

Contract Reference:.....

Airpoint Limited

Airpoint Limited has developed certain software applications and platforms which it makes available to subscribers via certain networks on a pay-per-use basis. Airpoint will grant access to the Services on the basis that the terms and conditions of this Agreement apply to such use. By accessing and/or using the Service, the Customer agrees to be bound by the terms of this Agreement. If you do not agree to the terms of this Agreement do not use the Service.

Terms and Conditions for Cloud Software under G-Cloud 10

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1 Parties

This Cloud Services Agreement is entered into, as of the date which is the last date of execution by the parties in the signature blocks below, by and between Airpoint Limited (hereinafter referred to as “Airpoint”) and the “Customer”.

2 Definitions

In these terms and conditions the following expressions will have the following meanings unless inconsistent with the context:

2.1 “Agreement” - these terms and conditions together with the terms of any applicable Order Proposal and Quotation documents.

2.2 “Charges” - the fees for the provision of the Service set out in the Service Definition.

2.3 “Customer” - the legal entity contracting to consume these Services.

2.4 “Customer Content” - the data, information and material that the Customer provides, stores, accesses or transmit using the Service.

2.5 “Effective Date” - the date so noted on the Order Form.

2.6 “Intellectual Property” - all copyright (including future copyright), patents, trademarks and service marks (registerable or not), rights in Internet domain names and website addresses and other rights in trade names, designs (registerable or not), database rights, trade secrets, applications for any of the foregoing, know-how and other intellectual property rights in any country or jurisdiction.

2.7 “Order Form” - a Form for ordering services based on the template set out in the Framework Agreement as updated and or amended from time to time.

2.8 “Ordered Services” - the services which Airpoint will provide to the Customer (in whole or part) as set out in the Order Form.

2.9 “Party” - Airpoint or Customer as appropriate.

2.10 “Parties” - Airpoint and the Customer and any other entities according to context.

2.11 “Service” - the cloud services provided by Airpoint to the Customer as described in the relevant Service Definition.

2.12 “Service Commencement Date” - the date so noted on the Order Form.

2.13 “Service Definition” - a schedule or schedules to this Agreement, which set(s) out the Service(s) purchased by the Customer.

2.14 “Service Owner” - the Customer representative responsible for the overall management of the Ordered Services on behalf of the Customer.

2.15 “Support Service” - the support service provided by Airpoint in connection with the Service(s), as set out in the relevant Service Definition.

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2.16 "Year" - the period of 365 days (plus 29 February where applicable) from the Effective Date.

3 Term and Termination

3.1 This Agreement will commence on the Effective Date and, unless terminated earlier in accordance with this Agreement, continue for the Minimum Term as is set out in the Service Definition. Thereafter this Agreement will automatically renew for subsequent Minimum Terms until such time as either party gives such written notice of termination to the other party.

3.2 Either party may terminate this Agreement immediately by notice in writing if the other party (i) is in material breach of any term of this Agreement and such breach is not remedied within 30 days of it being notified of the breach, or (iii) the other party ceases to carry out its business or substantially alters the whole of its business.

3.3 On termination of this agreement for any reason, the Service will immediately terminate and the Customers right to use software and content licensed by the Agreement will cease immediately.

4 Service Provision

4.1 Airpoint shall provide the Service to the Customer for the Term with due care and skill and in accordance with the terms of this Agreement and so that the Service complies in all material respects with the relevant Service Definition.

4.2 Airpoint will use its reasonable endeavours to ensure that the standards of the Ordered Services shall be as specified in the applicable Service Level Agreement(s).

4.3 Airpoint will appoint an Account Manager with responsibility for this Agreement for liaising and reporting to the Customer's Service Owner. The Customer shall assign a Service Owner with responsibility for this Agreement for liaising with the Airpoint's Account Manager.

5 Charges and Payment

5.1 The charges for the provision of the Service(s) are as set out in the Order Form.

5.2 Airpoint shall invoice the Customer for the services as detailed therein.

5.3 Invoiced amounts shall be due and payable as detailed within the invoice.

5.4 Airpoint shall be entitled to charge interest daily on overdue invoices from the date when payment becomes due from until the date of payment at a rate of 2% per annum above the base rate of the Bank of England. In the event that the Customer's procedures require that an invoice be submitted against a purchase order to payment, the Customer shall be responsible for issuing such purchase order before the services are rendered.

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5.5 Airpoint shall not refund any payment unless the amount received exceeds that which is owed Airpoint at the time of payment, in which case the difference shall be refunded as soon as practicably possible.

6 Customer Warranties

The Customer warrants to Airpoint:

6.1 All necessary permissions and consents required by it to enter into this Agreement have been obtained.

6.2 All information including but not limited to the Configuration Details as Airpoint may reasonably need concerning the Customer's business practices operations and answers to queries, decisions and approvals which may be reasonably necessary in order for Airpoint to undertake any of the Ordered Services will be provided in an accurate, complete and timely manner. Airpoint will make reasonable endeavours to give the Customer reasonable prior notice of any information answers decisions or approvals required.

6.3 It shall provide such access physical and remote to its premises, personnel and facilities as Airpoint shall reasonably require in order to provide the Ordered Services.

The Customer shall:

6.4 Ensure that its Equipment meets the requirements for provision of the Ordered Services as specified by Airpoint in writing from time to time, and that the Equipment shall be of adequate quality for such purposes and maintained as such.

6.5 In no way try to access, amend, hack or crack into any of Airpoint's services, routers managed service equipment or software except as instructed by Airpoint in writing.

6.6 Not, and must procure that its employees, contractors, users, agents, representatives, partners or any other entity which the Customer extends use of the Ordered Services do not, use the Ordered Services:

6.6.1 to send, receive, access or disseminate any material which is offensive, abusive, indecent, obscene, menacing, fraudulent or in breach of:

6.6.1.1 Confidence;

6.6.1.2 Any intellectual property right;

6.6.1.3 Privacy or any applicable data protection legislation;

6.6.1.4 Any other rights;

6.6.1.5 Any law, statute or regulation or in connection with a criminal offence.

6.6.2 Send or receive any material which contains any viruses or other computer programmes or malware;

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6.6.3 Breach of any additional Customer Warranties forming part of the terms and conditions associated with other G-Cloud CloudStore services used to deliver the Ordered Services.

7 Airpoint Warranty

7.1 Airpoint warrants that the services performed under this Agreement shall be performed using reasonable skill and care, and of a quality conforming to generally accepted industry standards and practices.

7.2 Without prejudice to Clause 7.1, and except as expressly stated in this Agreement, all warranties whether express or implied, by operation of law or otherwise, are hereby excluded in relation to the services to be provided by Airpoint.

8 Intellectual Property Rights

8.1 All Intellectual Property Rights in or in relation to the Ordered Services (including any manuals and operating documentation relating thereto) or in any materials (including software) provided by Airpoint during the course of supplying the Ordered Services shall vest in Airpoint or its suppliers as the case may be. The Customer shall have no title to or interest in any such Intellectual Property Rights except to the extent specifically set out in this Agreement.

8.2 Airpoint shall be free to utilise for the benefit of its other customers any skill and/or knowhow that it may develop or acquire in the performance of the Ordered Services.

8.3 The Customer shall notify Airpoint immediately if it becomes aware of any illegal or unauthorised use of any of the Intellectual Property Rights in the Ordered Services and will assist Airpoint and/or its suppliers in taking steps necessary to defend the owners' rights.

8.4 The Customer undertakes to execute and comply with the terms of any Licence Agreement(s).

8.5 Unless specifically authorised under a Licence Agreement(s), or by UK law the Customer undertakes that it shall not (and that it shall not employ nor permit any third party to) attempt to copy, adapt, amend, disassemble, de-compile or reverse engineer software or any part thereof except to the extent allowed by English law.

9 Indemnification

The Customer shall indemnify Airpoint against all claims, costs and expenses which Airpoint may incur and which arise, directly or indirectly, from the Customer's breach of any of its obligations under this Agreement, including any claims brought against Airpoint alleging that any services provided by Airpoint in accordance with the order infringes a patent, copyright or trade secret or other similar right of a third party.

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10 Limitation of Liability

10.1 Nothing in this Agreement shall limit or exclude either Party's liability for fraud or death or personal injury resulting from negligence or to the extent not permitted by law.

10.2 Airpoint's total liability in respect of loss or damage to tangible property shall not in any circumstances exceed five million pounds (£5,000,000).

10.3 Subject to Clauses 9.1 and 9.2, if Airpoint is determined to be liable to the Customer under this Agreement Airpoint's total liability in respect of any other loss or damage arising under this Agreement shall not in any circumstances exceed five million pounds (£5,000,000) or a sum equal to the Charges paid in the previous 12 months under this Agreement, whichever is the lower.

10.4 Airpoint shall not have any liability in respect of the provisions of any Ordered Services which it is alleged to be defective unless notice of any claim in respect of such services is given in writing to a director of Airpoint by the Customer within one month of the date upon which the Ordered Services were performed. Where such notice is validly given Airpoint's only obligation, on confirmation of the alleged defect, shall be to re-perform the relevant services and Airpoint shall have no further liability in relation to that defective service.

10.5 Airpoint will have no liability under or in connection with this Agreement in respect of:

10.5.1 loss of profits, loss of business, loss of revenue, loss of contract, loss of goodwill, loss of anticipated earnings or saving (whether direct, indirect or consequential); or

10.5.2 loss of use or value of any data or equipment including software, wasted management, operation or other time (whether direct, indirect or consequential); or

10.5.3 any indirect or consequential loss howsoever arising.

10.6 The Charges have been set by Airpoint on the basis of the exclusions and restrictions of liability in Clauses 9.2, 9.3, 9.4 and 9.5 and would be higher otherwise. In the circumstances, the Customer agrees that those provisions are reasonable and will accept the risk and/or insure accordingly. The Customer may by written notice request Airpoint to agree a higher limit of liability provided insurance cover can be obtained therefor and the Customer will pay any additional premiums incurred by Airpoint as a result.

10.7 Except as otherwise specifically provided in this Agreement, Airpoint hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in this Agreement) or implied, statutory, customary or otherwise which, but for such exclusions would or might subsist in favour of the Customer.

11 Force Majeure

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway

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authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or services, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.

12 Assignment

The Customer shall not assign, novate or otherwise in any other way transfer its rights or obligations under the Agreement to a third party without Airpoint's prior written consent (not to be unreasonably withheld). Airpoint shall be entitled to assign, novate or otherwise transfer its rights or obligations under this Agreement upon written notice to Customer.

13 Subcontractors

Airpoint may subcontract for the performance of this Agreement or any part of this Agreement and may engage subcontractors, whether or not operating under a corporate structure, to assist in the provision of Service pursuant to this Agreement at any time without the Customer's consent. Airpoint and the Customer are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties. Airpoint may, in addition to its own employees, engage subcontractors to provide all or part of the services being provided to the Customer and such engagement shall not relieve Airpoint of its obligations under this Agreement.

14 Severability

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

15 Variation

15.1 The Customer acknowledges and agrees that Airpoint may change the terms of this Agreement and its Schedules at any time during the Term, in which case the new (changed) Agreement shall apply to the Customer.

15.2 Airpoint will provide the Customer with at least 30 days' advance notice of any proposed change to the terms by email. If the Customer does not agree with the terms of the new (changed) Agreement, the Customer may terminate the Agreement without penalty by providing 30 days written notice to Airpoint.

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16 Dispute Resolution

16.1 All disputes, differences or questions arising in relation to this Agreement shall be referred in the first instance to the assigned Account Manager and the Service Owner of the Customer who shall meet together and attempt to settle the dispute (acting in good faith) within 20 Business Days.

16.2 If the persons so appointed are unable to resolve the dispute, it shall be referred to a director of Airpoint and equivalent senior manager of the Customer who shall meet together and attempt to settle the dispute (acting in good faith) within 10 Business Days.

16.3 If the persons appointed are also unable to resolve the dispute within 10 Business Days, the Parties shall have no further obligation to follow this dispute resolution procedure.

16.4 Neither party may initiate any legal action until the procedure set out in Clauses 16.1, 16.2 and 16.3 has been completed except that in no event shall the provisions of this Clause 16.1 operate to prevent a Party seeking interim relief in respect of any dispute or differences.

17 Waiver

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

18 Entire Agreement

This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both parties.

19 Publicity

Except as (but only to the extent) required by applicable law, the requirements of any governmental authority or other regulatory body which restricts the undertaking of marketing and promotional activities or press releases and public announcements in respect to the Service provided under this Agreement, Airpoint may, with notice to the Customer, undertake marketing and promotional activities and make press releases and other public announcements in respect to the Service.

20 No Third Parties

Nothing in this Agreement is intended to, nor shall it confer any rights on a third party.

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21 Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the law of England and Wales.

22 Signatures

IN WITNESS WHEREOF, the parties have entered into this agreement as of the latest date of execution by a Party below:

Airpoint LIMITED

CUSTOMER

Signature _____

Signature _____

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____