

## **Terms & Conditions**

# Cloud Hosting

ARCUS GLOBAL LTD

Terms & Conditions

# Arcus Global – General Terms

## 1 Definitions and interpretation

1.1 In this Agreement the following words and phrases shall have the following meanings:

“**Access Requirements**” means the access requirements set out in the Order Form;

“**Agreement**” has means a contract between the Customer and Arcus Global on the terms of the Order Form, the Arcus Global Terms (as set out in clause 2.1 below) and (where applicable) the Framework Terms;

“**Arcus Global Product**” means the Arcus Global software set out in the Order Form;

“**Arcus Global Terms**” means these Arcus Global General Terms and (where applicable under the Order Form) the attached Professional Services Terms, Products Terms, Resale Terms and Support Terms;

“**Charges**” means the Professional Services Charges, Product Charges and Support Charges (as applicable);

“**Claim**” means a claim brought against the Customer that the normal use or possession of the Products or the Documentation in accordance with this Agreement infringes a third party’s copyright;

“**Confidential Information**” means any information which is designated by the party disclosing it to be confidential (including, in respect of Arcus Global, the Products and the Documentation);

“**Contract Year**” means each period of 12 months starting on the date of this Agreement or an anniversary of the date of this Agreement;

“**Customer**” means the Customer specified on the G-Cloud Call-Off contract

“**Customer Failure**” means a breach by the Customer of any Customer Responsibilities;

“**Customer Responsibilities**” means the responsibilities of the Customer set out in this Agreement;

“**Deliverable**” means a deliverable provided by Arcus Global under this Agreement, including the deliverables set out in the Call Off Agreement;

“**Documentation**” means any instruction manuals and other information associated with the Products which may be provided by Arcus Global to the Customer, whether in electronic form or otherwise;

“**Framework Terms**” means the terms of G-Cloud or any other framework agreement to which Arcus Global has agreed in writing, where the Customer purchases Products and/or Services from Arcus Global under the terms of the framework;

“**GDPR**” means the EU Directive 2002/58/EC and, once in force and applicable, the GDPR and any legislation and/or regulation implementing or made pursuant to them, or which amends, replaces, re-enacts or consolidates any of them from time to time, together with the equivalent laws in any applicable jurisdiction and the guidance and codes of practice issued by supervisory authorities;

“**Licence Restrictions**” means the licence restrictions for a Product set out in the Order Form;

“**Call Off Agreement**” means a Call Off Agreement executed by Arcus Global and the Customer;

“**Personal Data**” means personal data (as defined in the GDPR) processed by Arcus Global on behalf of the Customer under this Agreement;

“**Product**” means a Arcus Global Product and/or Third Party Product as appropriate;

“**Product Charges**” means the charges for the Products set out in the Call Off Agreement;

**“Professional Services”** means the professional services set out in the Call Off Agreement;  
**“Professional Services Charges”** means the charges for the Professional Services set out in the Call Off Agreement;

**“Renewal Period”** has the meaning in respect of each Product set out in the Call Off Agreement;

**“Services”** means the services provided by Arcus Global under this Agreement, including (where applicable) the provision of access to the Products and/or the Third Party Products, the Professional Services and/or the Support Services;

**“Support Services”** means the support services set out in the Call Off Agreement;

**“Third Party Product”** means the third party software or service set out in the Call Off Agreement;

**“User”** means an employee of the Customer who is permitted to use the Products;

**“Warranty Period”** means a period of 90 days commencing on the earlier of (i) the date that the Product is first delivered to the Customer; and (ii) the date that the Customer first accesses or uses the Product; and

**“Working Days”** means Monday to Friday excluding bank and public holidays in the UK;

## 1.2 In this Agreement:

1.2.1 a reference to any law includes a reference to that law as amended, extended, consolidated or re-enacted from time to time;

1.2.2 the words “including” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;

1.2.3 the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement; and references to this Agreement are references to this Agreement as amended from time to time.

## 2 Status

2.1 Each Call Off Agreement constitutes a separate contract subject to the Arcus Global Terms.

2.2 This Agreement will become binding on Arcus Global only from the date that the Call Off Agreement is signed by an authorised representative of Arcus Global.

2.3 The terms of this Agreement will apply notwithstanding any terms attached to any purchase order or otherwise provided to Arcus Global by the Customer.

2.4 If there is any conflict between the Call Off Agreement, the Arcus Global Terms and/or the Framework Terms, the Call Off Agreement will take precedence over the Arcus Global Terms and the Arcus Global Terms will take precedence over the Framework Terms (to the extent permitted under the Framework Terms).

## 3 Customer Responsibilities

3.1 The Customer shall comply with the Customer Responsibilities.

3.2 If there is a Customer Failure then without prejudice to any of Arcus Global’s other rights and remedies it:

3.2.1 shall be granted an extension of time in respect of any timeframes agreed by the parties based on the period of delay caused by the Customer Failure;

3.2.2 shall not be deemed to be in breach of this Agreement where the Customer Failure causes Arcus Global to breach this Agreement; and

3.2.3 may charge the Customer for any additional costs or expenses it incurs as a result of the Customer Failure.

3.3 Arcus Global may, on reasonable notice, visit any premises in which the Customer is using or accessing the Products to determine whether the use of the Products by the Customer complies with this Agreement. The Customer shall grant Arcus Global such access to its premises and to its IT equipment as is required to enable Arcus Global to verify that the Customer is complying with this Agreement.

#### **4 Payment and payment terms**

4.1 Arcus Global will invoice the Customer for Charges in accordance with the timeframes set out in the Call Off Agreement.

4.2 The Customer shall pay Charges invoiced by Arcus Global in accordance with clause 4.1 above within 14 days of the date of the invoice.

4.3 If the Customer does not pay any Charges within 14 days of the date of the invoice, Arcus Global may:

4.3.1 suspend provision of all or any of the Services or the Customer's access to the Products; and/or

4.3.2 charge interest at a daily rate on all sums outstanding until payment in full is received whether before or after judgment at a rate of 2% above the base lending rate of Barclay's Bank plc from time to time. Arcus Global reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

4.4 The Customer shall be responsible for any applicable sales, use or value added taxes arising out of or in connection with this Agreement, other than UK corporation tax arising in respect of Arcus Global's income or profits. All payments due are expressed exclusive of UK Value Added Tax, which will be invoiced in addition where applicable.

4.5 The Customer shall reimburse Arcus Global for any reasonable travel and out-of-pocket expenses it incurs in the course of providing the Services.

4.6 Arcus Global may increase the Charges from time to time. The revised Charges shall take effect in accordance with any timeframes notified to the Customer by Arcus Global from time to time.

4.7 The process for resolving any disputes about invoices will be that the Customer pays the invoiced sum by the due date and that Arcus issues a credit note if it is subsequently shown to have invoiced the wrong amount.

#### **5 Warranties**

5.1 Each party warrants that it has full capacity and authority to enter into and perform this Agreement.

5.2 Arcus Global warrants that the Products will during the Warranty Period under normal use conform in all material respects with the functionality outlined in the Documentation. If the Customer notifies Arcus Global in writing of any material failure of a Product so to conform during the Warranty Period, Arcus Global shall at its own expense and sole option either correct any demonstrable failure in the Products within a reasonable time or upon return of the Product (where applicable) and the related Documentation provide or authorise a refund of the relevant Product Charge to the Customer. This shall be the Customer's sole remedy against Arcus Global for any

fault with the Products or failure of the Products to conform with the functionality outlined in the Documentation.

- 5.3 Arcus Global warrants that it will provide the Services with reasonable skill and care and that the Services will be of a professional quality conforming to generally accepted computer service industry practices. The Customer shall notify Arcus Global of any failure to comply with this warranty within 90 days of the provision of the relevant Services. The Customer's sole remedy against Arcus Global for any such failure shall be to require Arcus Global to correct such failure free of additional charge and within a reasonable time.
- 5.4 Except as expressly set out in this Agreement, all conditions, warranties, terms and undertakings, express or implied, whether by statute, common law, trade practice, custom, course of dealing or otherwise (including about quality, performance or fitness or suitability for purpose) in respect of the Products, the Documentation and the Services are excluded to the fullest extent permissible by law.

## **6 Intellectual Property Rights**

- 6.1 Arcus Global owns, or is licensed to use, all copyright and other intellectual property rights in the Products and the Documentation.
- 6.2 Arcus Global will own any Intellectual Property Rights it creates in the course of providing the Services (including any Intellectual Property Rights in Deliverables). Any modifications or customisations to Arcus Global Products made in the course of the Services will be licensed to the Customer on the relevant Arcus Global Product Terms.
- 6.3 Save as expressly set out in this Agreement, the Customer does not acquire any rights in the Products or Services.
- 6.4 Arcus Global warrants that the use of the Products and the Documentation in accordance with this Agreement will not infringe any third party's copyright.
- 6.5 Subject to clauses 6.6 and 6.7, if there is a Claim, Arcus Global shall indemnify the Customer against any damages that are awarded to be paid to such third party in respect of such Claim provided that the Customer:
- 6.5.1 notifies Arcus Global of the Claim in writing as soon as reasonably practicable and in any event within 30 days of becoming aware of the Claim;
- 6.5.2 does not make any admission of liability or compromise or agree any settlement of the Claim without Arcus Global's prior written consent and does not otherwise prejudice the defence of the Claim;
- 6.5.3 gives Arcus Global, or such person as Arcus Global directs, immediate and complete control of the conduct or settlement of all negotiations and litigation arising from the Claim; and
- 6.5.4 on payment of its reasonable costs, gives Arcus Global, and other third parties as Arcus Global directs, all assistance reasonably required with the conduct or settlement of any such negotiations or litigation.
- 6.6 Arcus Global shall have no liability for any claim of infringement based on the use of a superseded or altered release of a Product if the infringement would have been avoided by the use of a current unaltered release of the Product which Arcus Global provides to the Customer.
- 6.7 If a Claim is brought, Arcus Global shall have the right in its absolute discretion and at its own expense:



- 6.7.1 to procure the right for the Customer to continue using the Products and/or the Documentation in accordance with the terms of this Agreement;
- 6.7.2 to make such alterations, modifications or adjustments to the Products and/or the Documentation so that they become non-infringing; or
- 6.7.3 to replace the Products and/or the Documentation with non-infringing software and/or documentation.
- 6.8 If Arcus Global is unable to resolve a Claim by taking one of the actions under clause 6.7 Arcus Global may terminate this Agreement upon repayment to the Customer of the relevant Product Charges (less a reasonable deduction, determined by Arcus Global, in respect of any use of the Product made by the Customer). Any such payment such right shall be the Customer's sole and exclusive remedy under this Agreement in respect of the Claim.
- 6.9 If there is any claim attributable to the use or possession by the Customer of the Products and the Documentation other than in accordance with this Agreement, the provisions of clauses 6.4 to 6.8 shall not apply and Customer shall indemnify Arcus Global against all liabilities, costs and expenses which Arcus Global incurs as a result of the claim.

## **7 Limitation of liability**

- 7.1 Nothing in this Agreement shall exclude or restrict the liability of either party to the other for death or personal injury resulting from the negligent act of one party or for liability for any fraudulent misrepresentation by either party.
- 7.2 Subject to clauses 7.1, and 7.3, the liability of Arcus Global to the Customer for direct loss in contract, tort or otherwise arising out of or in connection with this Agreement, the Customer's use of the Products or the Documentation and/or the Services shall be limited in aggregate during each Contract Year to the greater of £1,000 and the total Charges paid by the Customer to Arcus Global during the relevant Contract Year.
- 7.3 Subject to clause 7.1, in no circumstances shall Arcus Global be liable to the Customer in contract, tort, negligence, breach of statutory duty or otherwise in respect of any of the following arising out of or in connection with this Agreement or the Customer's use of the Products or the Documentation or the Services:
  - 7.3.1 loss of profits, anticipated savings, revenue, goodwill or business opportunity;
  - 7.3.2 loss or corruption of or cost of restoration of data or for use of any results obtained by use of the Products;
  - 7.3.3 any indirect, consequential, financial or economic loss or damage, costs or expenses;
  - 7.3.4 loss of availability arising out of or in connection with the Products or Services or otherwise under, in connection with or in relation to this Agreement; or
  - 7.3.5 loss of access to the Products due to the failure by the Customer to comply with the Access Requirements.
- 7.4 If any of the limitations on Arcus Global's liability under this Agreement are adjudged to be unreasonable in the circumstances, then such limitation shall be increased to the amount that Arcus Global can recover from its insurer for the loss in question.
- 7.5 The payments due under this Agreement have been negotiated and agreed on the basis that the parties may exclude or limit their liability to each other as set out in this Agreement. The parties each confirm that they will themselves bear or insure against any loss for which the other party has limited or excluded liability under this Agreement.

## **8 Term**

- 8.1 This Agreement shall commence on the date of this Agreement and shall continue until the termination or expiry of this Agreement in respect of all Products and the termination or expiry of all the Services.

## **9 Termination**

- 9.1 Either party may terminate this Agreement by giving written notice to the other if the other commits a material or persistent breach of any term of this Agreement and that breach (if capable of remedy) is not remedied within 30 days of written notice being given requiring it to be remedied (and where such breach is not capable of remedy, the relevant party shall be entitled to terminate the Agreement with immediate effect).
- 9.2 This Agreement may be terminated by either party if an interim order is made, or a voluntary arrangement approved, or if a petition for bankruptcy order is presented or a bankruptcy order is made against the other party or if a receiver or trustee is appointed of the other party's estate or a voluntary arrangement is approved or a notice is served of intention to appoint an administrator or an administrator is appointed by Court order or by any other means, or a receiver or administrative receiver is appointed over any of the other party's assets or undertaking or a resolution or petition to wind up the other party is passed or presented (otherwise than for the purposes of reconstruction or amalgamation), or if any circumstances arise which entitle the Court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding up petition or make a winding up order or 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 above events.
- 9.3 Upon termination or expiry of this Agreement all licences granted under this Agreement shall immediately terminate.
- 9.4 Termination of this Agreement shall not relieve the Customer of its obligation to pay any Charges that have accrued prior to termination.
- 9.5 Any termination of this Agreement shall be without prejudice to any other rights or remedies either party may be entitled to under this Agreement or at law.
- 9.6 Following termination of this Agreement (by either party for whatever reason) the Customer shall:
- 9.6.1 within seven days at Arcus Global's option, either return to Arcus Global or destroy all copies of the Products and Documentation in its possession and a duly authorised officer of the Customer shall certify in writing to Arcus Global that the Customer has complied with such obligation; and
- 9.6.2 as soon as reasonably practical ensure that all data (including the Personal Data) is removed or deleted from the Products. If the Customer does not remove or delete the data within [14 days], Arcus Global may remove or delete the data (and will have no liability for the loss of such data).

## **10 Confidentiality**

- 10.1 Neither party shall during the term of this Agreement or for a period of five years after expiry or termination of this Agreement:
- 10.1.1 divulge or communicate to any person, company, business entity or other organisation;
- 10.1.2 use for its own purposes or for any purposes other than those of the other party; or

- 10.1.3 through any failure to exercise due care and diligence, cause any unauthorised disclosure of
- any trade secrets or Confidential Information relating to the other party. These restrictions will cease to apply to any such information that becomes available to the public generally other than through a breach of a duty of confidentiality owed to the other party. Neither party shall be restricted from disclosing the Confidential Information or any part of it pursuant to a judicial or other lawful government order, but only to the extent required by such order and subject to the party obliged to comply with such order giving the other party as much notice of the terms of the order as may be reasonably practicable.
- 10.2 Nothing in this clause 10 shall prevent:
- 10.2.1 Arcus Global from disclosing the Products to any third party;
- 10.2.2 the Customer from disclosing the Products to the Users, provided that the Customer remains responsible for the Users' compliance with the obligations of confidentiality set out in this Agreement; or
- 10.2.3 Arcus Global from including the name of the Customer in its publicity materials to reference the Customer's use of the Products.
- 10.3 Arcus Global acknowledges that the Customer is a public authority for the purposes of the Freedom of Information Act 2000 and may be required to disclose information about this Agreement to enquirers in accordance with the provisions of that Act. The Customer shall, where possible, notify Arcus Global in writing of any requests it receives for Confidential Information relating to Arcus Global and shall discuss with Arcus Global prior to the disclosure of such information any exemptions that may apply to such Confidential Information.

## **11 GDPR**

- 11.1 This contract provides written authorisation (GDPR Article 29) for Arcus Global to provide services to the Customer (which is the 'Data Controller') as a 'Data Processor' (each as defined in the GDPR) in respect of any Personal Data.
- 11.2 Arcus Global provides services using one or more of the AWS, Microsoft, Google, Salesforce or Conga platforms which means that one or more of those companies is a sub-processor for this service to Arcus Global. In order to comply with GDPR Article 28.2, acceptance of this contract provides Arcus Global with written authorisation from the Customer to use those companies as a sub-processor. No additional sub-processors will be used by Arcus Global without prior written authorisation from the Customer.
- 11.3 Arcus Global will work with the appropriate supervisory organisation (GDPR Article 31), which in this legal jurisdiction is assumed to be the Information Commissioner's Office (ICO), where necessary and required.
- 11.4 Arcus Global will take appropriate measures to ensure the security of data processing activities, which are detailed in our ISO27001:2015 certified Information Security Management System.
- 11.5 Where services are provided using public cloud platforms, Arcus Global will work with the Customer to suggest, design, implement and maintain appropriate tools and services to meet record security requirements (GDPR Article 32). The Customer has the option to accept or reject any security recommendations e.g. for cost reasons.



- 11.6 If the Customer buys Third Party Services through Arcus, the Customer acknowledges that Arcus shall have no responsibility for record security unless the Customer uses Arcus to design and support those services.
- 11.7 If the Customer rejects, or does not otherwise implement, the appropriate record security measures as indicated by Arcus Global and/or its public cloud sub-processors (as described in 12.2), neither Arcus Global nor its public cloud sub-processors will be liable for any financial penalty, or other material loss, in the event of a 'personal data breach' as defined by GDPR Article 33.
- 11.8 If Arcus Global detects a 'personal data breach' as defined by GDPR Article 33, it will notify the Customer within 8 working hours.
- 11.9 Arcus Global does not require a Data Protection Officer as defined by GDPR Article 37.
- 11.10 The Customer shall obtain all consents and provide all notices necessary to enable Arcus Global to receive and process the Personal Data for the purpose of providing the Services.
- 11.11 Arcus Global will:
- 11.12 process the Personal Data only on the instructions of the Customer as set out in this Agreement; and
- 11.13 put in place all reasonable technical and organisational security measures in respect of the Personal Data, as set out in this Agreement and agreed by the Customer.

## **12 Bribery and corruption**

- 12.1 The Customer shall:
  - 12.1.1 comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including the Bribery Act 2010;
  - 12.1.2 have and maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with clause 12.1.1 above; and
  - 12.1.3 promptly report to Arcus Global any request or demand for any undue financial or other advantage of any kind received by the Customer in connection with the performance of this Agreement.

## **13 General**

- 13.1 The failure or delay of Arcus Global to exercise or enforce any right under this Agreement shall not operate as a waiver of that right or preclude the exercise or enforcement of it at any time.
- 13.2 Neither party shall be liable for any delay in or for failure to perform its obligations under this Agreement, other than an obligation to make any payment due to the other party, if that delay or failure is caused by circumstances beyond the control of that party including fires, strikes, insurrection, riots, embargoes, or regulations of any civil or military authority.
- 13.3 The Customer shall not seek directly or through any third party to employ permanently or temporarily engage personnel who are supplying Services during the term of this Agreement or for six working months after termination or expiry of this Agreement. Any such approach shall result in payment by the Customer of damages including loss of revenue and expertise. As an agreed pre-estimate of damages, this sum shall be 6

working months of the standard price applicable to the person(s) affected and payable upon presentation of its invoice by Arcus Global.

- 13.4 This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and supersedes, cancels and replaces all prior agreements, licences, negotiations and discussions between the parties relating to it. The Customer acknowledges that it has not been induced to enter into this Agreement by, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) not expressly incorporated into this Agreement. However, nothing in this Agreement will exclude either party's liability for any fraudulent statement or act.
- 13.5 No variation of this Agreement shall be valid unless it is in writing and signed by an authorised representative of each of the parties.
- 13.6 The Customer shall not (without Arcus Global's prior written consent) assign this Agreement nor any of its rights or obligations under this Agreement nor sub-license the use of the Products or the Documentation. Arcus Global shall be entitled to assign this Agreement to another member of the Arcus Global group of companies and/or an assignee of Arcus Global's business. This Agreement shall be binding on any successors and assignees.
- 13.7 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement, and nothing in this Agreement shall confer or purport to confer on any third party any benefit or any right to enforce any term of this Agreement or operate to give any third party the right to enforce any term of this Agreement.
- 13.8 If any provision of this Agreement is held to be unlawful, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be severed from this Agreement and rendered ineffective as far as possible without modifying or affecting the legality, validity or enforceability of the remaining provisions of this Agreement which will remain in full force and effect.
- 13.9 Any notice to be given under this Agreement shall be in writing and shall be delivered by hand, sent by first class post to the address of the other party set out in this Agreement (or such other address as may have been notified in the Call Off Agreement) or sent by email to the address notified in the Call Off Agreement or from time to time. Any such notice or other document shall be deemed to have been served: if delivered by hand - at the time of delivery; if sent by post - upon the expiration of 48 hours after posting; and if sent by email - immediately unless the sender receives notice from the recipient that that the email has not been received.
- 13.10 This Agreement 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.
- 13.11 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 this Agreement or its subject matter or formation (including non-contractual disputes or claims).

# Arcus Global – Professional Services Terms

## **1 Definitions**

- 1.1.1 In these Professional Services Terms: “**Customer Location**” means a location chosen by the Customer at which they want Arcus Global Consultants to deliver some or all of the Professional Services.
- 1.1.2 “**Consultant**” means a member of Arcus Global staff or the staff of a partner or sub-contractor used by Arcus to deliver professional services.
- 1.1.3 “**Project Plan**” means any project plan set out in the Order Form.

## **2 Professional Services**

- 2.1 Subject to clause 2.2 below, Arcus Global will provide the Professional Services to the Customer.
- 2.2 Arcus Global will use reasonable endeavours to deliver any Deliverables to meet the Customer’s requirements as set out in the Order Form. However, owing to the nature of software development, Arcus Global cannot warrant that the Deliverables will meet the Customer’s requirements or that they will deliver a particular output or result.

## **3 Project Plan**

- 3.1 Arcus Global will use reasonable endeavours to meet any delivery dates set out in the latest version of any Project Plan agreed with the Customer (including in respect of the delivery of any Deliverables). Time is not of the essence in respect of any of Arcus Global’s obligations relating to the Professional Services.

## **4 Acceptance**

- 4.1 The Customer shall be deemed to accept any Deliverables received from Arcus Global under this Agreement seven days after delivery.

## **5 Customer Responsibilities**

- 5.1 The Customer shall provide all cooperation reasonably required by Arcus Global in the provision of the Professional Services, including access to information, staff, systems and locations.
- 5.2 The Customer shall comply with any Customer Responsibilities set out in the Order Form in respect of the Professional Services in accordance with any timeframes for such Customer Responsibilities (including in the latest version of any Project Plan agreed with Arcus Global).

- 6 To allow Arcus Global to provide the Customer with Professional Services relating to public cloud platforms, the Customer will need to provide Arcus Global with the Customer's public cloud login credentials. In providing these credentials, the Customer consents to allowing Arcus Global to access the Customer's public cloud accounts and information for the purpose of the Professional Services. Any activity on the Customer's public cloud account shall remain the Customer's sole and exclusive responsibility. The Customer agrees that Arcus Global shall not be liable or responsible for any matters pertaining to its public cloud account.

**7 Customer duty of care**

- 7.1 Where Arcus Global sends Consultants to deliver Professional Services at a Customer Location, the Customer shall assume a duty of care with regard to the Consultants' health and safety and shall provide them with appropriate access to facilities and equipment and inform them of relevant health and safety procedures and provide them with the same or greater level of protection, comfort and assistance as they would provide to the Customer's own staff.
- 7.2 Where Arcus Global sends Consultants to deliver Professional Services at a location chosen by the Customer that is not in the UK, the Customer shall assume the duty of care referred to above from the time that the Consultants leave the UK until they return to it. Such duty of care in this case includes but is not limited to provision of advice and assistance on risk of personal injury, disease, and locally applicable laws and customs.

**8 Travel & subsistence charges**

- 8.1 Unless otherwise specified in the Order Form, Arcus will charge travel and subsistence charges for Consultants when they visit Customer Locations. Arcus is happy to match the Customer's travel policy for their staff if this is provided and will otherwise base the scale of these charges on use of second class public transport where available, business hotels and typical prices for meals in restaurant chains.

**9 Payment**

- 9.1 The Customer shall pay the Professional Services Charges including any applicable travel and subsistence charges in accordance with the timeframes set out in the Order Form.

**10 Termination**

- 10.1 Either party may terminate the Professional Services by giving the other party not less than one month's notice in writing unless the Order Form specifies a longer termination period, in which case the details on the Order Form will prevail

# Arcus Global – Arcus Product Support Terms

## 1 **Definitions**

- 1.1 In these Arcus Global Support Terms, the following words and phrases shall have the following meanings:
  - 1.1.1 “**Fault**” means a demonstrable fault, error or other problem in a Product that is capable of replication by Arcus Global;
  - 1.1.2 “**Support Hours**” means the support hours set out in the Order Form;
  - 1.1.3 “**Support Request**” means a request made by the Customer in accordance with clause 4 below for support in relation to the Products, including correction of a Fault; and
  - 1.1.4 “**Upgrade**” means all significant changes made to a Product, new features requiring changes to the code and testing, or work requiring senior employees of Arcus Global, including batch extracts, migration, integration, conversion and import/export, made available by Arcus Global to the Customer.

## 2 **Support Services**

- 2.1 Arcus Global shall provide the following Support Services during the Support Hours via a support portal, telephone or email, as appropriate:
  - 2.1.1 a support portal (which is the preferred reporting method), email and telephone helpdesk facility during Support Hours, for reporting new Faults and monitoring Arcus Global's progress against existing incidents;
  - 2.1.2 where there is a Fault, ensuring that an engineer provides an initial telephone or email response;
  - 2.1.3 using reasonable endeavours to provide a fix (or, where a fix is not possible, workaround) for each Fault with a reasonable time after receiving notice of the Fault; and
  - 2.1.4 active monitoring of the Services with a monthly report of Arcus Global's findings.
- 2.2 Arcus Global may in its entire discretion resolve a Fault by providing a bug fix, workaround, patch or other minor modification to the Products.
- 2.3 Arcus Global shall not be liable to provide Support Services where any Fault results from or is connected with:
  - 2.3.1 the failure of the Customer to comply with the relevant Access Requirements and/or any other Customer Failure;
  - 2.3.2 any improper use, operation or neglect of the Products by the Customer (including any use of the Products that does not comply with this Agreement, the Documentation and/or any other instructions provided to the Customer by Arcus Global from time to time);
  - 2.3.3 the Customer's failure to implement recommendations in respect of or solutions to Faults previously advised by Arcus Global; or
  - 2.3.4 any repair, adjustment, alteration or modification of the Products or maintenance of the Products by any person other than Arcus Global or its authorised agents without Arcus Global's prior written consent.
- 2.4 Arcus Global reserves the right:

- 2.4.1 to refuse to respond to requests for Support Services made by any person who the Customer has not nominated as one of its support contacts in accordance with clause 5.1.1 below and if any such person makes a request for Support Services, Arcus Global shall be entitled to redirect that person to the Customer's nominated support contacts;
- 2.4.2 to monitor requests for Support Services and levels of support requested and, if it is found that an excessive number of inappropriate requests for Support Services are being made to Arcus Global, to notify the Customer of that fact and either temporarily or permanently to stop providing Support Services to the Customer whereupon the Customer shall investigate the number of requests being made and the reasons for such requests and Arcus Global may in its entire discretion assist the Customer to find out the reasons for the number of requests for Support Services and to reduce the number of such requests; and
- 2.4.3 to refuse to supply Support Services in respect of any alleged fault which could have been resolved by the Customer following any instructions set out in any related documentation provided by Arcus Global.
- 2.5 Arcus Global reserves the right to charge the Customer an additional sum (at the rates set out in the Order Form or, where not agreed, its standard rates for the provision of professional services) for the provision of support or other services in any of the following circumstances: namely, where:
  - 2.5.1 support or other services are provided in respect of any Fault resulting from or connected with any of the circumstances set out in paragraph 2.3;
  - 2.5.2 any assistance, support or other services are provided by Arcus Global in relation to any matter referred to in clause 2.6;
  - 2.5.3 performance of the Support Services is made more difficult or costly as a result of the Customer's failure to inform Arcus Global of a problem as soon as reasonably practicable;
  - 2.5.4 the Customer requests Arcus Global to perform the Support Services outside the Support Hours; or
  - 2.5.5 the Customer requests that Arcus Global provides the Support Services at any of its premises where the Products is being used.

### **3 Upgrades**

- 3.1 From time to time, Arcus Global may make Upgrades available to the Customer.
- 3.2 Where Arcus Global makes available an Upgrade to the Customer, the Customer shall not be liable to pay additional Support Fees except where such Upgrade provide additional features in which case additional Product Charges may be payable.
- 3.3 Arcus Global may at its discretion make available minor upgrades (being any upgrade other than a major Upgrade) to the Customer free of any additional charge.
- 3.4 Following installation of any Upgrade, Arcus Global's obligation to provide the Support Services shall only extend to the Products incorporating the Upgrade and shall cease in respect of the Products without the Upgrade. The Customer shall not refuse any Upgrade necessary at Arcus Global's reasonable determination for the continued operation of the Products.
- 3.5 Any Upgrades made to the Products by Arcus Global form part of the Products.

### **4 Submitting Support Requests and access**

- 4.1 The Customer may request Support Services by way of a Support Request.
- 4.2 Each Support Request shall include a description and the start time of the incident.
- 4.3 The Customer shall provide Arcus Global with:
  - 4.3.1 prompt notice of any Faults; and



- 4.3.2 such output and other data, documents, information, assistance and (subject to compliance with all Customer's security and encryption requirements notified to Arcus Global in writing) remote access to the Customer system, as are reasonably necessary to assist Arcus Global to reproduce operating conditions similar to those present when the Customer detected the relevant Fault and to respond to the relevant Support Request.
- 4.4 Save where agreed in advance by Arcus Global, all Support Services shall be provided from Arcus Global's office.
- 4.5 The Customer acknowledges that, to assess and resolve Support Requests, it may be necessary to permit Arcus Global direct access to the Customer's premises, system, files, equipment and personnel.
- 4.6 The Customer shall provide such access promptly, provided that Arcus Global complies with all the Customer's security requirements and other policies and procedures relating to contractors entering and working at the Customer's premises notified to Arcus Global.

## **5 Customer Responsibilities**

- 5.1 The Customer shall:
- 5.1.1 nominate in writing an appropriate number of appropriately technically qualified and experienced persons within its organisation who shall be the points of contact between Arcus Global and the Customer for all requests for Support Services and shall notify Arcus Global in writing at least 10 Working Days in advance of any changes made to such nominations;
- 5.1.2 adequate information and written material to enable Arcus Global to recreate any Fault in respect of which the Customer requests the Support Services;
- 5.1.3 procure that all Arcus Global's instructions are followed in relation to the Products;
- 5.1.4 ensure that its infrastructure meets the Access Requirements;
- 5.1.5 procure that the Products are operated only by competent users in a proper and skilful manner and in accordance with the terms of any licence for use and any related documentation;
- 5.1.6 ensure that the relevant units of the Customer's computer hardware remain switched on and connected to the internet by a connection configured in accordance with any documentation related to the Products and permit Arcus Global to access and amend any information and data stored on them so that Arcus Global can provide the Support Services remotely and any necessary downloads can be completed;
- 5.1.7 take frequent and regular backups of all data and configuration information relating to the operation of the Products;
- 5.1.8 not permit anyone other than Arcus Global's authorised representatives to provide any support or maintenance services in respect of the Products; and
- 5.1.9 not use the Products or any part of it knowing it to be faulty without Arcus Global's knowledge and consent.

## **6 Service levels and service credits**

- 6.1 Arcus Global shall use reasonable endeavours to comply with any service levels set out in the Order Form.
- 6.2 Where Arcus Global agrees in an Order Form to pay service credits in respect of any failures to comply with agreed service levels, such service credits will be the Customer's sole remedy for any such failures.

## **7 Payment**

- 7.1 The Customer shall pay the Support Charges in accordance with the timeframes set out in the Order Form.

- 7.2 If the Customer at any time terminates this Agreement and subsequently seeks to purchase Support Services, Arcus Global shall be entitled to charge the Customer at its then current rates in respect of any period following such termination during which the Customer did not purchase Support Services.

## **8 Termination**

- 8.1 Either party may terminate the Support Services by giving the other party notice in writing equal to the Renewal Period for the Product in respect of which Arcus Global is providing Support Services.

# Arcus Global – Managed Service Terms

## 1 Definitions

- 1.1 In these Arcus Global Support Terms, the following words and phrases shall have the following meanings:
- 1.1.1 **“Incident”** means an unplanned interruption to a Service that is capable of replication and resolution by Arcus Global;
- 1.1.2 **“Notification”** means any piece of information that the Customer provides to Arcus via a Support Request that cannot be categorised as an Incident, Service Request or RFC. Examples of a Notification include the provision of positive or negative feedback or the provision of useful information to the Service Desk such as an expected spike in demand. Notifications result in actions but are not tracked by the Support SLA.
- 1.1.3 **“Request For Change”** An RFC is a requirement for a non-standard change to a Service e.g. to add an additional capability or capacity. Since RFCs involve changing a service they do not count as a support activity and require Arcus to estimate the time to design and implement the change and the Customer to provide formal approval e.g. via a Change Approval Board before they can be implemented. Arcus aims to respond to RFCs within 10 working days.
- 1.1.4 **“RPI Rate”** means the difference in the New Retail Price Index (RPIJ) for the UK over the preceding twelve months divided by the RPIJ twelve months ago multiplied by 100.
- 1.1.5 **“Service”** means the ability to use the infrastructure, platform or software that Arcus provides to the Customer.
- 1.1.6 **“Service Desk”** means the function that Arcus provides to capture, track, categorise and respond to the Support Requests that the Customer raises.
- 1.1.7 **“Service Request”** means a Customer request for information, advice, or for a standard change (a pre-approved change that is low risk, relatively common and follows a procedure) or for access to an IT service e.g. a password reset or new user request. Service Requests do not require a Request For Change to be submitted and are usually given a Support Priority of ‘Low’ or ‘Medium’.
- 1.1.8 **“Support Hours”** means the support hours set out in the Order Form or, if they are not explicitly stated in the Order Form, from 09:00 – 17:00 on UK business days (does not include UK public holidays);
- 1.1.9 **“Support Priority”** means the category assigned to a Support Request by Arcus Global, which defines its importance and the target response and resolution times associated with it; and
- 1.1.10 **“Support Request”** means a request made by the Customer for support in relation to the Service. Support Requests are categorised by Arcus into Incidents, Notifications, Service Requests and Requests For Change. The Support SLA only relates to Incidents and Service Requests.
- 1.1.11 **“Support SLA”** means the service level agreement that Arcus provides that sets a target time for it to respond to and then to resolve a Support Request.

## 2 Support Services

- 2.1 Arcus Global shall provide the following Support Services during the Support Hours via a support portal, telephone or email, as appropriate:
- 2.1.1 a support portal (which is the preferred reporting method), email and telephone helpdesk facility during Support Hours, for registering new Support Requests and

- monitoring Arcus Global's progress in resolving Support Requests;
- 2.1.2 where there is a Support Request, ensuring that an engineer provides an initial telephone or email response, categorises it and assigns an appropriate Support Priority to it;
- 2.1.3 where a Support Request is recognised as an Incident, using reasonable endeavours to provide a fix (or, where a fix is not possible, a workaround) within a reasonable time after receiving the Support Request; and
- 2.1.4 active monitoring of the Services.
- 2.2 Arcus Global may in its entire discretion resolve a Incident by providing a bug fix, workaround, patch or other modification to the Service.
- 2.3 Arcus Global shall not be liable to provide Support Services where any Support Request results from or is connected with:
  - 2.3.1 the failure of the Customer to comply with the relevant Access Requirements and/or any other Customer Failure;
  - 2.3.2 any improper use, operation or neglect of the Service by the Customer (including any use of the Service that does not comply with this Agreement, the Documentation and/or any other instructions provided to the Customer by Arcus Global from time to time);
  - 2.3.3 the Customer's failure to implement recommendations in respect of or solutions to Incidents previously advised by Arcus Global; or
  - 2.3.4 any repair, adjustment, alteration or modification of the Service or maintenance of the Service by any person other than Arcus Global or its authorised agents without Arcus Global's prior written consent.
- 2.4 Arcus Global reserves the right:
  - 2.4.1 to refuse to respond to Support Requests made by any person who the Customer has not nominated as one of its support contacts in accordance with clause 5.1.1 below and if any such person makes a Support Request, Arcus Global shall be entitled to redirect that person to the Customer's nominated support contacts;
  - 2.4.2 to monitor Support Requests and levels of support requested and, if it is found that an excessive number of inappropriate requests for Support Services are being made to Arcus Global, to notify the Customer of that fact and either temporarily or permanently to stop providing Support Services to the Customer whereupon the Customer shall investigate the number of requests being made and the reasons for such requests and Arcus Global may in its entire discretion assist the Customer to find out the reasons for the number of requests for Support Services and to reduce the number of such requests; and
  - 2.4.3 to refuse to supply Support Services in respect of any alleged Incident which could have been resolved by the Customer following any instructions set out in any related documentation provided by Arcus Global.
- 2.5 Arcus Global reserves the right to charge the Customer an additional sum (at the rates set out in the Order Form or, where not agreed, its standard rates for the provision of professional services) for the provision of support or other services and reasonable expenses in any of the following circumstances: namely, where:
  - 2.5.1 support or other services are provided in respect of any Incident resulting from or connected with any of the circumstances set out in paragraph 2.3;
  - 2.5.2 performance of the Support Services is made more difficult or costly as a result of the Customer's failure to inform Arcus Global of a problem as soon as reasonably

practicable or because of the Customer's failure to respond to questions from Arcus Global;

- 2.5.3 the Customer requests Arcus Global to perform the Support Services outside the Support Hours; or
- 2.5.4 the Customer requests that Arcus Global provides the Support Services at any of its premises where the Product is being used.

### **3 Submitting Support Requests and access**

- 3.1 The Customer may request Support Services by way of a Support Request.
- 3.2 Each Support Request shall include a description and the start time of the event that gave rise to the request.
- 3.3 The Customer shall provide Arcus Global with:
  - 3.3.1 prompt notice of any suspected Incidents; and
  - 3.3.2 such output and other data, documents, information, assistance and (subject to compliance with all Customer's security and encryption requirements notified to Arcus Global in writing) remote access to the Customer's system, as are reasonably necessary to assist Arcus Global to reproduce operating conditions similar to those present when the Customer detected the relevant Incident and to respond to the relevant Support Request.
- 3.4 Save where agreed in advance by Arcus Global, all Support Services shall be provided from Arcus Global's office or remotely.
- 3.5 The Customer acknowledges that, to assess and resolve Support Requests, it may be necessary to permit Arcus Global direct access to the Customer's premises, system, files, equipment and personnel.
- 3.6 The Customer shall provide such access promptly, provided that Arcus Global complies with all the Customer's security requirements and other policies and procedures relating to contractors entering and working at the Customer's premises notified to Arcus Global.

### **4 Customer Responsibilities**

- 4.1 The Customer shall:
  - 4.1.1 nominate in writing an appropriate number of appropriately technically qualified and experienced persons within its organisation who shall be the points of contact between Arcus Global and the Customer for all requests for Support Services and shall notify Arcus Global in writing at least 5 Working Days in advance of any changes made to such nominations;
  - 4.1.2 provide adequate information and written material to enable Arcus Global to recreate any Incident in respect of which the Customer makes a Support Request;
  - 4.1.3 procure that all Arcus Global's instructions are followed in relation to the Service;
  - 4.1.4 ensure that its infrastructure meets the Access Requirements;
  - 4.1.5 procure that the Service is operated only by competent users in a proper and skilful manner and in accordance with the terms of any licence for use and any related documentation;
  - 4.1.6 ensure that the relevant units of the Customer's computer hardware remain switched on and connected to the Internet by a connection configured in accordance with any documentation related to the Service and permit Arcus Global to access and amend

- any information and data stored on them so that Arcus Global can provide the Support Services remotely and any necessary downloads can be completed;
- 4.1.7 take frequent and regular backups of all data and configuration information relating to the operation of the Service;
  - 4.1.8 not permit anyone other than Arcus Global's authorised representatives to provide any support or maintenance services in respect of the Service; and
  - 4.1.9 not use the Service or any part of it knowing it to be faulty without Arcus Global's knowledge and consent.

## **5 Service levels and service credits**

- 5.1 Arcus Global shall use reasonable endeavours to comply with any service levels set out in the Order Form or below.
- 5.2 The target resolution timings given below or in the Order Form refer to issues that can be resolved solely by the action of Arcus Global employees and do not include time spent by third party suppliers or time spent waiting for a response from the Customer or any organisation engaged by the Customer to act on its behalf.
- 5.3 Where the Order Form does not list service levels, they shall be as follows:
  - 5.3.1 A response time of less than one working hour and a target resolution time of less than four working hours for 'Critical' incidents (where a Service is down or does not function at all, and there is no circumvention for the problem; a significant number of users (over 40%) are affected, or a production business system is inoperable).
  - 5.3.2 A response time of less than two working hours and a target resolution time of less than eight working hours for 'High' incidents (where a component of the Service is not performing, creating a significant operational impact (affecting over 10% of users)).
  - 5.3.3 A response time of less than eight working hours and a target resolution time of less than sixteen working hours for 'Medium' incidents (where a component of the Service is not performing as documented or is providing unexpected results; where there are problems that can be worked around; or where there is moderate or minor operational impact causing inconvenience).
  - 5.3.4 A response time of less than sixteen working hours and a target resolution time of less than thirty-two working hours for 'Low' incidents (where there are usage questions; requests for clarification of documentation, suggestions; or requests for new product features and enhancements).
- 5.4 Where Arcus Global agrees in the Order Form to pay service credits in respect of any failures to comply with agreed service levels, such service credits will be the Customer's sole remedy for any such failures.

## **6 Payment**

- 6.1 The Customer shall pay the Support Charges in accordance with the timeframes and charges set out in the Order Form.
- 6.2 If the Customer at any time terminates this Agreement and subsequently seeks to purchase Support Services, Arcus Global shall be entitled to charge the Customer at its then current rates in respect of any period following such termination during which the Customer did not purchase Support Services.



## **7 Annual price change**

- 7.1 Where charges for support are a fixed amount rather than a percentage of e.g. AWS infrastructure costs, charges for Support Services will increase annually in the month that is the anniversary of the signing of the Order Form. The increase will match the RPI Rate.

## **8 Termination**

- 8.1 Either party may terminate the Support Services by giving the other party notice in writing. The notice period for terminating any of Arcus' AWS Support Services shall be 30 days unless otherwise specified in the Order Form.

## Arcus Global – Resale Terms

### **9**     **Definitions**

9.1     In these Arcus Global Resale Terms:

9.1.1     “**Third Party Terms**” means the licence terms in respect of a Third Party Product attached to the Order Form

### **10**    **Licence**

10.1    In consideration of payment of the relevant Product Charges, Arcus Global either:

10.1.1   grants the Customer a licence to use the Third Party Products; or

10.1.2   shall procure the grant to the Customer by the relevant third party of a licence to use the Third Party Products.

10.2    The Customer’s use of each Third Party Product shall be limited by the relevant Licence Restrictions. Where the Licence Restrictions limit the number of Users or restrict the Customer to use by named Users, the Customer shall ensure that only those Users use or access the Third Party Products and that usage is not shared with other users without Arcus Global’s prior written consent.

10.3    The Customer’s use of each Third Party Product is subject to the relevant Third Party Terms.

### **11**    **Access, delivery and installation**

11.1    Arcus Global’s only obligations in respect of enabling access to and/or the delivery and installation of the Third Party Products are set out in the Order Form as Professional Services.

11.2    To enable Arcus Global to provide the Professional Services in accordance with clause 2.1 above the Customer shall ensure that the Access Requirements in respect of each Third Party Product are met.

### **12**    **Hosting**

12.1    Where Arcus Global uses third party hosting providers to provide hosting in respect of any Products, the terms of the relevant third party hosting provider will apply to such hosting (including any availability or other service level commitments). Such terms may be attached to or referenced in the Order Form.

### **13**    **Warranties**

13.1    Arcus Global gives no warranty and accepts no liability in respect of the Third Party Products. The Customer’s sole remedy for any defect with any Third Party Products shall be under the terms of the relevant Third Party Terms.

13.2    If there is any loss of or corruption of the Customer’s data hosted by a third party, Arcus Global’s sole responsibility will be to use reasonable endeavours to procure that the relevant third party reinstates or restores the relevant data.

### **14**    **Payment**

14.1    The Customer shall pay the Product Charges for the Third Party Products in accordance with the timeframes set out in the Order Form.

- 14.2 Where Arcus Global purchases a Third Party Product on behalf of the Customer and uses a currency other than Pounds Sterling, the Customer shall bear the risk of any change in the exchange rate. Accordingly, Arcus Global reserves the right to change the Product Charges in respect of any Third Party Product to reflect any change in the applicable exchange rates.
- 14.3 Where the Customer fails to pay Arcus invoices for a Third Party Service for more than 40 days past the due date, Arcus shall, having first provided written warning on three occasions to the Customer, be entitled to switch-off those Services and to subsequently destroy them in order to remove its liability to the Third Party. The Customer accepts by signing this agreement that it cannot hold Arcus responsible for any damage to its data or business activities caused by such action.

## **15 Termination**

- 15.1 Either party may terminate this Agreement in respect of any Third Party Product by giving the other party notice in writing equal to the Renewal Period applying to the relevant Product.

# Amazon Web Services 3<sup>rd</sup> Party Terms

**In these Customer Call Off Terms, “You” shall mean the Customer, as specified in the Call-Off Form.**

This AWS Customer Agreement (this “Agreement”) contains the terms and conditions that govern your access to and use of the Service Offerings (as defined below) and is an agreement between the applicable AWS Contracting Party specified in Section 14 below (also referred to as “AWS,” “we,” “us,” or “our”) and you or the entity you represent (“you” or “your”). This Agreement takes effect when you click an “I Accept” button or check box presented with these terms or, if earlier, when you use any of the Service Offerings (the “Effective Date”). You represent to us that you are lawfully able to enter into contracts (e.g., you are not a minor). If you are entering into this Agreement for an entity, such as the company you work for, you represent to us that you have legal authority to bind that entity. Please see Section 14 for definitions of certain capitalized terms used in this Agreement.

## 1. USE OF THE SERVICE OFFERINGS.

1.1 Generally. You may access and use the Service Offerings in accordance with this Agreement. Service Level Agreements and Service Terms apply to certain Service Offerings. You will comply with the terms of this Agreement and all laws, rules and regulations applicable to your use of the Service Offerings.

1.2 Your Account. To access the Services, you must have an AWS account associated with a valid email address and a valid form of payment. Unless explicitly permitted by the Service Terms, you will only create one account per email address.

1.3 Third-Party Content. Third-Party Content may be used by you at your election. Third-Party Content is governed by this Agreement and, if applicable, separate terms and conditions accompanying such Third-Party Content, which terms and conditions may include separate fees and charges.

## 2. CHANGES.

2.1 To the Service Offerings. We may change or discontinue any or all of the Service Offerings or change or remove functionality of any or all of the Service Offerings from time to time. We will notify you of any material change to or discontinuation of the Service Offerings.

2.2 To the APIs. We may change or discontinue any APIs for the Services from time to time. For any discontinuation of or material change to an API for a Service, we will use commercially reasonable efforts to continue supporting the previous version of such API for 12 months after the change or discontinuation (except if doing so (a) would pose a security or intellectual property issue, (b) is economically or technically burdensome, or (c) would cause us to violate the law or requests of governmental entities).

2.3 To the Service Level Agreements. We may change, discontinue or add Service Level Agreements from time to time in accordance with Section 12.

## 3. SECURITY AND DATA PRIVACY.

**3.1 AWS Security.** Without limiting Section 10 or your obligations under Section 4.2, we will implement reasonable and appropriate measures designed to help you secure Your Content against accidental or unlawful loss, access or disclosure.

**3.2 Data Privacy.** You may specify the AWS regions in which Your Content will be stored. You consent to the storage of Your Content in, and transfer of Your Content into, the AWS regions you select. We will not access or use Your Content except as necessary to maintain or provide the Service Offerings, or as necessary to comply with the law or a binding order of a governmental body. We will not (a) disclose Your Content to any government or third party or (b) subject to Section 3.3, move Your Content from the AWS regions selected by you; except in each case as necessary to comply with the law or a binding order of a governmental body. Unless it would violate the law or a binding order of a governmental body, we will give you notice of any legal requirement or order referred to in this Section 3.2. We will only use your Account Information in accordance with the Privacy Policy, and you consent to such usage. The Privacy Policy does not apply to Your Content.

**3.3 Service Attributes.** To provide billing and administration services, we may process Service Attributes in the AWS region(s) where you use the Service Offerings and the AWS regions in the United States. To provide you with support services initiated by you and investigate fraud, abuse or violations of this Agreement, we may process Service Attributes where we maintain our support and investigation personnel.

#### **4. YOUR RESPONSIBILITIES.**

**4.1 Your Accounts.** Except to the extent caused by our breach of this Agreement, (a) you are responsible for all activities that occur under your account, regardless of whether the activities are authorized by you or undertaken by you, your employees or a third party (including your contractors, agents or End Users), and (b) we and our affiliates are not responsible for unauthorized access to your account.

**4.2 Your Content.** You will ensure that Your Content and your and End Users' use of Your Content or the Service Offerings will not violate any of the Policies or any applicable law. You are solely responsible for the development, content, operation, maintenance, and use of Your Content.

**4.3 Your Security and Backup.** You are responsible for properly configuring and using the Service Offerings and otherwise taking appropriate action to secure, protect and backup your accounts and Your Content in a manner that will provide appropriate security and protection, which might include use of encryption to protect Your Content from unauthorized access and routinely archiving Your Content.

**4.4 Log-In Credentials and Account Keys.** AWS log-in credentials and private keys generated by the Services are for your internal use only and you will not sell, transfer or sublicense them to any other entity or person, except that you may disclose your private key to your agents and subcontractors performing work on your behalf.

**4.5 End Users.** You will be deemed to have taken any action that you permit, assist or facilitate any person or entity to take related to this Agreement, Your Content or use of the Service Offerings. You are responsible for End Users' use of Your Content and the Service Offerings. You will ensure that all End Users comply with your obligations under this Agreement and that the terms of your agreement with each End User are consistent with this Agreement. If you become aware of any violation of your obligations under this Agreement

caused by an End User, you will immediately suspend access to Your Content and the Service Offerings by such End User. We do not provide any support or services to End Users unless we have a separate agreement with you or an End User obligating us to provide such support or services.

## 5. FEES AND PAYMENT.

**5.1 Service Fees.** We calculate and bill fees and charges monthly. We may bill you more frequently for fees accrued if we suspect that your account is fraudulent or at risk of non-payment. You will pay us the applicable fees and charges for use of the Service Offerings as described on the AWS Site using one of the payment methods we support. All amounts payable by you under this Agreement will be paid to us without setoff or counterclaim, and without any deduction or withholding. Fees and charges for any new Service or new feature of a Service will be effective when we post updated fees and charges on the AWS Site, unless we expressly state otherwise in a notice. We may increase or add new fees and charges for any existing Services you are using by giving you at least 30 days' prior notice. We may elect to charge you interest at the rate of 1.5% per month (or the highest rate permitted by law, if less) on all late payments.

**5.2 Taxes.** Each party will be responsible, as required under applicable law, for identifying and paying all taxes and other governmental fees and charges (and any penalties, interest, and other additions thereto) that are imposed on that party upon or with respect to the transactions and payments under this Agreement. All fees payable by you are exclusive of Indirect Taxes. We may charge and you will pay applicable Indirect Taxes that we are legally obligated or authorized to collect from you. You will provide such information to us as reasonably required to determine whether we are obligated to collect Indirect Taxes from you. We will not collect, and you will not pay, any Indirect Tax for which you furnish us a properly completed exemption certificate or a direct payment permit certificate for which we may claim an available exemption from such Indirect Tax. All payments made by you to us under this Agreement will be made free and clear of any deduction or withholding, as may be required by law. If any such deduction or withholding (including but not limited to cross-border withholding taxes) is required on any payment, you will pay such additional amounts as are necessary so that the net amount received by us is equal to the amount then due and payable under this Agreement. We will provide you with such tax forms as are reasonably requested in order to reduce or eliminate the amount of any withholding or deduction for taxes in respect of payments made under this Agreement.

## 6. TEMPORARY SUSPENSION.

**6.1 Generally.** We may suspend your or any End User's right to access or use any portion or all of the Service Offerings immediately upon notice to you if we determine:

- (a) your or an End User's use of the Service Offerings (i) poses a security risk to the Service Offerings or any third party, (ii) could adversely impact our systems, the Service Offerings or the systems or Content of any other AWS customer, (iii) could subject us, our affiliates, or any third party to liability, or (iv) could be fraudulent;
- (b) you are, or any End User is, in breach of this Agreement;
- (c) you are in breach of your payment obligations under Section 5; or



(d) you have ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of your assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.

6.2 Effect of Suspension. If we suspend your right to access or use any portion or all of the Service Offerings:

(a) you remain responsible for all fees and charges you incur during the period of suspension; and

(b) you will not be entitled to any service credits under the Service Level Agreements for any period of suspension.

## 7. TERM; TERMINATION.

7.1 Term. The term of this Agreement will commence on the Effective Date and will remain in effect until terminated under this Section 7. Any notice of termination of this Agreement by either party to the other must include a Termination Date that complies with the notice periods in Section 7.2.

### 7.2 Termination.

(a) Termination for Convenience. You may terminate this Agreement for any reason by providing us notice and closing your account for all Services for which we provide an account closing mechanism. We may terminate this Agreement for any reason by providing you at least 30 days' advance notice.

(b) Termination for Cause.

(i) By Either Party. Either party may terminate this Agreement for cause if the other party is in material breach of this Agreement and the material breach remains uncured for a period of 30 days from receipt of notice by the other party. No later than the Termination Date, you will close your account.

(ii) By Us. We may also terminate this Agreement immediately upon notice to you (A) for cause if we have the right to suspend under Section 6, (B) if our relationship with a third-party partner who provides software or other technology we use to provide the Service Offerings expires, terminates or requires us to change the way we provide the software or other technology as part of the Services, or (C) in order to comply with the law or requests of governmental entities.

### 7.3 Effect of Termination.

(a) Generally. Upon the Termination Date:

(i) except as provided in Section 7.3(b), all your rights under this Agreement immediately terminate;

(ii) you remain responsible for all fees and charges you have incurred through the Termination Date and are responsible for any fees and charges you incur during the post-termination period described in Section 7.3(b);

(iii) you will immediately return or, if instructed by us, destroy all AWS Content in your possession; and

(iv) Sections 4.1, 5, 7.3, 8 (except the license granted to you in Section 8.3), 9, 10, 11, 13 and 14 will continue to apply in accordance with their terms.

(b) Post-Termination. Unless we terminate your use of the Service Offerings pursuant to Section 7.2(b), during the 30 days following the Termination Date:

(i) we will not take action to remove from the AWS systems any of Your Content as a result of the termination; and

(ii) we will allow you to retrieve Your Content from the Services only if you have paid all amounts due under this Agreement.

For any use of the Services after the Termination Date, the terms of this Agreement will apply and you will pay the applicable fees at the rates under Section 5.

## 8. PROPRIETARY RIGHTS.

8.1 Your Content. Except as provided in this Section 8, we obtain no rights under this Agreement from you (or your licensors) to Your Content. You consent to our use of Your Content to provide the Service Offerings to you and any End Users.

8.2 Adequate Rights. You represent and warrant to us that: (a) you or your licensors own all right, title, and interest in and to Your Content and Suggestions; (b) you have all rights in Your Content and Suggestions necessary to grant the rights contemplated by this Agreement; and (c) none of Your Content or End Users' use of Your Content or the Service Offerings will violate the Acceptable Use Policy.

8.3 Service Offerings License. We or our licensors own all right, title, and interest in and to the Service Offerings, and all related technology and intellectual property rights. Subject to the terms of this Agreement, we grant you a limited, revocable, non-exclusive, non-sublicensable, non-transferrable license to do the following: (a) access and use the Services solely in accordance with this Agreement; and (b) copy and use the AWS Content solely in connection with your permitted use of the Services. Except as provided in this Section 8.3, you obtain no rights under this Agreement from us, our affiliates or our licensors to the Service Offerings, including any related intellectual property rights. Some AWS Content and Third-Party Content may be provided to you under a separate license, such as the Apache License, Version 2.0, or other open source license. In the event of a conflict between this Agreement and any separate license, the separate license will prevail with respect to the AWS Content or Third-Party Content that is the subject of such separate license.

8.4 License Restrictions. Neither you nor any End User will use the Service Offerings in any manner or for any purpose other than as expressly permitted by this Agreement. Neither you nor any End User will, or will attempt to (a) modify, distribute, alter, tamper with, repair, or otherwise create derivative works of any Content included in the Service Offerings (except to the extent Content included in the Service Offerings is provided to you under a separate license that expressly permits the creation of derivative works), (b) reverse engineer, disassemble, or decompile the Service Offerings or apply any other process or procedure to derive the source code of any software included in the Service Offerings (except to the extent applicable law doesn't allow this restriction), (c) access or use the Service Offerings in

a way intended to avoid incurring fees or exceeding usage limits or quotas, or (d) resell or sublicense the Service Offerings. You may only use the AWS Marks in accordance with the Trademark Use Guidelines. You will not misrepresent or embellish the relationship between us and you (including by expressing or implying that we support, sponsor, endorse, or contribute to you or your business endeavors). You will not imply any relationship or affiliation between us and you except as expressly permitted by this Agreement.

**8.5 Suggestions.** If you provide any Suggestions to us or our affiliates, we and our affiliates will be entitled to use the Suggestions without restriction. You hereby irrevocably assign to us all right, title, and interest in and to the Suggestions and agree to provide us any assistance we require to document, perfect, and maintain our rights in the Suggestions.

## **9. INDEMNIFICATION.**

**9.1 General.** You will defend, indemnify, and hold harmless us, our affiliates and licensors, and each of their respective employees, officers, directors, and representatives from and against any Losses arising out of or relating to any third-party claim concerning: (a) your or any End Users' use of the Service Offerings (including any activities under your AWS account and use by your employees and personnel); (b) breach of this Agreement or violation of applicable law by you, End Users or Your Content; or (c) a dispute between you and any End User. You will reimburse us for reasonable attorneys' fees, as well as our employees' and contractors' time and materials spent responding to any third party subpoena or other compulsory legal order or process associated with third party claims described in (a) through (c) above at our then-current hourly rates.

### **9.2 Intellectual Property.**

(a) Subject to the limitations in this Section 9, AWS will defend you and your employees, officers, and directors against any third-party claim alleging that the Services infringe or misappropriate that third party's intellectual property rights, and will pay the amount of any adverse final judgment or settlement.

(b) Subject to the limitations in this Section 9, you will defend AWS, its affiliates, and their respective employees, officers, and directors against any third-party claim alleging that any of Your Content infringes or misappropriates that third party's intellectual property rights, and will pay the amount of any adverse final judgment or settlement.

(c) Neither party will have obligations or liability under this Section 9.2 arising from infringement by combinations of the Services or Your Content, as applicable, with any other product, service, software, data, content or method. In addition, AWS will have no obligations or liability arising from your or any End User's use of the Services after AWS has notified you to discontinue such use. The remedies provided in this Section 9.2 are the sole and exclusive remedies for any third-party claims of infringement or misappropriation of intellectual property rights by the Services or by Your Content.

(d) For any claim covered by Section 9.2(a), AWS will, at its election, either: (i) procure the rights to use that portion of the Services alleged to be infringing; (ii) replace the alleged infringing portion of the Services with a non-infringing alternative; (iii) modify the alleged infringing portion of the Services to make it non-infringing; or (iv) terminate the allegedly infringing portion of the Services or this Agreement.

9.3 Process. The obligations under this Section 9 will apply only if the party seeking defense or indemnity: (a) gives the other party prompt written notice of the claim; (b) permits the other party to control the defense and settlement of the claim; and (c) reasonably cooperates with the other party (at the other party's expense) in the defense and settlement of the claim. In no event will a party agree to any settlement of any claim that involves any commitment, other than the payment of money, without the written consent of the other party.

#### 10. DISCLAIMERS.

THE SERVICE OFFERINGS ARE PROVIDED "AS IS." EXCEPT TO THE EXTENT PROHIBITED BY LAW, OR TO THE EXTENT ANY STATUTORY RIGHTS APPLY THAT CANNOT BE EXCLUDED, LIMITED OR WAIVED, WE AND OUR AFFILIATES AND LICENSORS (A) MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICE OFFERINGS OR THE THIRD-PARTY CONTENT, AND (B) DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED OR EXPRESS WARRANTIES (I) OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, (II) ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE, (III) THAT THE SERVICE OFFERINGS OR THIRD-PARTY CONTENT WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, AND (IV) THAT ANY CONTENT WILL BE SECURE OR NOT OTHERWISE LOST OR ALTERED.

#### 11. LIMITATIONS OF LIABILITY.

WE AND OUR AFFILIATES AND LICENSORS WILL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, REVENUES, CUSTOMERS, OPPORTUNITIES, GOODWILL, USE, OR DATA), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NEITHER WE NOR ANY OF OUR AFFILIATES OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) YOUR INABILITY TO USE THE SERVICES, INCLUDING AS A RESULT OF ANY (I) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICE OFFERINGS, (II) OUR DISCONTINUATION OF ANY OR ALL OF THE SERVICE OFFERINGS, OR, (III) WITHOUT LIMITING ANY OBLIGATIONS UNDER THE SERVICE LEVEL AGREEMENTS, ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICES FOR ANY REASON; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY YOU IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICE OFFERINGS; OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR CONTENT OR OTHER DATA. IN ANY CASE, EXCEPT FOR PAYMENT OBLIGATIONS UNDER SECTION 9.2, OUR AND OUR AFFILIATES' AND LICENSORS' AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNT YOU ACTUALLY PAY US UNDER THIS AGREEMENT FOR THE SERVICE THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS BEFORE THE LIABILITY AROSE. THE LIMITATIONS IN THIS SECTION 11 APPLY ONLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## 12. MODIFICATIONS TO THE AGREEMENT.

We may modify this Agreement (including any Policies) at any time by posting a revised version on the AWS Site or by otherwise notifying you in accordance with Section 13.10; provided, however, that we will provide at least 90 days' advance notice in accordance with Section 13.10 for adverse changes to any Service Level Agreement. Subject to the 90 day advance notice requirement with respect to adverse changes to Service Level Agreements, the modified terms will become effective upon posting or, if we notify you by email, as stated in the email message. By continuing to use the Service Offerings after the effective date of any modifications to this Agreement, you agree to be bound by the modified terms. It is your responsibility to check the AWS Site regularly for modifications to this Agreement. We last modified this Agreement on the date listed at the end of this Agreement.

## 13. MISCELLANEOUS.

**13.1 Assignment.** You will not assign or otherwise transfer this Agreement or any of your rights and obligations under this Agreement, without our prior written consent. Any assignment or transfer in violation of this Section 13.1 will be void. We may assign this Agreement without your consent (a) in connection with a merger, acquisition or sale of all or substantially all of our assets, or (b) to any Affiliate or as part of a corporate reorganization; and effective upon such assignment, the assignee is deemed substituted for AWS as a party to this Agreement and AWS is fully released from all of its obligations and duties to perform under this Agreement. Subject to the foregoing, this Agreement will be binding upon, and inure to the benefit of the parties and their respective permitted successors and assigns.

**13.2 Entire Agreement.** This Agreement incorporates the Policies by reference and is the entire agreement between you and us regarding the subject matter of this Agreement. This Agreement supersedes all prior or contemporaneous representations, understandings, agreements, or communications between you and us, whether written or verbal, regarding the subject matter of this Agreement (but does not supersede prior commitments to purchase Services such as Amazon EC2 Reserved Instances). We will not be bound by, and specifically object to, any term, condition or other provision that is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) including for example, any term, condition or other provision (a) submitted by you in any order, receipt, acceptance, confirmation, correspondence or other document, (b) related to any online registration, response to any Request for Bid, Request for Proposal, Request for Information, or other questionnaire, or (c) related to any invoicing process that you submit or require us to complete. If the terms of this document are inconsistent with the terms contained in any Policy, the terms contained in this document will control, except that the Service Terms will control over this document.

**13.3 Force Majeure.** We and our affiliates will not be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond our reasonable control, including acts of God, labor disputes or other industrial disturbances, electrical or power outages, utilities or other telecommunications failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

**13.4 Governing Law.** The Governing Laws, without reference to conflict of law rules, govern this Agreement and any dispute of any sort that might arise between you and us. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.



**13.5 Disputes.** Any dispute or claim relating in any way to your use of the Service Offerings, or to any products or services sold or distributed by AWS will be adjudicated in the Governing Courts, and you consent to exclusive jurisdiction and venue in the Governing Courts; except, if the applicable AWS Contracting Party is Amazon Web Services, Inc., any such dispute will be resolved by binding arbitration as provided in this Section 13.5, rather than in court, except that you may assert claims in small claims court if your claims qualify. The Federal Arbitration Act and federal arbitration law apply to this Agreement. There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief or statutory damages), and must follow the terms of this Agreement as a court would. To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to our registered agent Corporation Service Company, 300 Deschutes Way SW, Suite 304, Tumwater, WA 98501. The arbitration will be conducted by the American Arbitration Association (AAA) under its rules, which are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879. Payment of filing, administration and arbitrator fees will be governed by the AAA's rules. We will reimburse those fees for claims totaling less than \$10,000 unless the arbitrator determines the claims are frivolous. We will not seek attorneys' fees and costs in arbitration unless the arbitrator determines the claims are frivolous. You may choose to have the arbitration conducted by telephone, based on written submissions, or at a mutually agreed location. We and you agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action. If for any reason a claim proceeds in court rather than in arbitration we and you waive any right to a jury trial. Notwithstanding the foregoing we and you both agree that you or we may bring suit in court to enjoin infringement or other misuse of intellectual property rights.

**13.6 Trade Compliance.** In connection with this Agreement, each party will comply with all applicable import, re-import, sanctions, anti-boycott, export, and re-export control laws and regulations, including all such laws and regulations that apply to a U.S. company, such as the Export Administration Regulations, the International Traffic in Arms Regulations, and economic sanctions programs implemented by the Office of Foreign Assets Control. For clarity, you are solely responsible for compliance related to the manner in which you choose to use the Service Offerings, including your transfer and processing of Your Content, the provision of Your Content to End Users, and the AWS region in which any of the foregoing occur. You represent and warrant that you and your financial institutions, or any party that owns or controls you or your financial institutions, are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties, including but not limited to the lists maintained by the United Nations Security Council, the U.S. Government (e.g., the Specially Designated Nationals List and Foreign Sanctions Evaders List of the U.S. Department of Treasury, and the Entity List of the U.S. Department of Commerce), the European Union or its Member States, or other applicable government authority.

**13.7 Independent Contractors; Non-Exclusive Rights.** We and you are independent contractors, and this Agreement will not be construed to create a partnership, joint venture, agency, or employment relationship. Neither party, nor any of their respective affiliates, is an agent of the other for any purpose or has the authority to bind the other. Both parties reserve the right (a) to develop or have developed for it products, services, concepts, systems, or techniques that are similar to or compete with the products, services, concepts, systems, or techniques developed or contemplated by the other party, and (b) to assist third party



developers or systems integrators who may offer products or services which compete with the other party's products or services.

**13.8 Language.** All communications and notices made or given pursuant to this Agreement must be in the English language. If we provide a translation of the English language version of this Agreement, the English language version of the Agreement will control if there is any conflict.

**13.9 Confidentiality and Publicity.** You may use AWS Confidential Information only in connection with your use of the Service Offerings as permitted under this Agreement. You will not disclose AWS Confidential Information during the Term or at any time during the 5-year period following the end of the Term. You will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of AWS Confidential Information, including, at a minimum, those measures you take to protect your own confidential information of a similar nature. You will not issue any press release or make any other public communication with respect to this Agreement or your use of the Service Offerings.

**13.10 Notice.**

(a) **To You.** We may provide any notice to you under this Agreement by: (i) posting a notice on the AWS Site; or (ii) sending a message to the email address then associated with your account. Notices we provide by posting on the AWS Site will be effective upon posting and notices we provide by email will be effective when we send the email. It is your responsibility to keep your email address current. You will be deemed to have received any email sent to the email address then associated with your account when we send the email, whether or not you actually receive the email.

(b) **To Us.** To give us notice under this Agreement, you must contact AWS by facsimile transmission or personal delivery, overnight courier or registered or certified mail to the facsimile number or mailing address, as applicable, listed for the applicable AWS Contracting Party in Section 14 below. We may update the facsimile number or address for notices to us by posting a notice on the AWS Site. Notices provided by personal delivery will be effective immediately. Notices provided by facsimile transmission or overnight courier will be effective one business day after they are sent. Notices provided registered or certified mail will be effective three business days after they are sent.

**13.11 No Third-Party Beneficiaries.** Except as set forth in Section 9, this Agreement does not create any third-party beneficiary rights in any individual or entity that is not a party to this Agreement.

**13.12 U.S. Government Rights.** The Service Offerings are provided to the U.S. Government as "commercial items," "commercial computer software," "commercial computer software documentation," and "technical data" with the same rights and restrictions generally applicable to the Service Offerings. If you are using the Service Offerings on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, you will immediately discontinue your use of the Service Offerings. The terms "commercial item" "commercial computer software," "commercial computer software documentation," and "technical data" are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

13.13 No Waivers. The failure by us to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit our right to enforce such provision at a later time. All waivers by us must be in writing to be effective.

13.14 Severability. If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect. Any invalid or unenforceable portions will be interpreted to effect and intent of the original portion. If such construction is not possible, the invalid or unenforceable portion will be severed from this Agreement but the rest of the Agreement will remain in full force and effect.

#### 14. DEFINITIONS.

“Acceptable Use Policy” means the policy located at <http://aws.amazon.com/aup> (and any successor or related locations designated by us), as it may be updated by us from time to time.

“Account Country” is the country associated with your account. If you have provided a valid tax registration number for your account, then your Account Country is the country associated with your tax registration. If you have not provided a valid tax registration, then your Account Country is the country where your billing address is located, except if your credit card account is issued in a different country and your contact address is also in that country, then your Account Country is that different country.

“Account Information” means information about you that you provide to us in connection with the creation or administration of your AWS account. For example, Account Information includes names, usernames, phone numbers, email addresses and billing information associated with your AWS account.

“API” means an application program interface.

“AWS Confidential Information” means all nonpublic information disclosed by us, our affiliates, business partners or our or their respective employees, contractors or agents that is designated as confidential or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential. AWS Confidential Information includes: (a) nonpublic information relating to our or our affiliates or business partners’ technology, customers, business plans, promotional and marketing activities, finances and other business affairs; (b) third-party information that we are obligated to keep confidential; and (c) the nature, content and existence of any discussions or negotiations between you and us or our affiliates. AWS Confidential Information does not include any information that: (i) is or becomes publicly available without breach of this Agreement; (ii) can be shown by documentation to have been known to you at the time of your receipt from us; (iii) is received from a third party who did not acquire or disclose the same by a wrongful or tortious act; or (iv) can be shown by documentation to have been independently developed by you without reference to the AWS Confidential Information.

“AWS Content” means Content we or any of our affiliates make available in connection with the Services or on the AWS Site to allow access to and use of the Services, including APIs; WSDLs; Documentation; sample code; software libraries; command line tools; proofs of concept; templates; and other related technology (including any of the foregoing that are provided by our personnel). AWS Content does not include the Services or Third-Party Content.

"AWS Contracting Party" means (i) prior to July 1, 2018, Amazon Web Services, Inc., and (ii) from July 1, 2018, the party identified in the table below, based on your Account Country. If you change your Account Country to one identified to a different AWS Contracting Party below, you agree that this Agreement is then assigned to the new AWS Contracting Party under Section 13.1 without any further action required by either party.

Account Country	AWS Contracting Party	Facsimile	Mailing Address
Any country within Europe, the Middle East, or Africa ("EMEA")*	Amazon Web Services EMEA SARL	352 2789 0057	5 rue Plaetis L-2338 Luxembourg
Any other country that is not in EMEA	Amazon Web Services, Inc.	206-266-7010	410 Terry Avenue North, Seattle, WA 98109-5210 U.S.A.

\*See <https://aws.amazon.com/legal/aws-emea-countries> for a full list of EMEA countries.

"AWS Marks" means any trademarks, service marks, service or trade names, logos, and other designations of AWS and its affiliates that we may make available to you in connection with this Agreement.

"AWS Site" means <http://aws.amazon.com> (and any successor or related site designated by us), as may be updated by us from time to time.

"Content" means software (including machine images), data, text, audio, video or images.

"Documentation" means the user guides and admin guides (in each case exclusive of content referenced via hyperlink) for the Services located at <http://aws.amazon.com/documentation> (and any successor or related locations designated by us), as such user guides and admin guides may be updated by AWS from time to time.

"End User" means any individual or entity that directly or indirectly through another user: (a) accesses or uses Your Content; or (b) otherwise accesses or uses the Service Offerings under your account. The term "End User" does not include individuals or entities when they are accessing or using the Services or any Content under their own AWS account, rather than under your account.

"Governing Laws" and "Governing Courts" mean, for each AWS Contracting Party, the laws and courts set forth in the following table:

AWS Contracting Party	Governing Laws	Governing Courts
Amazon Web Services EMEA SARL	The laws of the Grand Duchy of Luxembourg	The courts of the district of Luxembourg City
Amazon Web Services, Inc.	The laws of the State of Washington	The state or Federal courts in King County, Washington

“Indirect Taxes” means applicable taxes and duties, including, without limitation, VAT, Service Tax, GST, excise taxes, sales and transactions taxes, and gross receipts tax.

“Losses” means any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys’ fees).

“Policies” means the Acceptable Use Policy, Privacy Policy, the Site Terms, the Service Terms, the Trademark Use Guidelines, all restrictions described in the AWS Content and on the AWS Site, and any other policy or terms referenced in or incorporated into this Agreement, but does not include whitepapers or other marketing materials referenced on the AWS Site.

“Privacy Policy” means the privacy policy located at <http://aws.amazon.com/privacy> (and any successor or related locations designated by us), as it may be updated by us from time to time.

“Service” means each of the services made available by us or our affiliates, including those web services described in the Service Terms. Services do not include Third-Party Content.

“Service Attributes” means Service usage data related to your account, such as resource identifiers, metadata tags, security and access roles, rules, usage policies, permissions, usage statistics and analytics.

“Service Level Agreement” means all service level agreements that we offer with respect to the Services and post on the AWS Site, as they may be updated by us from time to time. The service level agreements we offer with respect to the Services are located at <https://aws.amazon.com/legal/service-level-agreements/> (and any successor or related locations designated by AWS), as may be updated by AWS from time to time.

“Service Offerings” means the Services (including associated APIs), the AWS Content, the AWS Marks, and any other product or service provided by us under this Agreement. Service Offerings do not include Third-Party Content.

“Service Terms” means the rights and restrictions for particular Services located at <http://aws.amazon.com/serviceterms> (and any successor or related locations designated by us), as may be updated by us from time to time.

“Site Terms” means the terms of use located at <http://aws.amazon.com/terms/> (and any successor or related locations designated by us), as may be updated by us from time to time.

“Suggestions” means all suggested improvements to the Service Offerings that you provide to us.

“Term” means the term of this Agreement described in Section 7.1.

“Termination Date” means the effective date of termination provided in accordance with Section 7, in a notice from one party to the other.

“Third-Party Content” means Content made available to you by any third party on the AWS Site or in conjunction with the Services.

“Trademark Use Guidelines” means the guidelines and trademark license located at <http://aws.amazon.com/trademark-guidelines/> (and any successor or related locations designated by us), as they may be updated by us from time to time.

“Your Content” means Content that you or any End User transfers to us for processing, storage or hosting by the Services in connection with your AWS account and any computational results that you or any End User derive from the foregoing through their use of the Services. For example, Your Content includes Content that you or any End User stores in Amazon Simple Storage Service. Your Content does not include Account Information.

*Last updated May 14, 2018*

## **SFDC Pass-Through Terms**

These SFDC Pass-Through Terms apply between Contractor as "Reseller" for the purposes of these SFDC Pass Through Terms and its Customer in respect of Services ordered for the Opportunity.

1. SFDC is not a party to these SFDC Pass-Through Terms, which apply solely between Contractor and Customer, and Customer has not right to enforce or bring any claim against SFDC in respect of these SFDC Pass-Through Terms. However, SFDC is a third party beneficiary to these SFDC Pass-Through Terms, and shall have the benefit of and the right to enforce these SFDC Pass-Through Terms between Customer and Reseller.

### **1. DEFINITIONS**

**"Content"** means information obtained by SFDC from its content licensors or publicly available sources and provided to Customer pursuant to an Order Form, as more fully described in the Documentation.

**"Customer"** means the customer ordering Services from Reseller.

**"Customer Data"** means electronic data and information submitted by or for Customer to the Services or collected and processed by or for Customer using the Services, excluding Content and Non-SFDC Applications.

**"Data Controller"** has the meaning specified for "controller" in Data Protection Laws and Regulations.

**"Data Processor"** has the meaning specified for "processor" in Data Protection Laws and Regulations.

**"Data Protection Laws and Regulations"** means all applicable laws and regulations of the European Union, the European Economic Area and their member states regarding processing of Personal Data.

**"Documentation"** means SFDC's online user guides, help and training material for the applicable Services, accessible via [help.salesforce.com](https://help.salesforce.com) or login to the applicable Services, as updated from time to time, including without limitation any notices and license information, external usage policies, and security, privacy and architecture documentation for the applicable Services accessible through the Trust and Compliance section of the [help.salesforce.com](https://help.salesforce.com) website, current url at: [https://help.salesforce.com/apex/HTViewSolution?urlname=Trust-and-Compliance-Documentation&language=en\\_US](https://help.salesforce.com/apex/HTViewSolution?urlname=Trust-and-Compliance-Documentation&language=en_US) or any successor website, as updated from time to time.

**"Malicious Code"** means code, files, scripts, agents or programs intended to do harm,

including, for example, viruses, worms, time bombs and Trojan horses.

**“Marketplace”** means an online directory, catalog or marketplace of applications that interoperate with the Services, including, for example, the AppExchange located at <http://www.salesforce.com/appexchange>, the Heroku add-ons catalog located at <https://addons.heroku.com/>, and any successor websites.

**“Non-SFDC Application”** means a Web-based or offline software application that is provided by Reseller, Customer or a third party and interoperates with a Service, including, for example, an application that is developed by or for Customer, is listed on a Marketplace, or is identified as Salesforce Labs or by a similar designation.

**“Order Form”** means the ordering document specifying the Services to be provided hereunder that is entered into between Customer and Reseller, including any Product Specific Terms addenda and supplements thereto.

**“Personal Data”** has the meaning specified for “personal data” in Data Protection Laws and Regulations where such data is submitted to the Services as Customer Data.

**“Product Specific Terms”** means standard terms from SFDC that apply specifically to one or more particular Service, as set out in the applicable order from between SFDC and Reseller, which Contractor is obliged to set out in the applicable Order Form.

**“Reseller”** means the Contractor authorized by SFDC to resell Services from whom Customer orders Services.

**“Services”** means the products and services that are ordered by Customer under an Order Form and made available online by SFDC, including associated offline components, as described in the Documentation. “Services” exclude Content and Non-SFDC Applications.

**“SFDC”** means salesforce.com EMEA Limited, a limited liability company having its registered office at Floor 26 Salesforce Tower, 110 Bishopsgate, London EC2N 4AY, United Kingdom or any of its Affiliates, as applicable, where Affiliates means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

**“User”** means an individual who is authorized by Customer to use a Service, for whom Customer has ordered the Service, and to whom Customer (or when applicable, Contractor at Customer’s request, or SFDC at Customer’s request) has supplied a user identification and password. Users may include, for example, employees, consultants,



contractors and agents of Customer, and third parties with which Customer transacts business.

## 2. SFDC RESPONSIBILITIES

- (1) **Provision of Services.** SFDC will (a) make the Services and Content available to Customer pursuant to these SFDC Pass-Through Terms and the applicable Order Forms, and (b) use commercially reasonable efforts to make the online Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which SFDC shall give at least 8 hours electronic notice and which SFDC shall schedule to the extent practicable during the weekend hours between 6:00 p.m. Friday and 3:00 a.m. Monday Pacific time), and (ii) any unavailability caused by circumstances beyond SFDC's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving SFDC employees), Internet service provider failure or delay, Non-SFDC Application, or denial of service attack.
- (2) **Protection of Customer Data.** To the extent that Customer Data comprises Personal Data, Customer hereby agrees that SFDC and its Affiliates are each acting as individual Data Processors on behalf of Customer. SFDC shall, and shall procure that its Affiliates, shall: (a) process Customer Data in accordance with these SFDC Pass-Through Terms and Customer's instructions (b) implement and maintain organisational, administrative, physical and technical safeguards for the protection of the security, confidentiality and integrity of Customer Data, as described in the Documentation, including, but not limited to, measures to protect against unauthorised access to or alteration, disclosure, destruction or loss of Customer Data, (c) not modify Customer Data, (d) not disclose Customer Data except as compelled by law in accordance with the "Confidentiality: Compelled Disclosure" section below or as expressly permitted in writing by Customer, and (e) not otherwise process Customer Data except to provide the Services and prevent or address service or technical problems. By submitting Customer Data to the Services, Customer acts as Data Controller under applicable Data Protection Laws and Regulations. Customer shall (i) have sole responsibility for the accuracy, quality, integrity, legality and reliability of Customer Data and of the means by which it acquired Customer Data, (ii) ensure that data processing instructions given to SFDC comply with applicable Data Protection Laws and Regulations, and (iii) comply with all applicable Data Protection Laws and Regulations in collecting, compiling, storing, accessing and using Customer Data in connection with the Services.

## 3. USE OF SERVICES AND CONTENT

- (1) **Subscriptions.** Unless otherwise provided in the applicable Order Form, Services and Content are purchased as subscriptions.
- (2) **Usage Limits.** Services and Content are subject to usage limits, including, for example, the quantities specified in Order Forms. Unless otherwise specified, (a) a quantity in an Order Form refers to Users, and the Service or Content may not be accessed by more than that number of Users, (b) a User's password may not be shared with any other individual, and (c) a User identification may be reassigned to a new individual replacing one who no longer requires ongoing use of the Services.
- (3) **Customer Responsibilities.** Customer will (a) be responsible for Users' compliance with these SFDC Pass-Through Terms, (b) comply with Product Specific Terms,

including any Product Specific Terms notified to Customer which Contractor has failed to include in the applicable Order Form, (c) be responsible for the accuracy, quality and legality of Customer Data and the means by which Customer acquired Customer Data, (d) submit Customer Data only in accordance with the Documentation and applicable laws and government regulations, (e) use commercially reasonable efforts to prevent unauthorized access to or use of Services and Content, and notify SFDC promptly of any such unauthorized access or use, (e) use Services and Content only in accordance with the Documentation, Order Forms, and applicable laws and government regulations, and (f) comply with terms of service of Non-SFDC Applications with which Customer uses Services or Content.

- (4) **Support.** Customer acknowledges and agrees that all Customer support inquiries and matters must be made through Contractor, and that Contractor may have access to Customer's instance of the Services, including Customer Data, for the purposes of providing such support, and accordingly Customer and Contractor will enter appropriate contractual protection. Any additional access required by Contractor and requested by Customer shall be agreed to by the parties.
- (5) **Usage Restrictions.** Customer will not (a) make any Service or Content available to, or use any Service or Content for the benefit of, anyone other than Customer or Users, (b) sell, resell, license, sublicense, distribute, rent or lease any Service or Content, or include any Service or Content in a service bureau or outsourcing offering, (c) use a Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (f) attempt to gain unauthorized access to any Service or Content or its related systems or networks, (g) permit direct or indirect access to or use of any Service or Content in a way that circumvents a contractual usage limit, (h) copy a Service or any part, feature, function or user interface thereof, (i) copy Content except as permitted herein or in an Order Form or the Documentation, (j) access the Services or Content in order to build a competitive product or services, (k) frame or mirror any part of any Service or Content, other than framing on Customer's own intranets or otherwise for its own internal business purposes or as permitted in the Documentation, (l) access any Service or Content in order to build a competitive product or service, or (m) reverse engineer any Service (to the extent such restriction is permitted by law).
- (6) **External-Facing Services.** If Customer subscribes to a Service for creation and hosting of external-facing websites, Customer will comply with, and be responsible for Users' compliance with, SFDC's External-Facing Services Policy at <http://www.salesforce.com/company/legal/>, and be solely responsible for complying with applicable law in any use of cookies or other tracking technologies on such websites.
- (7) **Removal of Content and Non-SFDC Applications.** If SFDC is required by a licensor or any third party rights holder to remove Content, or receives information that Content provided to Customer may violate applicable law or third-party rights, SFDC may discontinue Customer's access to such Content through the Services. In addition, SFDC may on notice to Contractor or to Customer require Customer to discontinue all use of such Content and, to the extent not prohibited by law, promptly remove such Content from its systems. If SFDC receives information that a Non-SFDC Application hosted on a Service by Customer may violate SFDC's External-Facing Services Policy or

applicable law or third-party rights, SFDC may so notify Customer or Contractor and in such event Customer will promptly disable such Non-SFDC Application or modify the Non-SFDC Application to resolve the potential violation. If Customer does not take required action in accordance with the above, SFDC may disable the applicable Content, Service and/or Non-SFDC Application until the potential violation is resolved. If so requested by SFDC, Customer shall certify such deletion and discontinuance of use in writing and SFDC shall be authorized to provide a copy of such certification to any such third party claimant or governmental authority, as applicable

#### **4. NON-SFDC PROVIDERS**

- (1) Acquisition of Non-SFDC Products and Services.** SFDC or third parties may make available (for example, through a Marketplace or otherwise) third-party products or services, including, for example, Non-SFDC Applications and implementation and other consulting services. Any acquisition by Customer of such non-SFDC products or services, and any exchange of data between Customer and any non-SFDC provider, is solely between Customer and the applicable non-SFDC provider. SFDC does not warrant or support Non-SFDC Applications or other non-SFDC products or services, whether or not they are designated by SFDC as “certified” or otherwise.
- (2) Non-SFDC Applications and Customer Data.** If Customer installs or enables Non-SFDC Applications for use with the Services, Customer acknowledges that SFDC may allow providers of those Non-SFDC Applications to access Customer Data as required for the interoperation and support of such Non-SFDC Applications with the Services. Separate terms shall apply between Customer and the Non-SFDC Application providers regarding the use of such Non-SFDC Applications, and Customer shall be responsible for evaluating whether such terms with the Non-SFDC Application providers ensure appropriate protection of and access to Customer Data, and address responsibility for any disclosure, modification or deletion of Customer Data by the Non-SFDC Application providers, or any breach of Data Protection Laws and Regulations resulting from Non-SFDC Application providers’ access to Customer Data. Non-SFDC Application providers shall not be considered subcontractors or sub-Data Processors of SFDC or any of its Affiliates. SFDC and its Affiliates shall not be responsible for any disclosure, modification, corruption, loss or deletion of Customer Data, or any breach of applicable Data Protection Laws and Regulations, resulting from any access by a Non-SFDC Application provider to Customer Data through a Non-SFDC Application installed by Customer or the Users.
- (3) Integration with Non-SFDC Applications.** The Services may contain features designed to interoperate with Non-SFDC Applications. To use such features, Customer may be required to obtain access to Non-SFDC Applications from their providers. If the provider of a Non-SFDC Application ceases to make the Non-SFDC Application available for interoperation with the corresponding Service features on reasonable terms, SFDC may cease providing those Service features without entitling Customer to any refund, credit, or other compensation.

#### **5. FEES AND PAYMENT**

- 6. Fees and Payment.** Payment of fees due under any Order Form, and the related payment terms, is exclusively between Customer and Reseller.

## 7. Suspension of Service

Customer acknowledges that if any charge is owing by Contractor to SFDC in respect of Customer and is 30 days or more overdue, SFDC may, without limiting its other rights and remedies, suspend Services after following this process:

- (a) SFDC shall give both Customer and Contractor 10 or more days' prior notice that Reseller's account is overdue;
- (b) if after such period such charges still remain unpaid, SFDC shall give Customer notice ("Second Notice") that Reseller's account is still overdue, and upon such Second Notice (a) Customer may by written notice to the Contractor withdraw its designation as Customer's Contractor (becoming a "Former Reseller"), and (b) either Customer and SFDC shall in good faith and without delay negotiate with and appoint an alternative Contractor ("New Reseller") and SFDC and Former Contractor shall assign the applicable order from between SFDC and the Former Contractor to the New Reseller, provided such assignment is effective within 30 days of the date of the Second Notice, or Customer shall elect not to appoint a New Contractor in which case Customer shall engage good faith discussions with SFDC to agree a mutually acceptable payment schedule;
- (c) if SFDC and Customer are unable to appoint an alternative Contractor and assign the order form within 30 days of the date of the Second Notice, or if Customer elects not to appoint an alternative Reseller, Customer shall have 30 days (or such later date as Customer and SFDC agree) from the date of the Second Notice to pay directly to SFDC the outstanding fees due from the Former Contractor and to execute an assignment to assign the applicable order from between SFDC and the Former Contractor from Former Contractor to Customer;
- (d) if following such 30 days (or such later date as Customer and SFDC agree) period the charges still remain overdue, SFDC may suspend the Services until such amounts are paid in full.

8. **Future Functionality.** Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by SFDC or Contractor regarding future functionality or features.

## 9. PROPRIETARY RIGHTS AND LICENSES

- (1) **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, SFDC and its licensors reserve all of their right, title and interest in and to the Services and Content, including all of their related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.
- (2) **Access to Content.** Access to Content is subject to the terms of applicable Order Forms, these SFDC Pass-Through Terms and the Documentation.
- (3) **License by Customer to Host Customer Data and Applications.** Customer grants SFDC and its Affiliates a worldwide, limited-term license to host, copy, transmit and display Customer Data, and any Non-SFDC Applications and program code created by or for Customer using a Service, as necessary for SFDC to provide the Services in accordance with these SFDC Pass-Through Terms. Subject to the limited licenses granted herein, SFDC acquires no right, title or interest from Customer or its licensors

under these SFDC Pass-Through Terms in or to any Customer Data, Non-SFDC Application or program code.

- (4) **License by Customer to Use Feedback.** Customer grants to SFDC and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Users relating to the operation of the Services.
10. **COMPELLED DISCLOSURE.** Either Customer or SFDC (the “Receiving Party”) may disclose confidential information of the other party (the “Disclosing Party”) to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

## DISCLAIMERS

- (1) **Disclaimers.** SFDC makes not warranties of any kind and excludes all warranties, representations, terms, conditions or other commitments of any kind, whether express or implied, statutory or otherwise, and SFDC specifically disclaims all implied warranties, including (without limitation) any warranties, representations, terms, conditions or other commitments of merchantability or fitness for a particular purpose or of satisfactory quality or of reasonable skill and care, in each case, to the maximum extent permitted by applicable law. Without prejudice to the foregoing, Content and Beta Services are provided ‘as is’ and without warranty of any kind, and each party disclaims all liability and indemnification obligations for any harm, damages or other liability caused by any third party hosting providers.
11. **Warranties and Indemnities between Contractor and Customer.** For the avoidance of doubt, Contractor and Customer are free to agree warranties and indemnities in respect of the Services. Any such warranties and indemnities shall not form part of these SFDC Pass-Through Terms.
12. **LIMITATION OF LIABILITY**
- (1) **No Liability.** In no event shall SFDC have any liability to Customer or any User for any damages whatsoever, including but not limited to direct, indirect, special, incidental, punitive, or consequential damages, or damages based on lost profits, however caused and, whether in contract, tort or under any other theory of liability, whether or not Customer has been advised of the possibility of such damages. SFDC disclaims all liability and indemnification obligations for any harm or damages caused by any third-party hosting providers.
- (2) **Limitation of Restrictions.** Nothing in this “Liability” section shall exclude or limit the liability of Customer or SFDC for death or personal injury caused by that party's negligence or for fraud or fraudulent misrepresentation or for any other liability to the extent that the same may not be excluded or limited as a matter of applicable law.



### 13. TERM AND TERMINATION

- (1) **Term.** Services commence on the start date specified in the applicable Ordering Form entered into between Customer and Contractor and continue for the subscription term specified therein and any renewal term.
- (2) **Termination.** SFDC may terminate these SFDC Pass-Through Terms for cause (i) upon 30 days written notice to Customer or Contractor of a breach (a) of these SFDC Pass-Through Terms, or (b) by Contractor of its payment obligations to SFDC with respect to the Services it is providing to Customer in connection with these SFDC Pass-Through Terms, if such breach remains uncured at the expiration of such period, or (ii) immediately on written notice to Customer or Contractor if Customer becomes the subject of a petition in bankruptcy or any other proceeding (whether voluntary or involuntary) relating to insolvency, administration, receivership, administrative receivership, liquidation or assignment for the benefit of creditors, or if the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business, or takes or suffers any similar or analogous procedure, action or event in consequence of debt in any jurisdiction. Following any termination or expiration of Reseller's agreement with SFDC pursuant to which Contractor is providing the Services to Customer, each Customer subscription to the Services outstanding at the time of such termination or expiration shall remain in effect for the duration of its subscription term and shall continue to be governed by these SFDC Pass-Through Terms as if it had not been terminated ("Legacy Orders"), provided that Customer is not in breach of these SFDC Pass-Through Terms and SFDC has received all payments due in connection with such Legacy Orders. In no case will any termination, expiration or suspension hereunder give rise to any liability of SFDC to Customer for a refund or damages. Except as provided herein, SFDC is under no obligation to provide the Services to Customer, or to assume the relationship with Customer.

### 14. GENERAL PROVISIONS

- (1) **Export Compliance.** The Services, Content, other technology Salesforce makes available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. Contractor shall not permit Users to access or use any Service or Content in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan, Syria or the Crimea Region of Ukraine) or in violation of any U.S. export law or regulation, unless otherwise authorized by a specific license, general license, exemption, advisory opinion, or other authorization from the U.S. government.
- (2) **Anti-Corruption.** Customer has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from a SFDC or Contractor employee or agent in connection with these SFDC Pass-Through Terms, and shall comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption including without limitation the Bribery Act 2010 (as such statute is amended from time to time). If Customer learns of any violation of the above restriction, it will use reasonable efforts to promptly notify SFDC's Legal Department at [legalcompliance@salesforce.com](mailto:legalcompliance@salesforce.com).
- (3) **Third-Party Beneficiaries.** Except for SFDC and for SFDC's Content licensors, who shall have the benefit of SFDC's rights and protections hereunder with respect to the applicable Content, nothing in these SFDC Pass-Through Terms shall confer, or is

intended to confer, on any third party any benefit or the right to enforce any term of these SFDC Pass-Through Terms under the Contracts (Rights of Third Parties) Act 1999 (as such statute is amended from time to time). The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under these SFDC Pass-Through Terms is not subject to the consent of any person that is not a party to these SFDC Pass-Through Terms.

- (4) **Notices.** Except as otherwise specified in these SFDC Pass-Through Terms, all notices related to these SFDC Pass-Through Terms will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, (c) the second business day after sending by confirmed facsimile, or (d), except for notices of termination (“**Legal Notices**”), the day of sending by email. Legal Notices to Customer will be addressed to Customer and be clearly identifiable as Legal Notices. All other notices to Customer will be addressed to the relevant Services system administrator designated by Customer.
- (5) **Waiver.** No failure or delay by SFDC in exercising any right under these SFDC Pass-Through Terms will constitute a waiver of that right.

For an up to date version of the Salesforce Master Subscription Agreement (MSA) go to:

[https://www.salesforce.com/content/dam/web/en\\_us/www/documents/legal/salesforce\\_MSA.pdf](https://www.salesforce.com/content/dam/web/en_us/www/documents/legal/salesforce_MSA.pdf)



## Arcus Global – Third Party Product Terms

**INSERT ANY OTHER 3<sup>rd</sup> Party TERMS HERE AS  
REQUIRED**