

Master Services Agreement - Framework Agreement

1. Your Agreement with iomart

The Terms and Conditions should be read in conjunction with a completed Sales Order Form, in which you will find the Service description(s), pricing and other arrangements specific to your contract with iomart. Signature of a Sales Order Form on behalf of each of you and iomart creates a, legally binding contract made up of that Sales Order Form for the Services you have ordered, the relevant sections of these Terms and Conditions and other documents incorporated by reference in the Sales Order Form or these Terms and Conditions. For ease, such contract is referred to in these terms as an “Agreement”.

2. Terminology

- 2.1 To make these Terms and Conditions easier to read, we have given the following expressions a specific meaning, when used in the Agreement:

Agreement has the meaning given to that term in paragraph 1;

Applicable Data Protection Law means (a) the Data Protection Act 1998; or (b) from 25 May 2018, GDPR, read in conjunction with and subject to any applicable UK national legislation that provides for specifications or restrictions of the GDPR's rules; or (c) from the date of implementation, any applicable legislation that supersedes or replaces the GDPR in the UK or which applies the operation of the GDPR as if the GDPR were part of UK national law, which may include the Data Protection Act 2017; and (d) the Privacy and Electronic Communications (EC Directive) Regulations 2003 in the UK, in each case, as may be amended, superseded or replaced from time to time in the UK;

AUP means iomart's standard acceptable use policy, a copy of which is provided with the Sales Order Form and the terms of which may be updated by iomart from time to time for its customers generally on written notice to you;

Charges means the charges that you will pay to iomart pursuant to paragraph 7, as detailed in the Sales Order Form and updated from time to time in accordance with the Agreement;

Confidential Information has the meaning given in paragraph 12.1;

Data Centre means:

- (i) in respect of Data Centre Services, the data centre premises from which the Services are provided; or
- (ii) in respect of all other Services, any data centre operated by iomart or a member of its group of companies;

Effective Date means the date of the Agreement as set out on the Sales Order Form;

Energy Charges means any taxes levies costs and expenses whether direct or indirect arising out of or attributable to any requirement on iomart or any of its suppliers or customers to comply with any Energy Law or otherwise in connection with energy use or consumption or emissions of greenhouse gases;

Energy Law means any applicable Law (including but not limited to the EU Emissions Trading System, the UK Climate Change Levy, the Energy Act 2011 and Climate Change Act 2008) which makes provision for energy charges or levies or which imposes or increases any taxes, charges or levies of any nature in respect of use of power or energy consumption (whether directly or indirectly), in each case, as may be amended, superseded or replaced from time to time;

GDPR means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016;

ICO means the UK Information Commissioner, or any successor or replacement body from time to time;

Initial Term means the initial term of the Agreement, as set out in the Sales Order Form;

iomart means iomart Hosting Limited, (Co. No. SC275629), whose registered office is at Lister Pavilion, Kelvin Campus, West of Scotland Science Park, Glasgow, G20 0SP;

Law means any applicable law whether local, national or international including statute, statutory instrument, EU regulation having direct legal effect, and guidelines and codes which have legal effect;

Network means the connectivity used to access the Services provided by iomart, including:

- (i) iomart's underlying connectivity to the Internet;
- (ii) your connectivity to the internet and into your iomart-hosted platform or service; and
- (iii) the interconnectivity between elements of the Services provided by iomart;

Sales Order Form means a document bearing that heading which has been duly signed on behalf of both you and iomart, containing service, pricing and other arrangements specific to your contract;

Services means the services described in a Sales Order Form;

Service Credit means a service credit that may be payable to you in accordance with an applicable schedule of this agreement;

SLA has the meaning given in the relevant schedule to these Terms and Conditions or, if no meaning is given, means the service level agreement attached as an appendix to (or referenced in) the relevant schedule or otherwise attached to (or referenced in) the Sales Order Form;

Start Date has the meaning given in the relevant schedule to these Terms and Conditions or, if no meaning is given, means the date set out on the Order Form as the Start Date;

Term or Recurring Service Charge means those charges identified as term or recurring charges as set out in the Sales Order Form, where a term service charge denotes a pre-paid service charge relating to a specified time period;

Terms and Conditions means these Master Services Agreement Terms and Conditions;

Third Party Services means services provided to you by any supplier other than iomart or an iomart agent;

Variable Service Charge means those variable charges as set out in the Sales Order Form;

you and your means iomart's customer, being the person or entity that is identified in the Sales Order Form; and

Your Equipment means your hardware if/when located in an iomart data centre.

- 2.2 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

3. Order process

- 3.1 **Formation of Agreement.** An Agreement will be formed only when iomart accepts a Sales Order Form by signing it and notifying you in writing, and iomart will not be bound by any Sales Order Form until that point. Each Sales Order Form will establish a new Agreement, separate to any other Agreement. Each Agreement constitutes a separate legal contract between you and iomart for the provision of the Services described in the relevant Sales Order Form.

- 3.2 **Additional Orders.** You may order additional Services from iomart by submitting to iomart an additional Sales Order Form, which when signed by you will constitute an offer by you to purchase such additional Services from iomart. iomart will have no obligation to accept any additional order and will not be bound by such additional Sales Order Form until accepted and signed by iomart in accordance with paragraph 3.1.

- 3.3 **Schedules.** The schedules attached to these Terms and Conditions contain terms that are specific to Services that iomart may supply to you. However, for each Agreement only the schedules expressly and specifically incorporated by the relevant Sales Order Form will apply. Any additional terms attached to the Sales Order Form by iomart will also form part of the Agreement.

- 3.4 **Third party terms.** Certain Services may be subject to additional, third party terms and you may be required to enter into separate agreements prescribed by a third party involved in providing those Services or accept third party terms on a “back-to-back” basis. Your use of the Services will be subject to any such third party terms. Where applicable, further information will be provided in the relevant schedule to these Terms and Conditions or the Sales Order Form (or an attachment thereto provided by iomart).

- 3.5 **Exclusion of terms.** Without prejudice to paragraphs 3.3 and 3.4, these Terms and Conditions will apply in respect of the subject matter of the relevant Sales Order Form to the exclusion of any other terms and conditions contained or referred to in any order, letter, form or other communication sent by you to iomart.

4. The Services that iomart will provide

- 4.1 iomart will provide the Services to you in accordance with the Agreement:

- 4.1.1. to a standard that meets or exceeds the relevant SLA attached to the Agreement or the Order Form (if applicable); and
- 4.1.2. using reasonable care and skill.

- 4.2 Your sole remedy for iomart's breach of paragraph 4.1.1 will be the payment of Service Credits in accordance with the terms of the Agreement. You agree that the Service Credits are reasonable and proportionate to your legitimate interest in the Services being performed in accordance with paragraph 4.1.1.

5. Licences

- 5.1 **Licences iomart provides.** Subject to paragraph 5.2, iomart confirms that it owns or is licensed to use the systems, products, and materials (other than Your Equipment and Third Party Software) necessary to provide the Services to you as the same are specified in the applicable Sales Order Form. The software products and materials that iomart will licence as part of each relevant Services is as stated in the applicable service description attached to the Sales Order Form for the Services. You will comply with all licence terms for software products and materials we provide to you as part of the Services or are required to pass down to you, as we shall notify you from time to time, whether in the applicable Sales Order Form or otherwise.

- 5.2 **Your Licences.** You warrant and undertake that at all times you will either own or have a valid license to use Third Party Software and you shall comply with all relevant third party licence terms when using Third Party Software on the Services (including, but not limited to, the Microsoft End User Licence Terms where you use Microsoft products and materials). You agree that you will comply with all end user licence terms related to the Third Party Software from time to time and will provide copies of the relevant agreements to us on request.

- 5.3 **Your Compliance.** You shall at all times install, load and use on the Services Third Party Software that has been lawfully obtained in accordance with the applicable terms and you shall not install, load or use any Third Party Software which (i) requires consent from the vendor to be used or loaded without first obtaining our consent and all necessary third party consents and/or (ii), by reason of any licence terms, cannot be used with the Services or (with regard to existing licenses) cannot be migrated on to the Services.

- 5.4 **Third Party Software.** With the exception of software you purchase as part of the Services as described in paragraph 5.1, you are solely responsible for obtaining all required licences and for complying with all applicable Third Party Software licensing requirements, including the product use rights and product terms of Third Party Software. Usage of the Services in relation to the Third Party Software which is in violation of your agreement with the relevant third party is not authorised or permitted.

- 5.5 **Mobility Programme.** If you are using a mobility programme from a software vendor to use or operate Third Party Software using iomart's Services you must complete the appropriate procedure with such software vendor and provide evidence of your verification status to iomart before you load or install Third Party Software on the Services.

- 5.6 **Right to verify compliance.** You must keep records relating to all use of Third Party Software. iomart and/or any third party nominated by iomart (including, but not limited to, Microsoft) has the right, at their expense, to audit and verify compliance with any licence terms of Third Party Software. You must promptly provide the relevant auditor with the information the auditor reasonably requests in furtherance of the verification or audit, including access to the systems running Third Party Software and evidence of licenses for Third Party Software. Iomart will endeavour to notify you 21 days in advance of its intent to verify your compliance with the licence terms of Third Party Software and any auditor shall be subject to a confidentiality obligation. You agree to complete iomart's self-audit process, which iomart may require as an alternative to a third party audit.

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- 5.7 **Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use of Third Party Software, then you must immediately acquire sufficient licenses to cover such use and notify iomart immediately and reimburse iomart for any loss, fine, penalties or costs incurred by iomart in relation to the Third Party Software. By exercising the rights and remedies described above, iomart does not waive its rights to enforce this agreement by any other legal means.
- 5.8 **Indemnity.** You shall indemnify iomart against any and all losses, damages, costs (including legal fees) and expenses suffered or incurred by or awarded against iomart as a result of a breach of your obligations under clauses 5.2 (Your Licences), 5.3 (Your Compliance), 5.4 (Third Party Software), 5.5 (Mobility Programme) 5.6 (Right to verify compliance) and 5.7 (Remedies for non-compliance).
- 5.9 **Microsoft's Rights.** Microsoft is an intended third-party beneficiary of this clause 5 (Relevant Licences) with the right to enforce its provisions. The use of any and all Microsoft software provided as part of your service is subject to the Microsoft Licensing Terms which can be found here:

<https://www.microsoft.com/en-gb/Licensing/product-licensing/products.aspx>

Customer attention is drawn specifically to the Product Terms and Service provider Use Rights documents available at this location for review.

6. Our Commitments to one another

- 6.1 **Authority to sign the Agreement.** Each of us confirms to the other that we have the authority to enter into and meet our respective obligations under the Agreement.
- 6.2 **Relevant licences.** iomart confirms that it owns or is licensed to use the systems, products, and materials (other than Your Equipment) necessary to provide the Services to you.
- 6.3 **Acceptable Use.** You will comply with the AUP during the term of the Agreement. If iomart is informed by government authorities or other parties of inappropriate or illegal use of iomart's facilities or other networks accessed through iomart, or if iomart otherwise learns of such use or has reason to believe such use may be occurring, or if iomart receives a court judgment or order or request related to you from any law enforcement or governmental authority, then you will co-operate in any resulting investigation by iomart or relevant government or law enforcement authorities. Any government determinations will be binding on you. If you fail to co-operate with any such investigation or determination, or fail to immediately rectify any illegal or inappropriate use, iomart may immediately suspend your Service. Further, upon notice to you, iomart may modify or suspend your Service as necessary to comply with any law, regulation or court order.
- 6.4 **Third Party Services.** Unless otherwise stated in the Sales Order Form, you are responsible for ordering:
- 6.4.1. all lines or circuits you require from third party carriers to receive the Services; and
- 6.4.2. any necessary cross-connects from iomart subject to paying iomart's cross-connect charges.
- You will ensure that third party carriers install those circuits in your name. You will be solely responsible for those circuits and for all payments due to the carriers. You will notify the carrier directly when you wish to end or change those circuits.
- 6.5 **Resale of the Services.** You may use Services for your own benefit or for the purposes of using the Services to provide your business services to third parties but may not resell or sublet the Services to any third party. You will not enter into any agreement with any third party under which you agree to provide services to the third party that are reliant on the Services, unless the duration of such third party agreement is no longer than the minimum duration of the Agreement.
- 6.6 **Insurance.** It is your responsibility to obtain insurance, including in respect of Your Equipment (if any) whilst it is on iomart's premises or in transit and other such insurance, including professional indemnity, cyber-risk and data loss insurance, as may be required by you for provision of the Services by iomart. If iomart asks you to do so, you must provide iomart with the relevant certificates of insurance. iomart will take out and maintain professional indemnity, public liability and building insurance and will provide you with the relevant certificates of insurance on written request by you.

7. Charges and their payment

- 7.1 **Service Start Date.** iomart shall start invoicing you for the Services with effect from the Start Date.
- 7.2 **Implementation/Setup Charges.** When you sign a Sales Order Form, iomart will invoice you for any set up or implementation fee listed in the Sales Order Form, together with any costs incurred through the purchase of any equipment that you have agreed to pay for in accordance with and as set out in the Sales Order Form. That invoice will be payable within 14 days of the date on which it is issued to you.
- 7.3 **Term or Recurring Service Charge.** When you sign a Sales Order Form, iomart will also invoice you for the Term or Recurring Service Charge (as applicable) listed in the Sales Order Form. That invoice will similarly be payable within 14 days of the date on which it is issued to you. Following iomart's initial invoice, iomart will invoice you for any further instalment of the Recurring Service Charge monthly in advance (where applicable), each further invoice being payable within 30 days of the date on which it is issued to you.
- 7.4 **Variable Service Charges.** iomart will invoice you monthly in arrears for any Variable Service Charges that become payable as a result of the Services that iomart provides. Those Variable Service Charges will be calculated in accordance with the rates set out in the Sales Order Form.
- 7.5 **Additional Services.** If iomart provides any other Services to you under the same Sales Order Form, the Charges payable will be agreed in advance between iomart and you, in writing.
- 7.6 **Third Party Services.** In line with paragraph 6.4, you are solely responsible for paying any charges for the lease or use of telecommunications lines or any other Third Party Services.
- 7.7 **Taxes.** The Charges do not include applicable taxes (including VAT) or import/export duties or shipping and delivery charges. If any of those duties or charges are incurred, they will be added to

any relevant invoice and will be payable by you or, if payable on a withholding tax basis, will be payable by you to the relevant authority direct.

- 7.8 **Payment of invoices.** Unless you dispute an invoice with good cause, you must pay each iomart invoice in GBP(E) within 30 days of the date on which that invoice is issued or within such alternative period as is expressly stated in the Agreement (the "Due Date"). You will not be entitled to deduct or off-set any amount that iomart may owe to you against an iomart invoice.
- 7.9 **Suspension of Services for non-payment.** If you do not pay an invoice (which is not disputed in good faith):
- 7.9.1. within 7 days of the Due Date, iomart may terminate the Agreement and restrict your access to any equipment that you own which is located on iomart's premises;
- 7.9.2. within 14 days of the Due Date, iomart will be entitled, at any time thereafter (until payment is made), to disable the Service. If iomart does disable the Service and you wish to have it re-enabled, iomart will charge you a re-connection fee calculated in accordance with the Sales Order Form; and
- 7.9.3. within 30 days of the Due Date, iomart may terminate the Agreement and end the Service permanently and charge you a de-installation charge calculated in accordance with the Sales Order Form. If we end the Service in that way, you will still be responsible for your obligations under the Agreement, including the obligation to pay Charges.

We will contact you at least 3 times outlining details of your overdue invoices before taking any of the actions listed in this paragraph 7.9.

- 7.10 **Increase in Charges.** In addition to any annual change in the Charges imposed under paragraph 11.1, iomart may increase its Charges to reflect any change in the law or tax rules that affect operators of data centres or IT services, including any Energy Charges incurred by iomart in the provision of the Services. If a change of that kind is implemented, iomart will give you written notice of any resulting increase in the Charges (including any increase in Energy Charges) and the date on which it will become effective.
- 7.11 **Interest charge.** If you do not pay any invoice (which is not disputed in good faith) in full by the Due Date, iomart will be entitled to charge you interest on the unpaid undisputed amount calculated at a rate of 8% per annum above the prevailing base rate of the Bank of England, that interest charge being applied until the outstanding undisputed amount is settled in full. iomart's right to charge interest does not affect its right to take other legal action against you in relation to non-payment of the amount concerned.

8. Acceptance

- 8.1 **Acceptance Criteria.** Where the Sales Order Form specifies that acceptance tests are applicable to the provision of Services, then no later than 10 days from the Effective Date, the parties will prepare and will use reasonable endeavours to agree proposed acceptance criteria for acceptance tests for the Services.
- 8.2 **Acceptance Tests.** iomart shall carry out the agreed acceptance tests on the Services within 10 days of the Start Date (or as otherwise agreed between the parties). The acceptance tests shall be started as soon as reasonably possible following the Start Date. iomart will give you at least 24 hours' notice of the start of the acceptance tests and you are permitted to observe all or any part of the testing.
- 8.3 **Acceptance Remedies.** If any part of the Services fails the agreed acceptance tests, iomart shall remedy the defects or deficiencies and will repeat the relevant tests within a reasonable time.
9. **Third party claims**
- 9.1 **Indemnity.** If any claims or demands are brought against iomart or any iomart employee, officer, director or affiliate (each an "iomart Entity") arising out of (i) your breach or alleged breach of the AUP; or (ii) which allege: any damage or destruction to the Data Centre, the Network, iomart's premises or equipment; or (iii) which allege any damage or destruction to any of iomart's customer equipment or data; or (iv) which allege any personal injury to or property damage of any iomart Entity, and the claim, damage, destruction or injury is caused by you or results from a breach of this Agreement or something that you have negligently done or failed to do, you must indemnify iomart and the iomart Entities against those claims or demands. This will not apply to the extent that the damage, destruction or injury is caused by the negligence or breach of this Agreement by iomart or any iomart Entity. The limit on liability set out in paragraph 10.4 shall not apply to this indemnity.

- 9.2 **Conditions of Indemnity.** For the indemnity set out in paragraph 9.1: (i), iomart will promptly notify you in writing of the existence of any claim or demand covered by the indemnity; (ii) iomart will use reasonable endeavours to minimise any loss or damage which it may suffer; (iii) on request by iomart, you will allow iomart to participate in or conduct all negotiations and proceedings in relation to the defence and settlement of the claim; and (iv) where iomart permits you conduct or defence of the claim, you must obtain iomart's prior written consent to the settlement of any claim (provided that iomart does not unreasonably refuse or delay giving its consent).

10. Limits of Liability

- 10.1 **Limit of exclusions.** Nothing in these Terms and Conditions excludes or limits iomart's or your liability where that liability arises out of the death or personal injury of any person caused by negligence or for any statement that constitutes fraud or fraudulent misrepresentation.
- 10.2 **Service credits.** Except where you have an express right to terminate the Agreement as set out in an applicable SLA, the service credit regime set out in the applicable SLA will be the sole and exclusive remedy by which you will be compensated for any failure (howsoever arising, whether in contract tort or otherwise) by iomart to meet the service levels set out in the SLA.
- 10.3 **Your obligations.** You will take all reasonable measures to prevent and mitigate any losses, damages, costs and expenses that you may suffer or incur and in respect of which you intend to recover (in whole or in part) under or in connection with the Agreement.
- 10.4 **Cap on liability under each Agreement.** Provided that paragraph 10.1 will always apply, and subject to paragraph 10.3, iomart's and your total liability to each other in relation to loss or damage arising

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<p>out of or in connection with each Agreement, whether in contract, tort, (including negligence) or otherwise, in any contract year, (including any loss of data) will be limited to the greater of (a) the total Charges paid or payable by you to iomart under the relevant Agreement in the Initial Term; or (b) the total Charges paid or payable by you to iomart under the relevant Agreement in the contract year concerned.</p>		<p>made, for the appointment of an administrator, or an administrator is appointed over you (being a company); or (v) the holder of a qualifying floating charge over your assets (being a company) has become entitled to appoint or has appointed an administrative receiver; or a person becomes entitled to appoint a receiver over your assets or a receiver is appointed over your assets; or (vi) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, you or any part of your assets and such attachment or process is not discharged within 14 days; or any event occurs, or proceeding is taken, in any jurisdiction to which you are subject that has an effect equivalent or similar to any of the events mentioned in this paragraph;</p>	
10.5	<p>Exclusion of losses. Provided that paragraph 10.1 will always apply, neither party shall in any circumstances whether in contract, tort (including for negligence or statutory duty) misrepresentation (whether innocent or negligent), restitution or otherwise be liable for any:</p> <p>10.5.1. loss of profits;</p> <p>10.5.2. loss of anticipated savings;</p> <p>10.5.3. pure economic loss</p> <p>10.5.4. loss of data;</p> <p>10.5.5. loss of business opportunity and management time;</p> <p>10.5.6. loss of goodwill; or</p> <p>10.5.7. indirect or consequential loss, costs, damages, charges or expenses, howsoever arising.</p>	11.4.3.	<p>you suspend or cease, or threaten to suspend or cease, carrying on all or a substantial part of your business;</p>
10.6	<p>Your customers. You acknowledge that iomart has no duty to any of your customers or any other recipient of any goods or services that you supply to third parties. Provided that paragraph 10.1 will always apply, iomart shall not in any circumstances whether in contract, tort (including for negligence or statutory duty) misrepresentation (whether innocent or negligent), restitution or otherwise be liable for any loss or damage that you incur as a result of claims made by any third party or any other recipient of any goods or services that you supply to third parties.</p>	11.4.4.	<p>a Managed Hosting Services or Data Centre Services Agreement between you and iomart expires or is otherwise terminated; or</p>
10.7	<p>Exclusion of implied warranties. Subject to the warranties that iomart has given to you under the Agreement all warranties terms and conditions that would otherwise be implied by statute or at common law are excluded to the fullest extent permitted by law.</p>	11.4.5.	<p>any other Agreement between you and iomart is terminated by iomart under paragraph 11.3 or this paragraph 11.4.</p>
10.8	<p>Cyber risk. iomart will perform the Services as set out in the Agreement, including, without limitation, by implementing appropriate security measures and firewalls where the same are part of the Service. iomart has no knowledge of the data or types of data iomart hosts under the Agreement. It is your responsibility to ensure that the Services are appropriate for the type of data that iomart hosts under the Agreement. iomart will act on reasonable instructions from you to tailor the Services to your business needs and will provide you with the information necessary for you to assess whether the technical and organisational measures that iomart implements meet the requirements of Applicable Data Protection Law. However, iomart does not provide any warranty regarding the adequacy of the Services and does not warrant that the Services, or their design, will protect your data from corruption, loss or degradation in all circumstances.</p>	11.5	<p>If section 233A of the Insolvency Act 1968 (as amended by the Insolvency (Protection of Essential Supplies) Order 2015) applies, iomart's right to terminate this Agreement under paragraphs 11.4.2 and 11.4.3 above shall be suspended only to the extent that iomart is unable to contract out of this section.</p>
11.	<p>Termination</p>	11.6	<p>Continuing liability. However the Agreement ends, each of us will still be responsible for claims or liability (including payments due) relating to the time before the Agreement ended.</p>
11.1	<p>Automatic Renewal. Unless terminated by either party in accordance with the relevant Agreement or unless expressly stated otherwise in a schedule to an Agreement, each Agreement shall take effect on the Effective Date and shall continue for its Initial Term and thereafter will automatically renew for consecutive periods of 12 months, each starting on the anniversary of the Start Date (each period being a "Renewal Term"). From the first day of each Renewal Term, the Charges will automatically increase by a percentage amount equal to the increase in the retail prices index (as published by the Office for National Statistics) for the previous calendar year. If the change in the relevant index is zero or negative, the Charges will increase by 1%. Charges payable during each Renewal Term will be confirmed to you in writing at least 30 days in advance of the start of that Renewal Term. You have the right to bring the Agreement to an end in line with paragraph 11.2 if you do not agree to the Charges being increased in accordance with this paragraph.</p>	11.7	<p>The position after the Agreement ends. When the Agreement expires or terminates:</p>
11.2	<p>Terminating the Agreement on notice. Either you or iomart can end the Agreement by giving the other party at least 90 days' written notice in advance of and to expire at the end of the relevant Initial Term or any subsequent Renewal Term. Alternatively, you can end the Agreement on 90 days' written notice to iomart if you do not agree to an:</p> <p>11.2.1. iomart proposed change to the AUP which you can demonstrate materially and adversely will affect your business; or</p> <p>11.2.2. increase in the Charges imposed under paragraph 11.1,</p> <p>although you must serve that notice in writing no later than 30 days after the amended AUP or increase in Charges is notified to you. After expiry of that 30 day period, the change or increase that was notified to you will be deemed to have been agreed and will take effect immediately.</p>	11.7.1.	<p>iomart will immediately stop providing the relevant Service;</p>
11.3	<p>Terminating an Agreement following a breach. Either of us may end the Agreement with immediate effect on prior written notice to the other if the other materially breaches its obligations under the relevant Agreement and (if such breach is capable of remedy) does not remedy that breach within 30 days after receipt of written notice from the other party to remedy such breach.</p>	11.7.2.	<p>payments due or payable by you under the Agreement will become due and payable immediately, including any unpaid Charges due for the remainder of the Initial Term or any Renewal Term (except where the Agreement has ended for iomart's material breach under paragraph 11.3);</p>
11.4	<p>iomart's specific rights to end the Agreement. iomart may end the Agreement with immediate effect on written notice to you where:</p> <p>11.4.1. you have breached the AUP (if applicable);</p> <p>11.4.2. you suspend, or threaten to suspend, payment of your debts, or you are unable to pay your debts as they fall due or you admit inability to pay your debts, or (being a company) you are deemed unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986, or (ii) you commence negotiations with all or any class of your creditors with a view to rescheduling any of your debts, or make a proposal for or enter into any compromise or arrangement with your creditors other than (in the case of a company) for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or the solvent reconstruction of your company; or (iii) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of you (being a company) or (iv) an application is made to court, or an order is</p>	11.7.3.	<p>within 30 days after the Agreement ends, each of us will return all Confidential Information of the other in its possession at the time the Agreement ends and will not make or keep any copies of that Confidential Information except as required to comply with any applicable legal or accounting record keeping requirement.</p>
		11.8	<p>You acknowledge that, in order to deliver the Services, iomart may enter into contracts with third party suppliers. If any Agreement is terminated for any reason other than by you under paragraph 11.3, you shall, without prejudice to iomart's other rights and remedies, immediately pay to iomart all fees that iomart is liable to pay to such parties to terminate such contracts (as notified to you in writing by iomart). You acknowledge that the termination fees may include payment of fees to the third party suppliers for the minimum term of such contracts.</p>
		11.9	<p>You shall indemnify iomart against any and all losses, damages, costs (including legal fees) and expenses suffered or incurred by or awarded against iomart in respect of any claim or action brought against iomart by one of the third party suppliers described in paragraph 11.8 which results from your breach of any Agreement that causes iomart to be in breach of such third party contract.</p>
		11.10	<p>If paragraph 11.3 applies, the parties may agree (but will have no obligation to agree) to novate any contract described in paragraph 11.8 to you, subject to the relevant third party supplier agreeing to such novation.</p>
		11.11	<p>Termination of SLA. On termination or expiry of the Agreement for any reason, any service levels set out in the SLA which apply to the relevant Services, will no longer apply and will cease to have effect. Service levels will not apply to the provision of any termination assistance (if applicable) or any Services that may continue for any reason after expiry or termination.</p>
		11.12	<p>Survival. On termination or expiry of the Agreement for any reasons, the following paragraphs shall survive and continue in full force and effect: paragraph 6.6 (insurance), paragraph 7.8 (payment of invoices), paragraph 7.11 (Interest charge), paragraph 10 (limits of liability), paragraphs 11.6 - 11.12 (termination), paragraph 12 (protection of confidential information), paragraph 14.8 (dispute resolution) and paragraph 14.13 (governing law).</p>
		12.	<p>Protection of Confidential Information</p>
		12.1	<p>Information concerned. Each of us acknowledges that we will have access to certain confidential information of the other party concerning the other party's business, plans, customers, technology, and products, including the terms and conditions of the Agreement, proprietary software and customer information ("Confidential Information").</p>
		12.2	<p>Maintaining secrecy. Each of us agrees that except as expressly permitted under an Agreement, we will not use in any way, for our own account or the account of any third party, nor disclose to any third party, except as required by law or as reasonably necessary to that party's professional advisors (or in iomart's case, to the other operators of iomart's global network), any of the other party's Confidential Information and that we will each take reasonable precautions to protect the confidentiality of that information.</p>
		12.3	<p>Exceptions. Information will not be deemed Confidential Information if that information (i) was already known or becomes known to the receiving party from a source other than the disclosing party; (ii) becomes publicly known or becomes no longer secret or confidential, except through a breach of an Agreement by the receiving party; (iii) is independently developed by the receiving party; or (iv) is required to be released by law or regulation, provided that the receiving party promptly informs the disclosing party in writing of the impending release, and the releasing party co-operates fully with the disclosing party to minimise the extent of the release.</p>

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13. Protection of Personal Data

- 13.1 In this paragraph, the terms “Personal Data”, “Controller”, “Processor”, “Data Subject”, “Processing”, “Data Protection Impact Assessments” and “Personal Data Breach” have the meanings given in the GDPR.
- 13.2 The parties acknowledge that the factual arrangement between them dictates the classification of each party as either a Controller or Processor under Applicable Data Protection Law. Notwithstanding the foregoing, the parties acknowledge that:
- 13.2.1. where iomart only provides colocation services under the Agreement, iomart will not be a Processor; and
- 13.2.2. where Personal Data is not accessible or likely to be accessible by iomart, iomart will not be a Processor,
- and therefore, in either case, the obligations of paragraphs 13.3 to 13.7 shall not apply.
- 13.3 Subject to paragraph 13.2, with respect to the party's rights and obligations under the Agreement, the party's agree that you are the Controller and that iomart is the Processor.
- 13.4 Where iomart processes Personal Data as a Processor on your behalf, it shall:
- 13.4.1. Process the Personal Data only in accordance with instructions from you (which may be specific instructions or instructions of a general nature as set out in the Agreement or as otherwise notified by you to iomart during the term of the Agreement);
- 13.4.2. take reasonable steps to ensure the reliability of any iomart staff who have access to the Personal Data, and ensure such staff are trained in the care and handling of Personal Data and have given appropriate binding undertakings of confidentiality;
- 13.4.3. notify you without undue delay and, in any event, within five business days, if it receives:
- 13.4.3.1. a request from a Data Subject to have access to that person's Personal Data; or
- 13.4.3.2. a complaint or request relating to your obligations under Applicable Data Protection Law;
- 13.4.4. taking into account the nature of the Processing, assist and cooperate with you (including by using appropriate technical and organisational measures, in so far as this is possible), to respond to complaints or requests from Data Subjects exercising their rights under Applicable Data Protection Law, including by:
- 13.4.4.1. promptly providing you with full details of a complaint or request received by iomart; and
- 13.4.4.2. upon your request, promptly providing information which you require in order to comply with a request from a Data Subject exercising their rights under Applicable Data Protection Law (including a 'subject access request') provided that iomart shall, unless otherwise agreed in a Sales Order Form, be reimbursed any incremental costs incurred as a result of complying with this paragraph 13.4.4.2.
- 13.4.5. permit you or your representatives access to any location where iomart processes Personal Data during normal business hours to inspect and audit, on reasonable prior notice, iomart's data Processing activities and comply with all reasonable requests or directions by you to enable you to verify and/or procure that iomart is in full compliance with its obligations under this paragraph 13.4.5. You or your representative shall be required to adhere to any applicable iomart site and security policies in the performance of such an audit or inspection;
- 13.4.6. provide a written description of the technical and organisational methods employed by iomart for Processing Personal Data (within the timescales reasonably required by you);
- 13.4.7. be entitled to engage sub-Processors (as a subcontractor), subject to
- 13.4.7.1. the relevant subcontractor being engaged by way of a written contract which imposes obligations on the subcontractor which are at least equivalent to the obligations imposed on iomart pursuant to this paragraph 13.4; and
- 13.4.7.2. the relevant subcontractor providing sufficient guarantees to iomart in terms of expert knowledge, reliability and resources to implement technical and organisational measures which will meet the requirements of Applicable Data Protection Law,
- and all sub-Processors engaged by iomart as at the effective date of this Agreement shall be deemed authorised;
- 13.4.8. in addition to the sub-Processors engaged pursuant to paragraph 13.4.7, be entitled to engage additional or replacement sub-Processors (as a subcontractor), subject to:
- 13.4.8.1. the provisions of paragraph 13.4.7.1 and 13.4.7.2 being applied; and
- 13.4.8.2. iomart notifying you of the additional or replacement sub-Processor,
- and where you object to the additional or replacement Processor, the parties shall discuss the objection in good faith;
- 13.4.9. save where such countries have been deemed by the European Commission to be providing an adequate level of protection pursuant to the relevant provisions of Applicable Data Protection Law not Process Personal Data outside the European Economic Area without the prior written consent of you and, where you consent to a transfer, to comply with any reasonable instructions notified to it by you. Notwithstanding the foregoing, iomart is expressly permitted and instructed by you that it may transfer

Personal Data to any iomart subsidiary and any iomart subcontractor, subject to first ensuring that adequate protections are in place to protect the Personal Data consistent with the requirements of Applicable Data Protection Law;

- 13.4.10. at your cost and taking into account the nature of the Data Processing and the information available to iomart, assist you in ensuring your compliance with your obligations to:
- 13.4.10.1. ensure the security of the Processing;
- 13.4.10.2. notify Personal Data Breaches to the ICO;
- 13.4.10.3. notify Personal Data Breaches to the Data Subjects;
- 13.4.10.4. carry out Data Protection Impact Assessments; and
- 13.4.10.5. consult the ICO in respect of Data Protection Impact Assessments, pursuant to Articles 32 to 36 of the GDPR (respectively); and
- 13.4.11. notify you without undue delay upon becoming aware of a Personal Data Breach.
- 13.5 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purpose of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, you and iomart will take, implement and maintain such technical and organisational measures as are appropriate to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure.
- 13.6 Each party shall comply at all times with Applicable Data Protection Law and shall not perform its obligations under the Agreement in such a way as to cause the other to breach any of its applicable obligations under Applicable Data Protection Law.
- 13.7 Each party shall comply with its obligations set out in the Data Protection Specification.
- 13.8 To the extent that iomart's performance of its obligations under the Agreement involves the Processing of Personal Data on your behalf, you shall ensure:
- 13.8.1.1. you are not subject to any prohibition or restriction which would prevent or restrict you from disclosing or transferring such Personal Data to iomart, as required under the Agreement; and
- 13.8.1.2. you have lawful grounds for Processing such Personal Data, including (if applicable) the consent of the individual to whom such Personal Data relates (and that such consent shall be valid under Applicable Data Protection Law).
- 13.9 Where under Applicable Data Protection Law (including without limitation Article 82 of the GDPR and any applicable Law where you and the iomart may incur joint and several liability as Controller and Processor with any other person) iomart incurs any costs liability damages claims or expenses (other than for damage caused by Processing only where it has not complied with obligations of applicable DPA Regulation specifically directed to Data Processors or where it has acted outside or contrary to your lawful instructions under the Agreement), you shall indemnify iomart on demand against all such costs liability damages claims or expenses, save for such liability as corresponds directly to iomart's part of the responsibility for the damage caused by iomart's breach of the obligations of Applicable Data Protection Law or the Agreement.
- 13.10 **International clients.** You acknowledge and agree that if you are a business located in a territory outside the European Union (EU), it is your responsibility to ensure compliance with Applicable Data Protection Law (or equivalent) in relation to transfers of your personal data from iomart to you.
- 13.11 **PCI DSS Requirements.** In accordance with best practice as described in the Payment Card Industry Data Security Standard (PCI DSS) scheme to safeguard sensitive credit and/or debit card data, should you use the Services to store, process or transmit credit or debit card information you will:
- 13.11.1. inform us in writing as soon as practicable and, in any event, before you do so;
- 13.11.2. comply with the PCI DSS requirements; and
- 13.11.3. you will take all necessary steps to ensure you are properly advised by your card acquirer or a PCI DSS Qualified Security Assessor (QSA) with regards to your obligations and appropriateness of your Service.
- 13.12 **Business Continuity.** iomart warrants that it has and will undertake to maintain a business continuity plan for its operations that is consistent with the international standards ISO 22301:2012, ISO 27001:2013 and ISO 9001:2015. While iomart takes all steps provided in the Agreement to protect your data, this does not constitute an absolute guarantee that a third party will not try to access, interrupt, delete or compromise your data. You are therefore responsible for determining the ultimate safety and integrity of your data.
14. **General Provisions**
- 14.1 **Unenforceable Provisions.** If any part of the Agreement is found by a court or other competent authority to be illegal or unenforceable then the rest of the Agreement will remain valid.
- 14.2 **Circumstances outside either party's control.** Except for the obligation to pay money, neither you nor iomart will be liable for any failure or delay in meeting our respective obligations under the Agreement, or for credits due under the SLA, due to any cause beyond its reasonable control, including act of war, acts of God, earthquake, flood, embargo, riot, terrorist activity, sabotage, labour shortage or dispute, governmental act or failure of the Internet, provided that whichever of us is affected: (a) gives the other prompt notice of the situation; and (b) uses reasonable commercial efforts to correct promptly the failure or delay in performance.
- 14.3 **No property rights.** The Agreement is a services agreement and is not intended to and does not grant a lease or licence over any real or personal property. In particular, you acknowledge and agree that you have not been granted any real property interest in any Data Centre (or, if applicable to the Services to be supplied to you, any space in any iomart data centre where Your Equipment is kept) or in iomart's other premises (including the location where the Services are provided), and you have

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no rights as a tenant or otherwise under any real property or landlord/tenant/tenant laws, or regulations.

- 14.4 **Transfer of rights.** The Agreement is personal to you and you may not assign or transfer your rights or subcontract your obligations under the Agreement either in whole or in part without iomart's prior written consent. We will not unreasonably refuse that consent. Iomart may assign or transfer its rights or subcontract its obligations under the Agreement either in whole or in part.
- 14.5 **Notices.** Any notice given under the Agreement must be in writing and may be delivered personally, deposited with an overnight courier, sent by confirmed facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the relevant address indicated above, or such other address as either of us may nominate in writing. That notice will be deemed to have been given on the date delivered, or 5 days after mailed or sent, whichever is earlier.
- 14.6 **Status of the parties.** iomart and you are independent contractors and the Agreement does not create any partnership, joint venture or agency or employee relationship. Neither of us has authority to enter into any contract on behalf of the other.
- 14.7 **Changes to the Agreement.** The Agreement may only be amended if both of us agree in writing.
- 14.8 **Dispute resolution.** If a dispute arises between you and iomart relating to the Agreement you and iomart will use reasonable commercial efforts to resolve the dispute at senior management level within 28 days of the dispute arising, failing which:
- 14.8.1. you and iomart agree that, within 14 days of the failure to resolve the dispute, either of us may pass the dispute to an Alternative Dispute Resolution ("ADR") procedure officer of the Centre for Dispute Resolution ("CEDR") as adopted by a suitable qualified mediator in London, England appointed by the senior executive officer of CEDR. Each of us will meet our own costs in those proceedings unless we agree otherwise as part of any settlement. If the dispute has not been resolved within a further 28 days or if either of us refuses or ceases to participate in an ADR procedure, or you and iomart cannot agree on an ADR procedure within 14 days of the failure to resolve the dispute, either of us may refer the dispute to the English Courts; and
- 14.8.2. nothing in this paragraph 14.8 prevents either of us from going to court to seek a preliminary injunction or other order at any time if either of us thinks that such an action is necessary.
- 14.9 **Delay in exercising rights.** If either of us does not exercise a right which we have under the Agreement or at law, or if either of us delays in exercising that right, we will not be prevented from exercising that right at a later date.
- 14.10 **Documents making up this Agreement.** A Sales Order Form and these Terms and Conditions, together with any schedules, appendices and other documents referred to in either document, make up the complete agreement and understanding between us in relation to the relevant Services and replace any other agreement or understanding between us, written or oral. If a conflict is identified between the Sales Order Form, these Terms and Conditions, any schedules or appendices and any other document otherwise attached or incorporated into this Agreement, the order of priority for the purposes of construction, is in descending order:
- 14.10.1. the Sales Order Form;
- 14.10.2. any provision of the schedules that expressly takes precedence over the Terms and Conditions;
- 14.10.3. the Terms and Conditions;
- 14.10.4. the remaining provisions of the schedules;
- 14.10.5. the appendices to the schedules; and
- 14.10.6. any other document incorporated by reference into this Agreement.
- 14.11 **Status of headings.** Headings have been included for convenience only and will not be used in constructing any provisions of the Agreement.
- 14.12 **Interpretation.** Any references in the Agreement to words in the singular include the plural and vice versa. Where the words "includes" or "including" are used, the words that follow are examples only.
- 14.13 **Governing law.** The Agreement and any claims arising out of them or in connection with it (including non-contractual claims) will be governed by English law and both of us agree that the English Courts will have non-exclusive jurisdiction.