

## Cloud Storage & Video Redaction Solution

### Terms and Conditions of Business

**The Customer's attention is particularly drawn to the provisions of clauses 9.2, 9.3, 12.6(d) and 13 which limit the liability of the Supplier.**

#### **1. BASIS OF CONTRACT**

- 1.1 The Order constitutes an offer by the Customer to purchase the Cloud Storage Solution and access to the Ocucon Portal in accordance with these Conditions.
- 1.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (the **Commencement Date**).
- 1.3 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.4 All of these Conditions shall apply to the supply of both the Cloud Storage Solution and access to the Ocucon Portal except where application to one or the other is specified.

#### **2. CLOUD STORAGE SOLUTION**

- 2.1 The Supplier or its Approved Subcontractor shall:
  - (a) deliver and install the Cloud Storage Solution set out in the Order at the Site on or before the Go Live Date; and
  - (b) operate and provide maintenance and support of the Cloud Storage Solution during the Term.
- 2.2 The price for the Cloud Storage Solution is included in the Charges.
- 2.3 Time for delivery of the delivery and installation of the Cloud Storage Solution shall not be of the essence of the Contract.
- 2.4 Before delivering any item of Supplier Hardware to the Site, the Supplier shall carry out reasonable tests to ensure that such item is in operable condition and is capable of meeting the requirements of the Order once properly installed.
- 2.5 The Supplier shall supply the Supplier Software, which shall be installed on the Supplier Hardware.
- 2.6 The Supplier shall provide third-party software to the Customer (if any) under the standard licence terms provided by the relevant third parties.
- 2.7 The Go Live Date shall be adjusted if one of more of the following events occurs:
  - (a) a force majeure event occurs as described in clause 15.12; or
  - (b) delay is caused in whole or in part by an action or omission of the Customer or its employees, agents or third party contractors.

The Customer Representative and the Project Manager shall use best endeavours to agree in writing, signed by both parties, what extension of time is reasonable in the circumstances. The Go Live Date shall be deemed amended accordingly.

- 2.8 [If the Supplier can demonstrate that an adjustment to the Go Live Date has resulted in an increase in cost to the Supplier of carrying out its obligations under the Contract, the Supplier may at its sole discretion increase the Charges to take account of such increase and invoice the Customer accordingly.]
- 2.9 The Supplier or its Approved Subcontractor shall provide the Cloud Storage Support to the Customer. The price for Cloud Storage Support is included in the Charges.
- 2.10 The Cloud Storage Support shall be provided in accordance with the Support Service Levels.
- 2.11 The Supplier or its Approved Subcontractor shall deliver and install upgrades to the Cloud Storage Solution during the Term. Such upgrades shall be free of charge, provided always that:
- (a) the Customer shall be obliged to take any such upgrade; and
  - (b) at its own expense, shall be responsible for upgrading the Customer Environment in order to facilitate any upgrade provided by the Supplier.

### **3. PROJECT MANAGEMENT**

- 3.1 No later than five (5) Business Days after the Commencement Date, the Customer shall notify the Supplier of the name and qualifications of the person appointed as the Customer Representative. The Customer shall give the Supplier notice in writing of any change in the identity of the Customer Representative.
- 3.2 The Supplier shall appoint the Project Manager, who shall have the responsibility and commensurate authority for the overall progress of the delivery, installation and operation of the Cloud Storage Solution and the Ocucon Portal and to whom all questions regarding them can be referred. The name of the appointed individual shall be notified in writing to the Customer Representative. The Supplier shall give the Customer notice in writing of any change in the identity of the Project Manager.

### **4. THE OCUCON PORTAL**

- 4.1 Subject to the Customer paying the Charges in accordance with clause 4.5, the restrictions set out in this clause 4 and the other terms and conditions of the Contract, the Supplier grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicenses, to permit Users to use the Ocucon Portal during the Term solely for the Customer's business operations.
- 4.2 The price for access to the Ocucon Portal is included in the Charges.
- 4.3 In relation to the Users, the Customer undertakes that:
- (a) the maximum number of Users authorised to access and use the Ocucon Portal shall not exceed the number (if any) set out in the Order Form; and
  - (b) each User shall keep a secure password for their use of the Ocucon Portal and shall keep such password confidential.
- 4.4 The Customer shall not, and shall use best endeavours to procure that Users shall not, access, store, distribute or transmit any Viruses, or any material during the course of its use of the Ocucon Portal that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's or any User's access to any material that breaches the provisions of this clause.

- 4.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Ocucon Portal and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 4.6 The Supplier or its Approved Subcontractor shall provide the Portal Support to the Customer. The price for Portal Support is included in the Charges.
- 4.7 The Portal Support shall be provided in accordance with the Support Service Levels.
- 4.8 The Supplier or its Approved Subcontractor shall provide the Training at the Site to the Customer and/or the Users. The price for the Training is included in the Charges.

## **5. THIRD PARTY SERVICES**

- 5.1 In order for the Supplier to provide the Cloud Storage Solution, the Customer expressly consents to the Supplier obtaining the Third Party Services from its Approved Subcontractors and, subject to clause 5.2, the identity of Approved Subcontractors shall be at the sole discretion of the Supplier.
- 5.2 Notwithstanding clause 5.1, the Supplier shall not use any Third Party Services to provide Data Storage without the Customer's prior written consent (such consent not to be unreasonably withheld or delayed).
- 5.3 Where the Supplier requests consent to a provider of Third Party Services in accordance with clause 5.2, to help the Customer reach a decision on the proposed provider of Third Party Services, the Supplier shall provide the Customer with any information that the Customer may reasonably require about the proposed provider of Third Party Services.

## **6. PAYMENT**

- 6.1 The Supplier shall be entitled to invoice the Charges in advance commencing on the Go Live Date for the period between the Go Live Date and the end of the calendar month in which the Go Live Date falls and thereafter monthly in advance on the first day of each calendar month during the Term.
- 6.2 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of VAT chargeable from time to time. Where any taxable supply for VAT

purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on them at the same time as payment is due for the supply of the Cloud Storage Solution and/or access to the Ocucon Portal.

- 6.3 Each invoice is due and payable thirty (30) days after the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier. Time for payment is of the essence of the Contract.
- 6.4 If the Supplier has not received payment within five (5) Business Days after the due date, and without prejudice to any other rights and remedies of the Supplier:
- (a) the Supplier shall be under no obligation to provide the Cloud Storage Solution and/or access to the Ocucon Portal while the invoice(s) concerned remain unpaid; and
  - (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to four percent (4%) over the then current base lending rate of Barclays Bank Plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 6.5 If the Supplier or its Approved Subcontractor visits the Site at the Customer's request to investigate a failure of the Cloud Storage Solution or the Ocucon Portal, which proves in the Supplier's reasonable opinion to have been the fault of the Customer or a User, the Supplier may charge the Customer for the time spent on such visit on a time-and-materials basis at its standard rates then in force.
- 6.6 The Supplier may at any time, without notice to the Customer, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer, whether either liability is present or future, liquidated or un-liquidated, and whether or not either liability arises under the Contract.

## **7. DATA, DATA PROTECTION, SECURITY AND INTEGRITY**

7.1 The following definitions apply in this clause 7:

- (a) **Data Protection Legislation** means:
  - (i) prior to 25 May 2018, the Data Protection Act 1998; or
  - (ii) on or after 25 May 2018, unless and until no longer directly applicable in the United Kingdom, the General Data Protection Regulation ((EU) 2016/679) (**GDPR**) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; or
  - (iii) (in the event of non-applicability) any successor legislation to the GDPR or the Data Protection Act 1998
- (b) **Data Controller, Data Processor, Data Subject, Personal Data** and **Processing** bear the respective meanings given them in the Data Protection Legislation and **Process** shall be construed accordingly; and

- (c) **Customer Personal Data** means any Customer Data that is also Personal Data.
- 7.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause **Error! Reference source not found.** is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 7.3 The parties acknowledge and agree that:
  - (a) for the purposes of the Data Protection Legislation, the Customer is the Data Controller and the Supplier is the Data Processor that processes certain Personal Data on behalf of the Customer;
  - (b) the subject matter of the Processing is the Customer Personal Data;
  - (c) the duration of the Processing is the Term plus any Data Retention Period;
  - (d) the nature and purpose of the Processing is the use of the Customer Personal Data in the provision of the Cloud Storage Solution as envisaged by this Agreement (including without limitation, in connection with Third Party Services);
  - (e) the type of Personal Data and which shall be processed is CCTV images of individuals; and
  - (f) the categories of Data Subjects are individuals entering onto the premises of the Customer at which the Cloud Storage Solution has been installed and is in operation.
- 7.4 Without prejudice to the generality of clause 7.2, the Customer will ensure that it has all necessary appropriate consents and notices in place, and/or that it has taken all necessary measures (in each case, insofar as required by the Data Protection Legislation) to enable lawful transfer of the Customer Personal Data to and from the Data Storage for the duration and purposes of this Agreement.
- 7.5 Without prejudice to the generality of clause 7.2, the Supplier shall, in relation to any Customer Personal Data which is Processed in connection with the performance by the Supplier of its obligations under this Agreement:
  - (a) subject to clause 7.6, Process that Customer Personal Data only on the written instructions of the Customer, unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data (**Relevant Laws**). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for Processing Customer Personal Data, the Supplier shall inform the Customer of this before performing the Processing required by the Relevant Laws unless those Relevant Laws prohibit the Supplier from so notifying the Customer;
  - (b) ensure that all Supplier personnel who Process any Customer Personal Data are obliged to keep the same confidential;

- (c) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful Processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, appropriate to the harm that might result from the unauthorised or unlawful Processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
  - (d) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - (e) notify the Customer as soon as reasonably possible (and in any event within the timescale required by the Data Protection Legislation) on becoming aware of a Personal Data breach in relation to (including any actual or suspected accidental, unauthorised or unlawful use, destruction, loss, alteration, compromise, unauthorised disclosure of, or access to) the Customer Personal Data;
  - (f) subject to clause 12.6(d), at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the Agreement unless required by Relevant Laws to store the Customer Personal Data; and
  - (g) make available to the Customer all information necessary to demonstrate compliance with the obligations in this clause **Error! Reference source not found.**, and allow for and contribute to audits, including inspections, conducted by the Customer or the Customer's designated auditor (subject always to prior written agreement of reasonable confidentiality terms concerning the same).
- 7.6 The Supplier shall inform the Customer if, in the Supplier's opinion, the Supplier's compliance with clause 7.5(a) would breach Data Protection Legislation. The Supplier shall be entitled to suspend execution of the instructions concerned, until the Customer Representative confirms in writing that such instructions are to be followed (subject always to clause 7.10(b)).
- 7.7 The Customer hereby provides general authorisation to the Supplier to engage sub-Processors (whether inside or outside the European Economic Area and/or the United Kingdom) in connection with the Leased Lines and/or the Data Storage.
- 7.8 The Supplier hereby confirms that it has entered (or as the case may be, will enter) into written agreements with sub-processors that are substantially on that third party's standard terms of business, which in any event provide sufficient guarantees to implement appropriate technical and organisational measures in such a manner as to meet the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any sub-processor appointed by it pursuant to clause 7.7.
- 7.9 In any instance where the Supplier transfers any Customer Personal Data outside the European Economic Area, it shall ensure that:

- (a) appropriate safeguards are in place in relation to the transfer;
- (b) the Data Subjects have enforceable rights and effective legal remedies; and
- (c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Customer Personal Data that is transferred.

7.10 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with:

- (a) any breach by the Customer (or any User) of clause 7.4;
- (b) the Supplier's compliance with any instructions issued to it under clause 7.5(a); and/or
- (c) any breach by the Customer (or any User) of the Data Protection Legislation.

## **8. CUSTOMER'S OBLIGATIONS**

8.1 The Customer shall co-operate with the Supplier in any manner reasonably required by the Supplier in order to carry out its obligations under the Contract, including provision of information and data, making available suitably qualified employees and contractors of the Customer and, subject to the Supplier's compliance with the Customer's normal security requirements:

- (a) provide such further access for the Supplier's employees or Approved Subcontractors to the Site(s) as is necessary to carry out the Supplier's obligations under the Contract. The Customer shall obtain for the Supplier all permissions necessary to obtain such access; and
- (b) when the Supplier's employees or Approved Subcontractors are working on the Site, provide facilities and supplies reasonably required by the Supplier.

8.2 The Customer shall:

- (a) as soon as reasonably practicable, provide the Supplier or its Approved Subcontractors, contractors and agents with:
  - (i) all necessary co-operation in relation to the Contract;
  - (ii) all necessary access to the Site and the Customer Environment; and
  - (iii) all necessary access to such information as may be required by the Supplier in order to carry out its obligations under the Contract, including but not limited to Customer Data, security access information and configuration services;
- (b) comply with all applicable laws and regulations with respect to its activities under the Contract;
- (c) carry out all other Customer responsibilities set out in the Contract in a timely and efficient manner;

- (d) ensure that Users use the Cloud Storage Solution and the Ocucon Portal in accordance with the terms and conditions of the Contract and shall be responsible for any User's breach of the Contract; and
  - (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its Approved Subcontractors, contractors and agents to perform their obligations under the Contract.
- 8.3 The Customer shall ensure that the Customer Environment has been installed prior to the Go Live Date or such other date specified in the Order Form and shall ensure that throughout the Term the Customer Environment and its network and systems comply with the relevant specifications provided by the Supplier from time to time.
- 8.4 The Customer shall not, and shall use best endeavours to procure that Users shall not:
  - (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under the Contract:
    - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Supplier Software or the Ocucon Portal in any form or media or by any means; or
    - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Supplier Software or the Ocucon Portal; or
  - (b) access all or any part of the Supplier Software or the Ocucon Portal in order to build a product or service which competes with the Cloud Storage Solution or the Ocucon Portal; or
  - (c) use the Supplier Software or the Ocucon Portal to provide services to third parties; or
  - (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Supplier Software or the Ocucon Portal available to any third party except the Users, or
  - (e) attempt to obtain, or assist third parties in obtaining, access to the Supplier Software or the Ocucon Portal, other than as provided under this clause 8.4.

## **9. SUPPLIER'S WARRANTIES AND OBLIGATIONS**

- 9.1 The Supplier warrants that:
  - (a) it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Contract;
  - (b) the Supplier Hardware will be new (except where otherwise specified in the Order Form) and of satisfactory quality;
  - (c) none of the Ocucon Portal, the Supplier Software or the Documentation infringes the Intellectual Property Rights of any third party;



- (d) the Ocucon Portal at the Go Live Date, and throughout the Term, will perform substantially in accordance with any specification provided to the Customer;
  - (e) the Cloud Storage Solution at the Go Live Date, and throughout the Term, will perform substantially in accordance with any specification provided to the Customer;
  - (f) the Cloud Storage Support and Portal Support will be performed substantially in accordance with the specification in the Order Form and with reasonable skill and care by a sufficient number of competent staff with appropriate skills, qualifications and experience; and
  - (g) the Training will be performed with reasonable skill and care by a sufficient number of competent staff with appropriate skills, qualifications and experience.
- 9.2 The sole remedies for breach of the warranties in clause 9.1(c) are set out in clause 11.
- 9.3 The sole remedy for breach of the warranty under clause 9.1(d) shall be correction of Defects by the Supplier within a reasonable time from notification by the Customer of the Defect that constitutes such breach.
- 9.4 If the Cloud Storage Solution does not conform to the warranty set out in clause 9.1(e), the Supplier shall in its sole discretion:
  - (a) at its own expense, use all reasonable commercial endeavours to correct any such non-conformance promptly; or
  - (b) provide the Customer with an alternative means of accomplishing the desired performance; or
  - (c) refund that portion of the Charges paid by the Customer applicable to that part of the Term after the date of breach.

Such correction, substitution or refund constitutes the Customer's sole and exclusive remedy for any breach of the warranty set out in clause 9.1(e).
- 9.5 The warranties set out in clause 9.1 are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to the Contract.
- 9.6 Without limitation, the Supplier does not warrant and specifically denies any implied or express representation that:
  - (a) the Cloud Storage Solution or the Ocucon Portal will be fit to operate in conjunction with any hardware items or software products other than those in the Customer Environment; or
  - (b) the Cloud Storage Solution or the Ocucon Portal will operate uninterrupted or error-free; or
  - (c) the Ocucon Portal and/or the information obtained by the Customer or Users through the Ocucon Portal will meet the Customer's requirements.

- 9.7 The Supplier does not warrant or guarantee that it will be able to rectify all Defects, nor that any Defect which does not materially affect the Customer's operations using the Ocucon Portal will be corrected before the issue of the next update or upgrade.
- 9.8 The Supplier shall not be obliged to rectify any particular Defect if attempts to rectify such Defect other than normal recovery or diagnostic procedures have been made by the Customer's personnel or third parties without the permission of the Supplier.
- 9.9 Any use of the Cloud Storage Solution or the Ocucon Portal contrary to the Supplier's instructions and/or any unauthorised modifications, use or improper installation of either of them by or on behalf of the Customer by any party other than the Supplier or the Supplier's duly authorised contractors or agents shall render all of the Supplier's warranties and obligations under the Contract null and void.
- 9.10 The Supplier shall use commercially reasonable endeavours to meet or exceed the Support Service Levels.
- 9.11 The Supplier shall not be responsible, and shall have no liability, for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet (other than the Leased Lines), and the Customer acknowledges that access to and use of the Ocucon Portal may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 9.12 The Supplier undertakes that its employees and Approved Subcontractors, while on the Site or any other premises of the Customer, will comply with all relevant rules and regulations laid down by the Customer from time to time for the behaviour of its own employees and contractors, as notified to the Supplier in writing to the Supplier from time to time. The Supplier shall remove any employee or Approved Subcontractor whom the Customer can demonstrate has failed to comply with such rules, regulations and requirements.
- 9.13 The Customer warrants that it has full capacity and authority, and all necessary licences, permits and consents, to enter into and perform the Contract, and that the person signing the Order Form is duly authorised to bind the Customer to the Contract.

## **10. INTELLECTUAL PROPERTY RIGHTS**

- 10.1 The Intellectual Property Rights in the Cloud Storage Solution and the Ocucon Portal are, and shall remain, the property of the Supplier, and the Supplier reserves the right to grant a licence to use the Cloud Storage Solution and/or the Ocucon Portal to any other party or parties.
- 10.2 The Supplier Software, the Ocucon Portal and the Documentation are proprietary to the Supplier (or the appropriate third-party rights owner(s)) and the Customer acquires no rights in or to the Ocucon Portal, the Supplier Software or the Documentation other than those expressly granted by the Contract.
- 10.3 The Customer shall use all reasonable endeavours to prevent any infringement of the Supplier's Intellectual Property Rights in the Cloud Storage Solution and the Ocucon Portal including the Documentation and shall promptly report to the Supplier any such infringement that comes to its attention. In particular, the Customer shall:

- (a) ensure that each of its employees and agents before starting to use the Cloud Storage Solution is made aware that they are proprietary to the Supplier and that it may only be used in accordance with the Contract;
- (b) ensure that each of the Users before starting to use Ocucon Portal is made aware that they are proprietary to the Supplier and that it may only be used in accordance with the Contract; and
- (c) not permit third parties to have access to the Cloud Storage Solution or the Ocucon Portal except as permitted by the Contract or with the prior written consent of the Supplier, who may require that such third party executes a written confidentiality agreement before being given such access.

## **11. INDEMNITY**

11.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with use of the Cloud Storage Solution and/or the Ocucon Portal including the Documentation (a **Claim**) provided that:

- (a) the Supplier is given prompt written notice of any such Claim, specifying the nature of the Claim in reasonable detail;;
- (b) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such Claim, at the Supplier's expense; and
- (c) the Supplier is given sole authority to defend or settle the Claim.

11.2 Without prejudice to clause 9.9, the Supplier shall not in any circumstances have any liability for any claim of infringement of Intellectual Property Rights:

- (a) caused or contributed to by the Customer's use of the Cloud Storage Solution or the Ocucon Portal in combination with software not supplied or approved in writing by the Supplier; or
- (b) based on use of any version of the Cloud Storage Solution or the Ocucon Portal other than the latest version supplied by the Supplier, if such claim could have been avoided by the use of such supplied version.

11.3 In the defence or settlement of any Claim, the Supplier may procure the right for the Customer to continue using the Cloud Storage Solution and/or the Ocucon Portal, replace or modify either of them so that they become non-infringing or if the Supplier is unable, after using all reasonable endeavours, to procure for the Customer the right to continue using either of them or to provide the Customer with functionally equivalent non-infringing services, the Contract will be terminated.

11.4 Nothing in this clause shall restrict or limit the Customer's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.

## 12. TERM AND TERMINATION

- 12.1 The Contract shall commence on the Commencement Date and, unless otherwise terminated under clause 11.3, clause 15.12 or this clause 12, shall continue until the third anniversary of the Go Live Date (or such later date as the parties may agree in writing) whereupon it shall expire.
- 12.2 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 the other party commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of five (5) Business Days after being notified in writing to do so. For the purposes of this clause 12.2, **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of the Contract.
- 12.3 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:
- (a) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - (b) 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;
  - (c) 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;
  - (d) 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;
  - (e) 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;
  - (f) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - (g) a 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 fourteen (14) days;
  - (h) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.3(a) to clause 12.3(g) (inclusive); or

- (i) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

12.4 On termination of the Contract by the Customer under clause 12.2 or 12.3, the Supplier shall refund to the Customer that portion of the Charges paid by the Customer applicable to that part of the original Term after the Termination Date.

12.5 On termination of the Contract by the Supplier:

- (a) under clause 12.2 or 12.3; or
- (b) because the Customer is in breach of clause 6.3

the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Charges for the remainder of the Term for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt. The parties confirm that such payment are reasonable and proportionate to enable the Supplier to pay its ongoing data storage and leased line costs after termination.

12.6 On expiry or termination of the Contract for any reason:

- (a) the licence granted under clause 4.1 shall immediately terminate and the Customer shall immediately cease all use of the Cloud Storage Solution and the Ocucon Portal;
- (b) the Supplier and its Approved Subcontractors shall vacate the Site, remove the Supplier Hardware and all cabling and other equipment forming part of the Cloud Storage Solution, and arrange for disconnection of the Leased Lines;
- (c) notwithstanding sub-clause 12.6(b), each party shall return and make no further use of any equipment, property and other items (and all copies of them) belonging to the other party;
- (d) the Customer may, subject to payment of the Data Retention Fee, during the Data Retention Period use the Ocucon Portal to download (but, for the avoidance of doubt, not upload) Customer Data stored in the Cloud Storage Solution. The Supplier shall use reasonable endeavours to assist the Customer to complete such downloads. For this purpose the **Data Retention Fee** shall be fifty percent (50%) of the monthly Charges payable by the Customer and shall be paid by the Customer to the Supplier on or before the Termination Date. For the avoidance of doubt, the Supplier shall, without liability to the Customer be entitled to delete any Customer Data stored in the Cloud Storage Solution after the later of the Termination Date and the expiry of the Data Retention Period; and
- (e) any rights, remedies, obligations or liabilities of the parties that have accrued up to the Termination Date, including the right to claim damages in respect of any breach of the Contract which existed at or before the Termination Date shall not be affected or prejudiced.

- 12.7 Any provision of the Contract which expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

### **13. LIMITATION OF LIABILITY**

- 13.1 Neither party excludes or limits liability to the other party for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by negligence;
- (c) a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any matter for which it would be unlawful for the parties to exclude liability.

- 13.2 Subject to clause 13.1, the Supplier shall not in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

- (a) any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
- (b) any loss or corruption (whether direct or indirect) of data or information;
- (c) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
- (d) any loss or liability (whether direct or indirect) under or in relation to any other contract.

- 13.3 Subject to clauses 9.2, 9.3 and 13.1, the Supplier's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract or any collateral contract shall be limited to the amount of the Charges.

### **14. CONFIDENTIALITY**

- 14.1 Each party undertakes that it shall hold the other's Confidential Information in confidence and, except as permitted by clause 14.2, not make the other's Confidential Information available to any third party.

- 14.2 Each party may disclose the other party's Confidential Information:

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 14; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority provided that, to the extent it is legally permitted to do so, provided that it gives the other party as much notice of such

disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 14.2(b), it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

- 14.3 Neither party shall use the other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract and each party shall ensure other party's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the terms of the Contract. Both parties expressly acknowledge that the use of Third Party Services to provide Data Storage shall not be a breach of the Supplier's obligations under this clause 14.
- 14.4 Notwithstanding any other provision of this clause 14, information disclosed by the Customer to the Supplier shall only be Confidential Information to the extent it remains under the Supplier's control. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party. For the avoidance of doubt, the Supplier shall not be in breach of this clause 14.4 if Customer Data is accessed from Data Storage by the Customer or a User [or a third party that has not been authorised by the Supplier].
- 14.5 The Customer expressly acknowledges that the Supplier Software, the Ocucon Portal and the Documentation constitute the Supplier's Confidential Information.
- 14.6 The Supplier expressly acknowledges that the Customer Data is the Customer's Confidential Information.
- 14.7 Neither party shall make, or permit any person to make, any public announcement concerning the Contract without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including any relevant securities exchange), any court or other authority of competent jurisdiction.
- 14.8 This clause 14 shall survive termination of the Contract, however arising.

## **15. GENERAL**

### **Assignment and subcontracting**

- 15.1 The Contract is personal to the parties and neither party shall, except as specifically provided in these Conditions and/or or the Order Form assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any or all of its rights and obligations under the Contract without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).
- 15.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

### **Waiver**

- 15.3 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.

#### **Rights and remedies**

- 15.4 Except as expressly provided in the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

#### **Entire agreement**

- 15.5 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 15.6 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

#### **Variation**

- 15.7 No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

#### **Severance**

- 15.8 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 shall not affect the validity and enforceability of the rest of the Contract.

#### **Third Party Rights**

- 15.9 Except as specifically set out in these Conditions, the Contract does not confer any rights on any person or party (other than the parties to the Contract and (where applicable) their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

#### **No partnership or agency**

- 15.10 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, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 15.11 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

#### **Force majeure**



- 15.12 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for three (3) months, the party not affected may terminate the Contract by giving twenty (20) Business Days' written notice to the affected party.

### **Notices**

- 15.13 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered or sent by email to the Customer Representative (in the case of the Customer) or the Project Manager (in the case of the Supplier) in both cases to the email address last used by each of them to the other.
- 15.14 A notice or other 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; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if sent by or email, at 9.00 am on the next Business Day after transmission.
- 15.15 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

## **16. DISPUTE RESOLUTION**

- 16.1 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (a **Dispute**) then the parties shall, acting by such employees or officers as is appropriate, use all reasonable endeavours acting in good faith to resolve the Dispute.
- 16.2 If the parties are for any reason unable to resolve the Dispute within ten (10) Business Days of it being referred in writing by one of them to the other (a **Dispute Notice**), the parties agree to enter into mediation in good faith to settle such a Dispute and will do so in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties within ten (10) Business Days of the Dispute Notice, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (an **ADR Notice**) to the other party, referring the Dispute to mediation. A copy of the referral should be sent to CEDR. Unless otherwise agreed, the mediation will start not later than twenty (20) Business Days after the date of the ADR Notice. No party may commence any court proceedings in relation to any Dispute arising out of the Contract until it has attempted to settle the Dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

## **17. GOVERNING LAW AND JURISDICTION**

- 17.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 17.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

## **18. INTERPRETATION**

- 18.1 The following definitions and rules of interpretation apply to the Contract.

**Approved Subcontractor:** a provider of Third Party Services appointed by the Supplier in accordance with clause 5.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Charges:** the charges for the Cloud Storage Solution and access to the Ocucon Portal set out in the Order Form.

**Cloud Storage Solution:** the Supplier's solution for real-time transfer and storage of CCTV images including but not limited to the Supplier Hardware, the Supplier Software, the Leased Lines and the Data Storage. For the avoidance of doubt, the Cloud Storage Solution does not include hardware comprised in the Customer Environment.

**Cloud Storage Support:** the support and maintenance provided as part of the Cloud Storage Solution set out in the Order Form.

**Commencement Date:** has the meaning given in clause 1.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 15.7.

**Confidential Information:** any information, however conveyed or presented, that relates to the business, affairs, operations, customers, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, know-how, personnel and suppliers of the disclosing party, together with all information derived by the receiving party from any such information and any other information clearly designated by a party as being confidential to it (whether or not it is marked "confidential"), or which ought reasonably be considered to be confidential.

**Contract:** the contract between the Supplier and the Customer for the supply of the Cloud Storage Solution and the Ocucon Portal in accordance with the Order Form and these Conditions.

**Customer:** the person or firm who purchases the Cloud Storage Solution and access to the Ocucon Portal from the Supplier.

**Customer Data:** the data stored in the Cloud Storage Solution and/or imported into and/or exported out of the Ocucon Portal by the Customer, by Users, or by the Supplier

on the Customer's behalf or other data relating to the Customer's business communicated to or processed or generated by the Supplier or its Approved Subcontractors.

**Customer Environment:** the hardware and software requirements as set out in the Order Form that must be met by the Customer before the Cloud Storage Solution can be installed at the Site including but not limited to the CCTV cameras specified in the Order Form.

**Customer Representative:** a person duly authorised by the Customer to act on its behalf for the purposes of the Contract and identified to the Supplier in a written notice.

**Data Retention Period:** the period set out in the Order Form during which the Customer shall continue to have access to Customer Data in the Data Storage after the Termination Date in accordance with clause 12.6(d).

**Data Storage:** the cloud data centre storage [set out in the Order Form and] required to provide the Cloud Storage Solution.

**Defect:** an error in the Supplier Software or the Ocucon Portal that causes it to fail to operate substantially in accordance with the specification set out [in the Order Form **OR** on the Supplier's website hosted at [URL]] or the Documentation.

**Documentation:** the operating manuals, user instruction manuals, technical literature and all other related materials in human-readable and/or machine-readable forms supplied by the Supplier in respect of the Cloud Storage Solution and/or the Ocucon Portal.

**GDPR:** Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data,

**Go Live Date:** the date set out in the Order Form after which the Customer will be able to use the Cloud Storage Solution at the Site.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Leased Lines:** the telecommunications equipment [set out in the Order Form and] required to connect the Supplier Hardware to the Data Storage.

**Ocucon Portal:** the Supplier's cloud-based software application providing internet access to and downloads of the data stored in the Data Storage.

**Order:** the Customer's order for the supply of the Cloud Storage Solution and the Ocucon Portal, as set out in the Order Form.

**Order Form:** the order form completed by the Supplier, issued to the Customer and [to which these Conditions are attached **OR** attached to the same email as these Conditions].

**Portal Support:** the support and maintenance provided in respect of the Ocucon Portal set out in the Order Form.

**Project Manager:** the Supplier employee appointed under clause 3.2 who has overall responsibility for the delivery, installation and operation of the Cloud Storage Solution.

**Site:** the Customer's premises identified in the Order Form.

**Supplier:** Ocucon Limited incorporated and registered in England and Wales with company number 10285590 whose registered office is at 34 Frederick Street, Sunderland SR1 1LP.

**Supplier Hardware:** all the computers and other equipment to be supplied by the Supplier set out in the Order Form

**Supplier Software:** the software programs proprietary to the Supplier, which are to be provided to the Customer as part of the Cloud Storage Solution without modification [together with any error corrections, updates, upgrades, modifications and enhancements to them from time to time].

**Support Service Levels:** the service levels set out in the service level agreement provided with the Order Form.

**Term:** has the meaning given in clause 12.1.

**Termination Date:** the date on which the Contract is terminated or expires (as the case may be).

**Third Party Services:** services provided by third party providers including:

- (a) installation, maintenance and support of the Cloud Storage Solution and/or the Ocucon Portal;
- (b) provision of Leased Lines and/or Data Storage; and
- (c) training of Users.

**Training:** the Supplier's standard training in the use of the Ocucon Portal.

**Users:** individuals authorised by the Customer to use the Ocucon Portal including but not limited to employees and agents of the Customer and **User** shall mean any of them.

**VAT:** value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax or any other similar turnover, sales or purchase tax or duty levied in any other jurisdiction.

## 18.2 Interpretation:

- (a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.

- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to writing or written includes email.