

CWCS Public Cloud Hosting G-Cloud Terms and Conditions

G-CLOUD TERMS AND CONDITIONS

CWCS G-Cloud Hosting Terms and Conditions are detailed within this document, however any conflict of these terms will be superseded by the Order Form and Call Off Contract.

CompuWeb Communications Services Limited T/AS CWCS Managed Hosting Terms and Conditions described below define the actions which CWCS considers to be abused and strictly prohibited. There are no exclusions in this listing. Please be aware that the actions listed below are also prohibited from other Internet Presence Providers (IPP's) and their users on behalf of CWCS to advertise any service hosted by CWCS or connected via the CWCS Network. For abbreviation purposes, CompuWeb Communications Services Limited will be referred to as CWCS and companies or individual account owners using our services as CLIENT.

CWCS Terms and Conditions have been formulated in line with the G-Cloud framework with the following goals in mind:

Ensure security, reliability and privacy of CWCS systems, network and the networks and systems of others.

Avoid situations that may cause CWCS to incur civil liability.

Maintain the image and reputation of CWCS as a responsible organisation.

Encourage the responsible use of net resources, discouraging practices, which degrade the usability of network resources and thus the value of Internet services.

Preserve the privacy and security of individual users.

The Terms and Conditions below defines the actions which CWCS considers to be abusive and thus, strictly prohibited.

The examples named in this list are non-exclusive and are provided solely for guidance to CWCS clients. If you are unsure whether any contemplated use or action is permitted, please send mail to abuse@cwcs.co.uk and we will assist you. Please note that the actions listed below are also not permitted from other Internet Service Providers on behalf of, or to advertise, any service hosted by

CWCS or connected via the CWCS network. Furthermore, such services may not be advertised via deceptive marketing policies

1. DEFINITIONS AND INTERPRETATION

1.1 The following definitions and rules of interpretation in this clause shall apply to these terms and conditions:

‘Acceptable Use Policy’ or **‘AUP’** means the Company’s acceptable use policy which can be found at <https://www.cwcs.co.uk/aup>.

‘Business Day’ means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for a full range of banking transactions.

‘Business Hours’ means 9:00 a.m. – 5:00 p.m. on a Business Day.

‘Contract’ means a contract for the provision of Licensed Space and/or Services made pursuant to clause 2 of these Terms.

‘Cloud Server Services’ means the IT resources to be made available to the Customer via the Company’s virtualised IT infrastructure as are contemplated in the Plan.

‘Company’ means CompuWeb Communications Services Limited (CWCS) a company registered in England & Wales with company number 03798604 whose registered office is at 1 Bowden Drive, Beeston, Nottingham, NG29 2JY which currently trades as CWCS Managed Hosting.

‘Colocation Server’ means a server owned or controlled by the Customer but physically located in a CWCS Data Centre and used exclusively by the Customer.

‘Colocation Services’ means the services to be provided by the Company in relation to Licensed Space such as power and temperature control as are contemplated in the Plan.

‘Customer’ means the person, firm or company who enters into a Contract with the Company.

‘Customer Equipment’ means any equipment including servers which is owned or controlled by the Customer including wiring between such equipment and the Company’s demarcation equipment.

'CWCS Data Centre' means the Company's data centre or space dedicated to the Company within a third party data centre in which the Customer receives Licensed Space and Services from the Company pursuant to a Contract.

'Data Controller' has the meaning set out in the Data Protection Legislation.

'Data Processor' has the meaning set out in the Data Protection Legislation.

'Data Protection Legislation' means the European Directive 95/46 and 2002/58/EC (as amended by Directive 2009/139/EC) and any legislation and/or regulation implementing or made pursuant to them including but not limited to the Data Protection Act 1998 or which amends, replaces, re-enacts or consolidates any of them (including the General Data Protection Regulation EU 2016/67) and, including, where applicable, any guidance and codes of practice issued or approved by the supervisory authorities (including the Information Commissioner).

'Data Subject' has the meaning set out in the Data Protection Legislation.

'Dedicated Server' means a server owned by CWCS or leased/licensed by CWCS from a third party which is located in a CWCS Data Centre and is dedicated exclusively to the Customer.

'Dedicated Server Services' means the IT resources to be made available to the Customer via its Dedicated Server(s) as are contemplated in the Plan.

'Intellectual Property Rights' means in respect of any item, any patent, copyright, database right, trade mark or other form of protection, whether or not capable of registration.

'Licensed Space' means the areas within a CWCS Data Centre which are licensed by the Customer pursuant to a Contract. For each Licensed Space, the Company will determine at all times the exact location in the CWCS Data Centre where the Licensed Space will be located and CWCS will notify the Customer accordingly.

'Order' means an order for Licensed Space and/or Services as described in the Plan. Orders are not valid until signed by the Customer.

'Personal Data' has the meaning set out in the Data Protection Legislation.

‘Plan’ means the plan prepared by CWCS for the Customer which describes, inter alia, the Licensed Space and/or Services, the Service Description, the Service Level Agreement(s) and pricing.

‘Policies’ means the policies to which these Terms refer.

‘Privacy Policy’ means the Company’s Privacy Policy which can be found at <https://www.cwcs.co.uk/privacy-policy>.

‘Processing and Process’ have the meanings set out in the Data Protection Legislation.

“Security Breach” means any actual loss, unauthorised or unlawful destruction, alteration, or unauthorised disclosure of, or access to the Personal Data (accidental or otherwise) **[and/or any other irregularity in processing the Personal Data]**.

‘Services’ means the services (whether Colocation Services and/or Cloud Server Services and/or Dedicated Server Services and/or consultancy services such as set up services or otherwise) as are contemplated in the Plan and are to be provided pursuant to a Contract.

‘Services Description’ means a written description of the Services to be provided as re contemplated in the Plan.

‘Service Level Agreement’ means the service levels which are applicable to the Services as are contemplated in the Plan.

‘Spamming Policy’ means the Company’s Spamming Policy, which is part of the Company’s Acceptable Use Policy, and which can be found at <https://www.cwcs.co.uk/aup>.

‘Support’ means the support services to be provided by the Company as are contemplated in the Plan.

‘Support Package’ means the support package selected by the Customer as is contemplated in the Plan.

‘Terms’ means these terms and conditions.

- 1.2 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.3 a reference to a party includes its personal representatives, successors or permitted assigns;
- 1.4 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.5 any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- 1.6 a reference to writing or written includes emails;
- 1.7 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular and a reference to one gender shall include a reference to the other genders;
- 1.8 clause and paragraph headings shall not affect the interpretation of these Terms; and
- 1.9 if there is a conflict between these Terms and an Order, quotation or other document, these Terms shall prevail.
- 1.10 A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force, taking account of any amendment or re-enactment and includes and statute or statutory provision or subordinate legislation which it amends or re-enacts; provided that as between the parties, no such amendment or re-enactment shall apply for the purpose of these Terms to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party.

2. CONTRACT FORMATION

- 2.1 These Terms shall apply to all tenders, offers, quotations, acceptances, agreements and deliveries relating to the supply of Licensed Space and/or Services by the Company

- 2.2 An Order placed by the Customer constitutes an offer by the Customer to purchase Licensed Space and/or Services in accordance with these Terms. An Order must be placed in writing and refer to the Plan.
- 2.3 An Order shall only be deemed to be accepted when the Company issues a written acceptance whether by email or otherwise of the Order (together with an invoice which refers to these Terms and Conditions) at which point the Contract shall come into existence. These Terms apply to the Contract to the exclusion of any other terms and conditions that the Customer may seek to impose or incorporate or which are implied by trade, custom, practice or cause of dealing.
- 2.4 All specifications, descriptions, drawings, photographs, weights, dimensions, capacities, prices, performance ratings and other information quoted or submitted by the Company or included in any sales literature, quotation, price list, acknowledgement of Order, invoice or other document or information issued by the Company are to be deemed approximate only (except where stated in writing to be exact) and subject thereto none of such items or any part thereof shall form part of the Contract (other than as approximations).
- 2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acknowledgement of Order, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
- 2.6 The Customer is responsible for ensuring that the terms of an Order, whether submitted by the Customer or the Company, are complete and accurate.
- 2.7 Unless otherwise agreed in writing by a director of the Company, the prices payable by the Customer for the supply of Licensed Space and/or Services shall be that agreed between the Company and the Company each time the Customer places an Order.

3. POLICIES

- 3.1 The Policies are incorporated into these Terms by reference and form part of these Terms.
- 3.2 The Policies will be updated as and when required by the Company and as such are subject to change.

- 3.3 The Customer will be notified thirty (30) days in advance of any change in Policy, unless a Policy change is urgent in which case the Customer will be notified as soon as is practicable.

4. SERVICES AND SERVICE LEVELS

- 4.1 The Company warrants that it will provide the Services using reasonable skill and care and will use its reasonable endeavours to provide the Services in accordance with the applicable Services Description and the applicable Service Level Agreement. Any dates or timings provided are estimates only.
- 4.2 The Company warrants that it will use its reasonable endeavours to provide the Support in accordance with the Support Package selected by the Customer. Data backup is only included if stipulated in the Support Packages selected by the Customer in the Company's Support Packages. In any event, if the Customer chooses self-service as its Support Package, the Company will not be responsible for providing any support services. If the Customer requests support, (whether data back up or otherwise) the Company may agree to provide services on a reasonable endeavours basis and (unless otherwise agreed) on a time and materials basis only and subject to the Customer paying for the Company's then applicable prices for the provision of such services.
- 4.3 The Company will have in place information security measures which are in line with ISO/IEC 27001.

5. CUSTOMER'S OBLIGATIONS

- 5.1 Without prejudice to any other obligations on the Customer under a Contract, the Customer shall:
- (a) pay all sums, fees and other charges due under the Contract upon the due date or dates, time of payment being of the essence; and
 - (b) comply (and procure compliance) with the Policies and any stipulations made by the Company from time to time.
- 5.2 The Customer shall promptly provide the Company, on request, with all information and assistance that the Company may reasonably require.

- 5.3 The Customer acknowledges that it is relying solely upon its own skill and judgment and not that of the Company in determining the suitability of the Licensed Space and/or Services and the fitness for any general or specific purpose of the same.

6. NETWORK SECURITY

- 6.1 The Customer will, at all times, comply with the laws applicable to its use of the Licensed Space and/or the Services and with the Company's Acceptable Use Policy and, without prejudice to the generality of the above, will:
- 6.1.1 not use the Company's network to attempt to circumvent user authentication or security of any host, network or account including but not limited to, accessing data not intended for the Customer logging into a server or account which the Customer is not expressly authorised to access, password cracking, probing the security of other networks in search of weakness or violations of any other organisation's security policy.
 - 6.1.2 not attempt to interfere or deny service to any user, host or network including, but not limited to flooding, mail bombing or other deliberate attempts to overload or crash a host or network.
 - 6.1.3 not initiate or target a denial of service attack that adversely affects the Company and/or any third party's network.
 - 6.1.4 cooperate with the Company's reasonable investigation of security problems, and any reasonably suspected breach of these Terms.
- 6.2 The Company is not responsible to the Customer or any third party for unauthorised access to the Customer's data or the unauthorised use of the Licensed Space and/or Services unless the unauthorised access or use results from the Company's failure to meet the security obligations stated in these Terms.
- 6.3 The Customer will be responsible for the use of the Licensed Space and/or Services by any person (including employees) which it allows (whether authorised by it or not) to make use of the Licensed Space and/or Services.

7. SPAMMING POLICY

- 7.1 The Customer will comply with the Company's Spamming Policy.
- 7.2 Without prejudice to the generality of clause 7.1 the Customer expressly prohibits spam originating from its Customers, from clients of its customers or from spam advertising web sites of its Customer or clients of its Customers.

8. PAYMENT

- 8.1 All payments to the Company due under a Contract must be paid in full by the Customer without any deduction. Unless otherwise agreed by the Company, the Customer will levy its charges monthly in advance, with invoices to be issued three (3) days in advance of the due date as stated on the invoice in question. Unless otherwise agreed by the Company, the initial invoice will include a setup fee. The charges will be set out in the applicable Order.
- 8.2 The charges for Licensed Space and/or the Services shall be exclusive of any expenses and disbursements and value added tax, which the Customer must pay in addition at the time it pays for the Licensed Space and/or Services.
- 8.3 If there is a dispute with respect to any portion of an invoice, the Customer shall pay the undisputed portion of the fees promptly and provide written details specifying the basis of any dispute. An invoice must be disputed within thirty (30) days of issue.
- 8.4 Without prejudice to clause 24 if, after thirty (30) days payment in respect of an invoice has not been received the Company will be entitled to discontinue the provision of the Licensed Space and/or Services.
- 8.5 The Company reserves the right to charge interest on overdue payments at the rate of 4% above the Bank of England base rate, such interest to be calculated on a daily basis until payment is made.
- 8.6 The Company reserves the right to vary all charges to the Customer with one (1) month's notice but any such variation shall only take effect on the contract renewal date or the anniversary of the contract commencement date (whichever is the earlier).
- 8.7 Notwithstanding clause 8.6, the Company reserves the right to increase any charges on no less than two (2) months' notice to the Customer to reflect any increase in the cost of

supply whether due to exchange rate fluctuation, increases in third party charges such as third party licence fees or otherwise.

- 8.8 The Company reserves the right to vary these Terms with one (1) month's notice but any such variation shall only take place on the contract renewal date.

9. BANDWIDTH AND POWER CHARGES

- 9.1 The Customer will be required to comply with the Company's fair usage policies in relation to bandwidth and power usage as are contemplated in the Plan. If the Customer uses power and/or bandwidth outside of these parameters (for example, bursting), the Company shall be entitled to, at its option, to terminate the Contract or to upgrade the Customer and, in any event, the Customer shall be obliged to pay forthwith the additional charges.

10. USAGE

- 10.1 The Customer hereby agrees to accept and abide by the AUP.

11. PUBLICITY

- 11.1 The Customer agrees that the Company may publicly disclose that it is providing Licensed Space and/or Services to the Customer and may use the Customer's name and logo to identify the Customer as a customer of the Company in promotional materials, including press releases. The Company will not use the Customer's name or logo in a manner that suggests an endorsement or affiliation unless otherwise agreed with the Customer.

12. EQUIPMENT

- 12.1 Any Customer Equipment which the Customer locates in one of the CWCS Data Centres will remain at the Customer's sole risk and the Customer will be responsible for insuring such equipment against all risks.
- 12.2 Equipment leased or licensed from the Company shall at all times as between the Company and the Customer remain the property of the Company.
- 12.3 The Customer agrees to:
- (a) maintain at the Customer's expense, comprehensive general liability insurance with a reputable insurance company for the full maintenance and replacement

cost of any Customer Equipment which the Customer locates in one of the CWCS Data Centres; and

- (b) provide the Company with evidence of the requisite insurance upon request.

13. ACCESS TO AND USE OF THE CWCS DATA CENTRES

- 13.1 Subject to these Terms, the Customer will have access to the Licensed Space twenty-four (24) hours per day, every day of the year. Notwithstanding the above sentence, the Customer will be required to provide reasonable notice to the Company, will comply with the Policies of the Company including health and safety policies and acknowledges that if any payments are overdue or the Company suspects that the person requesting access is intoxicated or otherwise unsuitable, that access will be denied.
- 13.2 The Customer may sublicense Licensed Space to a sublicensee provided that (i) the terms and conditions of such sublicense will be no less restrictive than the Contract; (ii) Customer will not act or purport to act on behalf of the Company or any landlord of the Company; and (iii) the Customer will require the sublicensee to abide by these terms. The Customer shall be responsible for ensuring that no sublicensee shall further sublicense any Licensed Space. Notwithstanding any sublicensing, Customer remains responsible to Company for the performance of all obligations under the Contract including the payment of all amounts owed under the Contract.
- 13.3 The Customer will be responsible and liable for all acts or omissions of Customer's personnel who attend CWCS Data Centres and for any equipment or services not provided by the Company. The Customer will indemnify, defend and hold harmless the Company from any and all liability, loss, damages, costs and expenses (including reasonable attorneys' fees and expenses) for third-party claims brought by, arising from or related to such personnel.
- 13.4 This Contract is not intended to and does not constitute a lease of any real or personal property or a grant of any other real property interest. The Customer acknowledges and agrees that it is granted only a license to access and use the Licensed Space in

accordance with the Contract. The Contract is subject and subordinate to the leases for the CWC Data Centres and all superior instruments to such leases. The Customer's equipment will not be construed as fixtures or fittings. The Company will retain title to all parts and materials used or provided by the Company in providing the Licensed Space and the performance of the Services.

14. INTELLECTUAL PROPERTY RIGHTS

- 14.1 The Company grants to the Customer a limited, non-exclusive license to use the Services throughout the term of the Contract or until the Contract is terminated (whichever date is earlier).
- 14.2 The Company reserves any and all Intellectual Property Rights created, developed, subsisting or used in connection with any deliverables, software, the Licensed Space and/or the Services or specifications or otherwise which are, as between the Company and the Customer, the sole property of the Company.
- 14.3 The Company acknowledges:
- (a) all Intellectual Property Rights in the Customer's data are and will remain the property of the Customer or its licensors, as the case may be;
 - (b) it shall have no rights in or to the Customer's data other than the license to Process the Customer's data for the purposes contemplated in the applicable Contract and these Terms.

15. THIRD PARTY SOFTWARE

- 15.1 Depending on the Customer's Plan, third party software may be supplied to the Customer subject to the Customer's acceptance of the applicable terms and conditions for use of such third party software. Any support provided by the Company in relation to such third party software will be on a first line and reasonable endeavours basis only unless stipulated otherwise in the Plan.
- 15.2 The pricing for third party software is reflective of pricing provided by third party software vendors, and as such changes in pricing by third party software vendors will affect the Company's pricing which the Company reserves the right to pass on to the Customer as and when such changes occur.
- 15.3 It is the Customer's responsibility to install the third party software and updates as and when they become available.
- 15.4 The Company may be able to install third party software updates for the Customer's behalf, but such installation will be at an additional cost to the Customer.

- 15.5 Unless otherwise agreed by the Company, in relation to Dedicated Server Services and Cloud Server Services, the Customer will be responsible for ensuring that for any software which has been installed (whether operating system software, control panel software, administrative software or otherwise) as part of the Services in question, that any updates and/or upgrades are installed and implemented as when they are available. Furthermore, the Customer agrees to comply with any terms and conditions in relation to the usage of such software as the licensor of such software requires, whether on a sublicense or direct licence basis. Notwithstanding the above sentence, the Company reserves the right to suspend or terminate the Dedicated Services or Cloud Server Services forthwith by serving notice on the Customer if the Customer allows any of the above-mentioned software components to become end of life (for which only security patches are available) or are past their end of life (so that no security patches are available) unless it is satisfied that such software will not pose a security risk to its networks) in which case the Customer acknowledges that such Services will be provided on a strictly “as is” basis only, without the benefit of any Service Level Agreement and the Company will have no liability in relation to the same. Furthermore, the Customer acknowledges that, unless otherwise agreed with the Company, the Company will not be responsible for any issues at the applications level which result from any updates or upgrades (such as with scripts which the Customer has written) and the Customer acknowledges that it is responsible for ensuring that it has taken regular back ups to enable it to restore.
- 15.6 In relation to any software (whether software applications or otherwise) which the Customer arranges to be installed on the Cloud Server infrastructure or on the Dedicated Server (whether installed by the Company, the Customer or a third party), the Customer will be responsible for complying with the applicable terms and conditions and for ensuring that such software is maintained and supported. If the Company agrees to provide services in relation to the same it will be on a strictly time and materials, reasonable endeavours and first line basis only apply the Company’s then applicable rates for the provision of time and materials services.
- 15.7 The Customer acknowledges that if it does not keep up to date with updates, the applicable Service Level Agreement will not apply and if the Company agrees to provide Support Services, such services will, unless otherwise agreed, be provided on a time and materials and reasonable endeavours basis subject to the Company’s then applicable pricing for the same.

16. DATA PROCESSING

- 16.1 The Customer and the Company acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and the Company is the Data Processor in respect of any Personal Data, which the Customer provides to the Company for processing. The parties acknowledge that this clause 15 does not apply to co-location services.
- 16.2 The Data Processor shall process the Personal Data only in accordance with the Customer's instructions from time to time and shall not process the Personal Data for any purpose other than those expressly authorised by the Customer.
- 16.3 The Customer warrants to the Company that it has the right to instruct the Company to Process the Personal Data in accordance with the Contract.
- 16.4 Notwithstanding clause 15.5, if the Customer agrees to purchase Server Management in its Plan such that the Company will be responsible for ensuring that the operating system software, control panel software and administration software which it installed is kept up to date as new versions, releases and/or upgrades to the same become available, the Company confirms that, having regard to the state of technological development and the cost of implementing any measures, it will in respect of the software in for which it has agreed to assume responsibility:
- (a) take appropriate technical and organisational measures against the unauthorised or unlawful Processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:
 - (i) the harm that might result from such unauthorised or unlawful Processing or accidental loss, destruction or damage; and
 - (ii) the nature of the data to be protected,
 - (b) take reasonable steps to ensure compliance with those measures.

For the avoidance of doubt, clause 16.4 does not apply in respect of any software, which the Company has not installed.

For the further avoidance of doubt, clause 16.4 will not apply in circumstances where the Company, pursuant to clause 15.5, is not responsible for keeping the operating system software, control panel software or administrative software up to date and/or the Customer determines the time-frame within which the Dedicated Server and/or Cloud Server will be re-booted following the installation of new releases, versions and/or upgrades whether by the Company, Customer or otherwise.

16.5 The Company will:

- (a) not appoint a third party to process the Personal Data without the prior consultation with the Customer;
- (b) not transfer the Personal Data outside of the European Economic Area without the Customer's prior written consent such consent not to be unreasonably withheld or delayed;
- (c) make available to the Customer such information as the Customer reasonably requires to demonstrate compliance with this clause 16 and allow (or as the case may be procure the right for) the Customer (or its authorised representative), on reasonable notice, to inspect any facilities used by the Company to process the Personal Data;
- (d) comply with all reasonable requests of the Customer (and/or its authorised representatives and/or any supervisory body including the Information Commissioner) to inspect and audit the Company's Processing activities, records of Processing activities);
- (e) at the Customer's cost, cooperate fully with the Customer in relation to its obligations under the Data Protection Legislation including notifying the Customer as soon as possible and, in any event, within five (5) days if it receives a complaint from a Data Subject (as defined in the Data Protection Legislation) or a communication from a regulatory authority in respect of a matter which concerns the Customer as the Data Controller;
- (f) at its own cost, respond to any and/or reasonable requests and enquiries made by the Customer relating to its processing of Personal Data;

- (g) if it becomes aware of a Security Breach, will notify the Customer promptly (and, in any event, within 48 hours) and will provide the Customer with such information as it needs to be able to report the incident breach to the Information Commissioner within 72 hour time-frame, will cooperate fully with the Customer in relation to such incident management time as the Customer, acting reasonably, puts in place, will, unless agreed in writing with the Customer, take immediate action to stop the Security Breach, investigate it and prevent a further occurrence, will allow the Customer (or its authorised representative) access to such information and facilities as it needs to investigate the same and will not release or publish any communication or report concerning the Security Breach without the Customer's express prior written approval (except where it is required to do so by applicable law and always having pre-notified the Customer). The Customer acknowledges that if a Security Breach occurs in circumstances in which the obligations on the Company contemplated in clause 16.4 do not apply, any costs associated in the Company co-operating with the Customer in relation to such a Security Breach will be to the Customer's account;
- (h) on termination or expiry of the Contract, delete or return the Personal Data to the Customer (at the choice of the Customer).

17. CONFIDENTIALITY

- 17.1 Each party agrees with the other in respect of all information of a confidential nature disclosed in the Contract or discovered further to the operation of the Contract (which includes without limitation, in the case of information to be kept confidential by the Customer, information as to the operation of the business of the Company and information relating to the Licensed Space and/or Services) ("**Confidential Information**"):-
- 17.2 to keep the Confidential Information in strict confidence and secrecy;
- 17.3 not to use the Confidential Information save for complying with its obligations under the Contract;
- 17.4 not to disclose the same to a third party; and
- 17.5 to restrict the disclosure of the relevant and necessary parts of the Confidential Information to such of its employees and others who of necessity need the same in the performance of their duties as envisaged by the Contract and in such circumstances to ensure that such employees and others are aware of the confidential nature of the

Confidential Information; provided however that where a part of the Confidential Information is already or becomes commonly known in the trade (except through a breach of the obligations imposed under the Contract) then the foregoing obligations of confidentiality in respect of such part shall not apply or shall cease to apply (as the case may be).

17.6 Notwithstanding clause 17.1, either party shall have the right to communicate any information concerning the other party to any Government department, regulatory body or any other form of enforcement authority or as may be required by law.

17.7 With particular regard to Co-location Services and use of the Licensed Space, any information happened upon by the Customer or its authorised representatives whilst the Customer is on the Company's premises is to be treated as strictly confidential.

18. RESALE

18.1 The Customer may resell the Services, subject to these terms and subject to clause 18.2.

18.2 If the Customer resells any part of the Services, it must require its client to sign an agreement incorporating the following:

- (a) confirmation that its client will abide by these Terms and including the Policies;
- (b) confirmation that its client will have no contractual rights against the Company;
and
- (c) confirmation that its customer will abide by any terms applicable to third party software rights.

19. BUSINESS CONTINUITY

19.1 Details of the Company's Business Continuity Plan is available on request.

19.2 In the event of a disaster, standby capability will not be provided unless it is included in the Customer's Plan.

19.3 Testing is solely the Customer's responsibility and will not be provided by the Company unless it is requested as part of the Customer's system administration allowance.

19.4 Unless stated otherwise in the Plan, data backup is the Customer's responsibility.

20. NON-SOLICITATION

- 20.1 During the term of the Contract and for a period 1 year after any termination of the Contract, the Customer will not, without the prior written consent of the Company, either directly or indirectly, solicit or attempt to solicit, divert or hire away any person employed by the Company or any customer of the Company.

21. LIABILITY

- 21.1 The maximum aggregate liability of the Company whether in tort (including, without limitation, negligence), contract or otherwise in connection with a Contract shall not exceed the greater of the amount of fees paid for the Licensed Space and/or Services for the twelve (12) months prior to the occurrence of the event giving rise to the claim.
- 21.2 Neither party (nor any of its employees, agents, affiliates, or suppliers) shall be liable to the other for:
- (a) any loss of profit;
 - (b) any loss of business;
 - (c) any loss of data; or
 - (d) any anticipated savings or revenue.
- 21.3 Nothing in these terms and conditions limits or excludes either party's liability for any loss or damages resulting from:
- (a) death or personal injury caused by its negligence; or
 - (b) any fraud or fraudulent misrepresentation; or
 - (c) any other liability which cannot be excluded or limited as a matter of law.
- 21.4 The Customer shall not be entitled to bring claims more than one (1) year after accrual of the cause of action in question.
- 21.5 To the extent permissible by law, all conditions and warranties, which are to be implied by statute or otherwise by general law into these Terms and hereby excluded.

22. INDEMNIFICATION

- 22.1 The Customer will indemnify and keep the Company indemnified against all losses, costs and expenses that incurs as a result of the Customer and/or any of its clients not complying with these Terms and the Contract including but not limited to:
- (a) any alleged negligence;
 - (b) any breach of law;
 - (c) failure to comply with the network security obligations as set out in clause 6 of these Terms;
 - (d) failure to comply with any Policy;
 - (e) any breach of these Terms.
- 22.2 The Customer's obligations under this clause include claims arising out of the acts or omissions of its employees or agents, any other person to whom the Customer has given access to the Licensed Space and/or Services, and any person who gains access to the Licensed Space and/or Services as a result of the Customer's failure to use reasonable security precautions, even if the acts or omissions of such persons were not authorised by the Customer.
- 22.3 The Customer will comply with the Company's reasonable requests for assistance and cooperation in the defence of the claim.

23. DISPUTE RESOLUTION

- 23.1 Where an issue, claim or dispute should arise out of or in accordance with the Contract the parties will attempt to settle the matter through discussions and negotiations;
- 23.2 For the avoidance of doubt, any discussion or negotiation, shall not preclude either party from applying to the courts for relief whether equitable relief or otherwise.
- 23.3 The formation, construction, performance, validity and all aspects whatsoever of the Contract shall be governed by the laws of England and Wales and the parties hereby submit to the non-exclusive jurisdiction of the courts of England and Wales.

24. SUSPENSION OF SERVICES

- 24.1 The Company may suspend the use of the Licensed Space and/or the provision of the Services without liability if:
- (a) the Company reasonably believes that the Licensed Space and/or Services are being used in breach of any of the Policies (or elements thereof) or in breach of the Contract;
 - (b) the Customer does not cooperate with the Company's reasonable investigation of any suspected breach;
 - (c) there is a cyber-attack on a CWCS Data Centre (including but not limited to a DoS or DDoS attack);
 - (d) the Company is required by law or a regulatory or government body to suspend the Services and/or the Customer's use of the Licensed Space;
 - (e) there is another event for which the Company reasonably believes that the suspension of Services and/or the use of the Licensed Space is necessary to protect the Company network or its other customers; or
 - (f) any payments are overdue.
- 24.2 The Company will give the Customer advance notice of a suspension under this clause of at least twenty four (24) hours unless the Company determines, acting reasonably, that a suspension on shorter notice is necessary to protect the Company or its other customers from imminent and significant operational, legal, or security risk.
- 24.3 If any of the Customer Equipment (including a Colocation Server) is compromised, it must address the vulnerability prior to placing the Customer Equipment back in service or, at the Customer's request; the Company may be able to perform this work for the Customer at its then standard hourly rates as a supplementary service.
- 24.4 If the Company notifies the Customer that any of Customer Equipment (including a Colocation Server) has been compromised and the Customer fails to address the issue within five (5) Business Days of notification, then, without prejudice to the Company's other termination rights under these Terms, the Company reserves the right to terminate the Contract and all other Contracts between the parties forthwith on notice.

25. TERMINATION

- 25.1 This Contract will terminate on the End Date specified in the Order Form unless terminated earlier in accordance with Clause 18 and will be a maximum of 24 months from the Commencement Date, unless extended in accordance with Clause 21.3 to 21.8 of the G-Cloud 11 Call-Off contract.
- 25.2 The Company may terminate a Contract (and all other Contracts between the parties) for breach if:
- (a) the Company discovers that the information provided by the Customer for the purpose of providing the Licensed Space and/or establishing the Services is inaccurate or incomplete;
 - (b) the individual signing the Contract did not have the legal right or authority to enter into the Contract on behalf of the person represented to be the Customer;
 - (c) any amount payable is thirty (30) or more days overdue;
 - (d) the Customer has made payment arrangements via credit card or other third party, which refuses to honour the charges;
 - (e) the Customer fails to comply with any other obligation stated in these Terms and/or the Contract and, if remediable, does not remedy the failure within thirty (30) days of written notice to the Customer by the Company describing the failure;
 - (f) the Customer is in breach of any provision of a Contract or a Policy or any element thereof;
- 25.3 Either party may terminate the Contract with immediate effect on written notice if the other:
- (a) is unable to pay its debts; or
 - (b) enters into compulsory or voluntary liquidation; or
 - (c) compounds with or contravenes a meeting of its creditors; or
 - (d) has a receiver or manager or an administrator appointed (or an application is made to the court for the same); or
 - (e) ceases for any reason to carry on business or takes or suffers any similar action which means that it may be unable to pay its debts (insolvency event);

- (f) if the other party being an individual or partnership commits (or any partner in it commits) any act of bankruptcy or shall die, becomes or is declared insolvent or convenes a meeting or proposes to make any arrangement or composition with his or her creditors; or
- (g) in each case any analogous events to those referred to in clauses 25.4 (a) to 25.4 (f) inclusive occurs in relation to the other party in any other jurisdiction.

25.4 Notwithstanding anything to the contrary within the Contract, all fees payable for the Licensed Space and/or Services (whether payable on a deferred basis or otherwise) shall become due immediately upon termination, for whatever reason.

25.5 The Company may terminate a Contract at any time by giving the Customer thirty (30) days' notice in writing.

25.6 If the Company terminates a Contract in accordance with clause 25.2 or 25.3 then the Customer will not be entitled to any refund of any charges that have been paid by the Customer in respect of any period after such termination.

25.7 If the Company terminates a Contract in accordance with 25.5, provided the Customer is not in breach of any of its obligations under the Contract including any Policies, then any fees paid before termination in respect of any period after termination will be pro-rated and refunded by the Company to the Customer.

25.8 Howsoever a Contract is terminated; the Customer is, when applicable, solely responsible for deleting its DNS host registrations from domain registrar(s) within thirty (30) Business Days.

26. CONSEQUENCES OF TERMINATION

26.1 Any provision of these Terms that expressly or by implication is intended to come into or continue in force on or after termination or expiry of these Terms shall remain in full force and effect.

26.2 Termination or expiry of these Terms shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

- 26.3 The Customer will remove all Customer Equipment on or before expiry or termination of the applicable Contract. Unless otherwise agreed in writing, failure to remove the Customer Equipment within ten (10) days from termination or expiry of the applicable Contract will constitute abandonment of the Customer Equipment and the Company will, at its option, and at the Customer's expenses be entitled to arrange for the Customer Equipment to be removed and stored at the Customer's risk and expense, or to be disposed of as the Company sees fit and, in the case of a sale of the same the Company will be entitled to retain the proceeds. For the avoidance of doubt, in the case of abandonment of the Customer Equipment by the Customer under this this clause 26.3, the Company will not be responsible for any loss of data and will indemnify the Company in respect of liabilities, losses or damages which the Company incurs as a result of any claim by any third parties in respect of the Customer Equipment or in respect of data loss.
- 26.4 On termination or expiry of an applicable Contract, the Company will, as between the Company and the Customer, forthwith turn off the servers in question, disconnect the Customer from the networks and will delete all of the Customer's data.
- 26.5 Where the Customer has resold Licensed Space and/or Services, the Customer acknowledges that the Company will for the purpose of this clause 26.3, be entitled to treat the equipment of the Customer's customer as Customer Equipment and the date of the Customer's customer as Customer data.

27. FORCE MAJEURE

- 27.1 The Company shall not have any liability to the Customer for any delay, omission, failure or inadequate performance of a Contract, which is the result of circumstances beyond the reasonable control of the Company. Where the Company is so affected in its performance of the Plan it will notify the Customer in writing as soon as is reasonably possible.
- 27.2 Where the performance of the Plan is affected by force majeure the Company shall use its reasonable endeavours to overcome the problem as soon as practicably possible.

28. SEVERABILITY

If a provision in the Contract is held by any competent authority to be invalid or wholly or partly unenforceable such invalidity or unenforceability shall not in any way affect the remainder of the Contract.

29. ASSIGNMENT

- 29.1 Save as is elsewhere contemplated in these terms, the Customer will not be entitled to assign the benefit or delegate the burden of the Contract or to sub-contract any of its rights and obligations without the prior written consent of the Company, which it may in its absolute discretion refuse.
- 29.2 The Company will be entitled to assign the benefit or delegate the burden of the Contract.

30. SUB-CONTRACTING

Subject to clause 16.5(a), the Company shall be free to sub-contract any or all of its rights and obligations under the Contract as it sees fit subject always to it being responsible for the acts and omissions of such sub-contractor.

31. AMENDMENT AND WAIVER

- 31.1 No amendment of the Contract shall be binding unless executed in writing and signed by an authorised representative of the Company and by an authorised representative of the Customer.
- 31.2 The failure of the Company at any time to enforce a provision of the Contract shall not be deemed a waiver of such provision or of any other provision of the Contract or of the Company's right thereafter to enforce any provision of the Contract.

32. NOTICES

Any demand, notice or other communication shall be in writing and may be served by hand, prepaid first class post or email. In the absence of evidence of there being a receipt, a notice will be given; if delivered by hand, when left at the relevant address, if sent by pre-paid first class post, five (5) days after posting, if sent by email, and on transmission, provided that a read receipt is given. If a notice is deemed to have been given on a day other than a Business Day or after normal Business Hours, the notice shall instead be deemed to have been given on the next Business Day.

33. THIRD PARTY RIGHTS

There will be no third party beneficiaries to a Contract.

34. ENTIRE AGREEMENT AND REPRESENTATIONS

- 34.1 These Terms supersede all previous written or other documents or agreements (written or oral) relating to the subject matter of the Contract including without limitation all documents proffered by the Customer and relating to the subject matter of the Contract.
- 34.2 The parties acknowledge that in entering into a Contract they have not relied upon any representations or misrepresentations (whether made innocently or negligently) other than those reduced to writing in the Contract. The provisions of this clause 34 shall not apply to any fraudulent misrepresentation.