 14.1.2 otherwise terminated in accordance with its terms.
- 14.2 Certain Services are subject to longer cancellation periods imposed by the upstream supplier. The cancellation period for such Service will be as set out in the Proposal, and in respect of such Service clause 14.1.1 will be deemed to be amended accordingly.
- 14.3 The Customer acknowledges that the fees are subject to variations caused by, among other things, increases in upstream supplier charges and general inflation, and that The Provider may therefore vary the fees payable by the Customer in respect of Renewal Terms. 45 days before the expiry of the Initial Term and each Renewal Term, The Provider will notify the Customer of any adjustment in the fees payable for the subsequent Renewal Term and, unless the Customer terminates the Contract in accordance with clause 14.1.1, such adjusted Fees will apply from the start of such Renewal Term.
- 14.4 The Customer may additionally terminate the Contract at any time during the Term if it pays to The Provider the Cancellation Charge.

15 Suspension

- The Provider may suspend all or any part of any Service without liability to the Customer if:
- 15.1 The Provider reasonably believes that the Service have, are or will be used in breach of the Contract;
 - 15.2 The Provider discover that the Customer is affiliated in any manner with a person who has used similar services abusively in the past;
 - 15.3 the Customer does not co-operate with The Provider's investigation of any suspected breach of the Contract;
 - 15.4 The Provider reasonably believes that the Customer has permitted the Service to be accessed or manipulated by a third party without its consent;
 - 15.5 The Provider reasonably believes that Customer applications, databases or operating systems hosted on the Service have been hacked or compromised, except where such hack or compromise is reasonably attributable to The Provider's failure to perform its obligations under the Contract;
 - 15.6 The Provider reasonably believes that suspension of the Service is necessary to protect The Provider's System or The Provider's other customers;
 - 15.7 any fee or other amount due under the Contract is overdue or is at risk of non-payment in the opinion of The Provider; or
 - 15.8 The Provider is required to do so by law or a regulatory or government body.
 - 15.9 The Provider will give the Customer advance notice of a suspension under this clause of at least twelve (12) Business Hours unless The Provider determines in its reasonable commercial judgment that a suspension on shorter or contemporaneous notice is necessary to protect The Provider or its other customers from imminent and significant operational, legal, or security risk, or non-payment of its Fees. If The Provider suspends any Service pursuant to any of clauses 15.1.1, 15.1.3 or 15.1.7, then The Provider may continue to charge the Customer the fees for the Service during the period of suspension, and may charge the Customer a reasonable reinstatement fee upon reinstatement of the Service. If The Provider suspends any Service pursuant to clause 15.1.5, then the Customer must address the underlying vulnerability prior to The Provider placing the Service back in service. If the Customer requests, The Provider may be able to perform this work for the Customer as a supplementary service on a time and materials basis at The Provider's standard hourly rates.

16 Termination

Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice

to the other party if:

- 16.1 the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- 16.2 the other party commits a material breach of any terms of the Contract which is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- 16.3 the other party repeatedly breaches the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the Contract;
- 16.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 16.5 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 16.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or an order is made, for or in connection
- 16.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- 16.8 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- 16.9 person appoints or becomes entitled to appoint a receiver over the assets of the other part
- 16.10a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days; or
- 16.11 the other party suspends, ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 16.12 If 16.1 applies then without prejudice to any other right or remedy available to The Provider it shall be entitled to cancel the supply of Service without any liability to the Customer and any unpaid Service shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 16.13 On termination or expiry of the Contract:
- 16.14 each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party; and
- 16.15 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.
- 16.16 Upon expiration or termination of the Contract, the Customer must discontinue use of the Service and relinquish use of the IP addresses and server names assigned to the Customer by The Provider in connection with Services, including pointing its domain name(s) away from Service. The Customer agrees that The Provider may, as it determines necessary, make modifications to DNS records and zones on The Provider managed or operated DNS servers and services.

17 Exit Assistance, Return of Customer Data and Transfer of Employees and Assets

- 17.1 Reasonably promptly following expiry or termination of the Contract for any reason, The Provider will provide the Customer with one electronic copy of the Customer Data, in the format it is then in and on an "as-is" basis. Thereafter, subject to clause 17.3, The Provider may delete the Customer Data at its discretion.
- 17.2 Reasonably promptly following expiry or termination of the Contract for reasons other than those set out in clause 16.1, The Provider will:
 - 17.2.1 provide to the Customer copies of existing technical documentation of the Service;
 - 17.2.2 hand over to the Customer all relevant passwords specific to the Service provided to the Customer; and
 - 17.2.3 provide the Customer with such reasonable assistance and information in transitioning the Service to a replacement supplier ("Replacement Supplier") as the Customer may request, free of charge for a period of up to 30 days following such expiry or termination, and thereafter chargeable to the Customer on a time and materials basis at The Provider's then-current rates for a further period of no more than 90 days following such expiry or termination (together, the "Transition Assistance Period").
 - 17.2.4 If requested to do so by the Customer, upon expiry or termination of the Contract for reasons other than those set out in clause 15.1 and subject to continuing payment by the Customer of the applicable Fees, The Provider will use reasonable endeavours to continue to provide such of the Service as the Customer may require for up to 30 days following such termination or expiry so as to allow the Customer to transition to a Replacement Supplier. The Customer acknowledges that certain upstream suppliers may not permit such transitional provision, and therefore agrees that this clause 17.3 will not apply in respect of Service which are dependent upon such upstream suppliers.
- 17.3 If applicable, on expiry or termination of the Contract The Provider shall sell to the Customer, and the Customer shall buy, the Customer Site Equipment for net book value, calculated in accordance with The Provider's reasonable then-current depreciation policy. Title to such Customer Site Equipment shall pass to the Customer upon payment of the agreed sum.

18 Force Majeure

Neither party shall be liable, nor will Service Credits be applied, for any failure of any equipment, facilities or delivery of Service due to causes beyond such party's reasonable control.

19 Liability

- 19.1 Except as expressly and specifically provided in the Contract:
- 19.1.1 the Customer assumes sole responsibility for results obtained from the use of the Service, and for conclusions drawn from such use. The Provider shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to The Provider by the Customer in connection with the Service, or any actions taken by The Provider at the Customer's direction; and
 - 19.1.2 all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 19.2 Nothing in the Contract is intended to or shall be interpreted to exclude or limit the liability of either party for:
- 19.2.1 the indemnities expressly given in the Contract; or
 - 19.2.2 any liability which cannot lawfully be excluded or limited.
- 19.3 The Provider will have no liability to the Customer arising out of or in connection with the Contract for any loss of profits, account of profits, loss of business, loss of revenue, loss or reputation or goodwill, loss of opportunity, loss of data or interference with business (unless and solely to the extent that The Provider provides backup and restore services as part of the Service), or any indirect or consequential loss of any kind.
- 19.4 In particular and without prejudice to the provisions of clause 19.3, The Provider will not be liable for any loss or damage arising to the Customer's systems, data, information, equipment (including the Customer's Operating Environment) or any Intellectual Property Rights if such loss is in any way attributable to any of the following:
- 19.4.1 any failure of the Customer's applications, databases or operating systems, including loss or corruption of data or (unless and to the extent that backup and restore services are part of the Service) failure to implement back-up procedures;
 - 19.4.2 any failure of any applicable Service Level if in the reasonable opinion of The Provider (based on its knowledge of the industry) the solution/systems have been tampered with by the Customer or any third party authorised by the Customer with or without The Provider's knowledge;
 - 19.4.3 any failure of any Customer-managed IT Partner to provide its services in accordance with the relevant agreements;
 - 19.4.4 any Internet or communications failure outside the control of The Provider; or
 - 19.4.5 any latent defect in any third-party equipment or Software, or failure of such equipment or Software to perform in accordance with the manufacturer's specification.
- 19.5 Subject to the other provisions of this clause 18, The Provider's maximum aggregate liability to the Customer arising out of or in connection with the Contract is, in relation to each event and all events preceding that event (taken together), limited to an amount equal to the fees paid by the Customer to The Provider in the 12 months preceding such event.

20 Non-Solicitation

- 20.1 Both parties agree that during the period of the Agreement and for a period of twelve (12) months after its termination or expiry, save for where such action is a result of a bona fide public recruitment process, neither party shall entice or seek to employ or engage directly or indirectly (without the other party's prior written agreement, such consent not to be unreasonably withheld or delayed) or make or seek to make any offer of employment or engagement to any of the other party's officers, employees or workers, including those of any of its sub-contractors who have been involved in the course of the negotiation, conclusion and performance of the Contract;
- 20.2 If any officer, employee or worker of a party leaves the employment of that party as a result of a breach of this clause 20 and commences employment with, or provides services to, the other party, it shall pay the non-breaching party 50% of the higher of:-
- 20.2.1 the annual salary (including any benefits-in-kind, bonus payments, commissions and other benefits) of the employee at the date that they ceased to be an employee of the non-breaching party; or
 - 20.2.2 the annual salary of the employee at the time they commence employment by the breaching party.
- 20.3 Each party acknowledges that any such payment is by way of liquidated damages and is a reasonable and genuine pre-estimate of the non-breaching party's losses.

21 No Waiver

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

22 Insurance

Each party shall at all times maintain appropriate policies of insurance with a reputable insurance company to cover their separate risks and liabilities under this agreement (such policies to include but not be limited to public liability insurance in an amount of not less than GBP 5,000,000 for any event, unless the parties agree otherwise in writing).

23 Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 23 shall not affect the validity and enforceability of the rest of the Contract.

24 Assignment

- 24.1 The Customer shall not, without the prior written consent of The Provider, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 24.2 The Customer accepts that The Provider may, in its sole discretion, sub-contract, outsource or resell all or parts of the delivery of a Service to any of The Provider's IT Partners, provided that The Provider remains responsible for any act or omission of its IT Partners and other sub-contractors.

25 No Partnership or Agency

- 25.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.
- 25.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

26 Third-Party Rights

Nothing in the Contract will confer any rights on any third parties.

27 Governing Law and Dispute Resolution

- 27.1 This Agreement shall in all respects be governed by and construed, interpreted and enforced in accordance with the laws of United Kingdom without giving effect to any conflicts of law or choice of law principles. Any action arising out of or relating to this Agreement will be venued in a court situated in England and Wales, and both Parties hereby irrevocably consent and submit themselves to the personal jurisdiction of said courts for that purpose.
- 27.2 Dispute Resolution: The Parties agree to meet and confer in good faith on all matters of common interest or all controversies, claims, or disputes which materially affect the performance of either Party under this Agreement. The Parties' primary contacts for this Agreement agree to initially confer and negotiate in good faith any concerns or issues that arise under this Agreement. If the Parties' primary contacts are unable to agree on a resolution within thirty (30) days of first notice of the issue or concern, then the Parties shall submit themselves to Arbitration Laws in accordance with the arbitration laws of England and Wales.

28 Notices

- 28.1 Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand, by email to the Customer Representative at the address specified in the Proposal, or sent by pre-paid first class post or other next working day delivery service, at its registered office (if a Company) or (in any other case) its principal place of business.
- 28.2 Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address, or if sent by email, at 9.00 am on the next Business Day after sending, or otherwise at 9.00 am on the second Business Day after posting.
- 28.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any Arbitration or other method of Dispute Resolution.

29 Anti-Bribery

Neither party will commit, or do or omit to do any act or thing which would result in the other party committing, an offence under sections 1, 2 or 6 of the Bribery Act 2010.

30 Anti-Slavery

Neither party will commit, or do or omit to do any act or thing which would result in the other party committing, an offence under sections 1, 3 or 6 of the Modern Slavery Act 2015.

31 Service Level Agreement

31.1 Introduction

Many of the services delivered by The Provider can actually be 'invisible' in many ways to a non-technical end user. To ensure that our customers get value for money we therefore seek to make this 'visible'. To do that we outline here all tasks that are carried out as a part of the service contract, what they do, how the work, and how you can tell very easily if they are being done as per the Service Agreement.

31.2 Response times

Where you make contact with The Provider, we will prioritise the incident as covered in the 'Setting Priorities' section and will agree to respond within the given time frames. A response does not merely mean we will let you know we have received your message, it means we will look at your issue, started diagnosis, and we will come back to you with 4 facts:

- 1) A clear agreement of what the incident is about
- 2) An owner for the problem both at The Provider and your company
- 3) A clear outline from The Provider as to what the next steps are
- 4) An expected time frame to resolution of the problem (a 'Fix' time)

In furnishing you with this information we have satisfied the 'Response' as constituted by this Service Agreement.

It is extremely important that you discuss the Priority clearly with the The Provider representative as the priority will be set

by agreement, the default Priority will be used if you do not specify. You must also be realistic about the priority of an incident. Any incidents which have been set above their allotted Response will be dropped to the appropriate Priority by a senior member of The Provider, which will also reset the count time for the incident.

The target Response times set out for SLA are as follows:

Priority	Response Time
Urgent	8 hrs
High	1 day
Medium	2 Days
Low	2 Days
Incident	3 Days
Request	Best endeavours

31.3 Priority Definitions

As the setting of Priority for an incident carries such an important weight in the delivery of service, it is imperative that this is carried out in a consistent and fair manner for all customers. To ensure this, clear definitions exist to decide what priority any incident will come under, and this is based upon the business impact.

Priority	Defenition	Example
Urgent	All Users at site unable to work	<ul style="list-style-type: none"> • Virus outbreak • Email systems company wide down • Networks are down
High	Single User unable to work or many users greatly inconvenienced	<ul style="list-style-type: none"> • Single system Virus • Users machine not functioning • Network connection failure
Medium	Single User unable to perform a single function or experiencing inconvenience	<ul style="list-style-type: none"> • Application fault • Cannot access a file
Low	Single user or application intermittent issue	

Incident	Notification of an item non impacting issue	
Request	Add, Move or change	

*Note that Internet outage is not an emergency priority as it is held with a 3rd party – your ISP, and while The Provider will endeavour to chase this as quickly as possible it is in the end, outside of our control.

31.4 Adds Moves and Changes

Adds moves and changes are delivered as part of the Professional Services hourly or daily call off

Services are available in the following formats

- Per hour 9x5
- Per hour 24x7
- Day rate 9x5
- Day rate 24x7

*Professional Services Excludes Bank holidays. Weekends are charged at time and a half

31.5 Network

31.5.1 To provide IT support it is necessary for The Provider to have full administration access to your network and any supported machines, you must agree to this to allow us to fulfil the requirements of this service.

31.5.2 You must allow access for the The Provider Support System by opening port 5721& 443 on your network for outbound access, or giving permission for The Provider to set up such access. A site visit to set this up may incur a charge).

31.6 Passwords

31.6.1 The Provider will need passwords to access the network environment, including but not limited to:

31.6.2 Windows Domains, Local Windows Admin Accounts, Routers, Firewalls

31.6.3 The Provider will set up Admin Accounts for its own technical access to your systems. We will use strong password technique,

this also means your password is unique to your business, but is based on a formula so that it cannot be guessed, and does not need to be written down or stored. The Provider does not reveal this information to customers, and customers asking for password information will be refused. It is an offence for any member of The Provider's staff to disclose any Admin passwords to anyone outside the Provider security team and will result in immediate dismissal of such member of staff.

31.7 The Provider management system:

The Provider Management System is designed with comprehensive security throughout..

31.7.1 The Provider Agent

The Provider platform architecture is central to providing maximum security. Each computer managed has a small agent installed. The agent initiates all communications back to the server. Since the agent will not accept any inbound connections, it is impossible for a third party application to attack the agent from the network.

31.7.2 Firewalls

The Provider does not need any inbound ports opened on client machines. This lets the agent do its job in any network configuration without introducing susceptibility to inbound port probes or new network attacks. Outbound ports 5721,443 & 3478 need to be configured for TCP, UDP & IP as a minimum requirement in point 31.8.4

31.7.3 Encryption

The Provider protects against "man-in-the-middle" attacks by encrypting all communication between the agent and server with 256-bit RC4 using a key that rolls every time the server tasks the agent (typically at least once per day). Since there are no plain-text data packets passing over the network, there is nothing available for an attacker to exploit.

31.7.4 Secure Access

Administrators access the Provider server through a Web interface after a secure logon process. The system never sends passwords over the network and never stores them in the database. Only each administrator knows his or her password. The client side combines the password with a random challenge, issued by the Provider server for each session, and hashes it with SHA-1. The server side tests this result in order to grant or deny access. The unique random challenge protects against a "man-in-the-middle" attack sniffing the network, capturing the random bits, and using them later to access the Provider server.

31.7.5 Web Access

The Web site itself is protected by The Provider Patch Management. The The Provider Patch scan is run on the Provider server every day. As soon as new patches are released, the The Provider Patch scan automatically detects they are needed and applies all security patches automatically.

31.8 Basic Requirements

- 31.8.1 All systems under SLA need to be under warranty
- 31.8.2 All systems under SLA need to have an active software license with support
- 31.8.3 Patches should be within the last 3 updates
- 31.8.4 Systems must be able to be accessible with secure access

31.9 Customer Obligations

- 31.9.1 Where some part of a customer environment does not meet the basic requirements The Provider will be unable to setup any service, or continue to deliver service to that device or site (if the item affects an entire site) until the environment is brought back in line with The Provider's minimum requirements.
- 31.9.2 Where service is already being delivered by The Provider and the environment is changed outside the aforementioned requirements either by the customer, by The Provider, its partners or a 3rd party, The Provider will at its discretion continue to deliver service to that environment until it can be brought back into alignment with the requirements, for a period of up to 14 days, or until next payment date is due for the customer, whichever is sooner. After which time if support is to continue an extra charge will be levied to support a machine outside of the required specification, generally this will be three times the normal monthly cost of supporting a machine per month or part thereof.
- 31.9.3 Unless the changes are directly a result of negligence on the part of The Provider or its partners, all costs involved in bringing an environment back in line with requirements will be met by the customer. The Provider will not meet any costs as a result of 3rd parties.
- 31.9.4 The Provider will make all endeavours to warn the customer of the costs before undertaking any work, but will also try to operate in the best interests of the customer and the continuation of its business, and may take it upon itself to deliver chargeable services where this would be continuing to operate in the spirit of the previous spending and decisions made by that Customer in accordance with the perceived business impact or possible service disruption.

31.10 The Provider Warranty Extension

- 31.10.1 The Provider facilitates the option of bringing in existing out of support Servers, Networking and Workstation (including laptops) in order to meet the minimum requirements as set out in 31.8
- 31.10.2 For all hardware assets under warranty, Customers will receive the following services
 - Help desk support: 24 hours a day, 7 days a week, 365 days a year
 - Maintenance, repair, and/or replacement of equipment (if necessary)

31.10.3 Warranty Extension SLA options available

31.10.3.1 For servers and network equipment:

- Next business day service
- 4 hour service

31.10.3.2 For workstations:

- Next business day service

31.10.4 Currently, our warranty coverage for all hardware assets is available in the following countries:

- United States (including Puerto Rico)
- Canada
- Australia
- New Zealand
- United Kingdom

31.10.5 The following countries have coverage available for servers and networking equipment only:

- Ireland
- France
- Italy
- Germany
- Netherlands

31.10.6 Standards of Our Services

- 31.10.6.1 To be eligible for Service by us, your equipment will receive a proposal for Extension. All Covered Equipment must be in good working condition and meet the manufacturers' minimum equipment configuration requirements and specifications. Any costs associated with correcting deficiencies to the aforementioned requirement(s) are for the customers responsibility.
- 31.10.6.2 The Provider will maintain the Covered Equipment in good operating condition. Services include labour and replacement of all parts deemed necessary for proper operation of Covered Equipment. Defective parts containing proprietary data will remain Customer's property; all other defective parts will become our property unless otherwise agreed.
- 31.10.6.3 You will promptly notify us of Covered Equipment failure and will allow our staff reasonable access to Covered Equipment and reasonable time to perform the Services. You will maintain accurate and current logs and records concerning the operation of Covered Equipment.
- 31.10.6.4 Customer shall provide The Provider with full and free access to the Equipment, and a safe place in which to perform maintenance service. Customer shall also maintain a current backup of the Operating System and other applicable software programs and data. Should any person other than service representatives provided repair, modify, or perform any maintenance service on any Equipment under warranty, we are required to restore the Equipment to good operating condition, you will be billed separately per the professional services rates as set out in Cloud Activa8 E-commerce platform.
- 31.10.6.5 All Services are dependent upon hardware availability on commercially reasonable terms.
- 31.10.6.6 Our Services will be provided by supervised and qualified staff and will be provided in a good and workmanlike manner and in compliance with all applicable laws and regulations.

31.11 Exclusions

The following services are outside the scope of maintenance service provided by us:

- 31.11.1 Installation, de-installation, reinstallation or moving Covered Equipment;
- 31.11.2 Adding, changing, removing features or options, or making functional changes to Covered Equipment;
- 31.11.3 Providing consumable or operating supplies or materials, including but not limited to print heads, shuttle assemblies, cables, batteries, media, toner or ink cartridges;
- 31.11.4 Repair of equipment damage including, without limitation, damage resulting from accident, transportation, neglect or misuse, lightning, failure or fluctuation of electrical power, air conditioning or humidity control, water, other environmental factors, telephone equipment or communication lines failure, failure of foreign interconnect equipment, or caused by maintenance services or modifications, alterations or additions of items not provided by us to Covered Equipment;
- 31.11.5 Maintenance or repair required caused by misuse, abuse or neglect, or other loss or damage from causes external to the equipment;
- 31.11.6 Software or firmware service (including upgrades and patches) or any repair of any equipment failure caused by inappropriate software or firmware programming, system software or application software support;
- 31.11.7 System engineering services, programming, and operating procedures;
- 31.11.8 Maintenance or other services on equipment other than Covered Equipment. Excluded services noted above may be performed by us under a separate Service Agreement or, at our sole discretion, on a time and materials basis (which may include travel).
- 31.11.9 Ramp-up period
- 31.11.9.1 From the moment you buy warranty coverage, we have a ramp-up period where we work to stock our nearby service centres with the necessary equipment needed to service your hardware assets.
- 31.11.9.2 This period is 30 days in the US, Canada, and the UK. For all other serviceable areas, it's 45 days.
- 31.11.9.3 During this time, all requests are treated on a best-effort basis. This means the SLAs are usually achieved, but not guaranteed.

31.12 The Provider SLA exclusions

31.12.1 The Service Commitment does not apply to any Unavailability, Suspension or Termination of The Provider Services, or any other The Provider or The Provider Services performance issues:

- (i) caused by factors outside of our reasonable control, including, without limitation, any force majeure event or Internet access or related problems beyond the demarcation point of The Provider Services or its direct hosting subcontractors (i.e. beyond the point in the network where The Provider maintains access and control over the Provider Services);
- (ii) that result from any actions or inactions of you or any third party (other than The Provider's direct hosting subcontractor);
- (iii) that result from your equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within our direct control);
- (iv) that result from any scheduled maintenance; or
- (v) (vi) arising from our suspension and termination of your right to use The Provider Services in connection with any breach by you of the Terms of Service or otherwise in accordance with the Terms of Service (collectively, the "The Provider SLA Exclusions"). If availability is impacted by factors other than those used in our Monthly Uptime Percentage calculation, then we may issue a Service Credit considering such factors at our discretion.

END
