

These **'Terms and Conditions'**, together with the G-Cloud Services Call-Off Terms (**'Call Off Agreement'**) and any terms set out in a Service Schedule (collectively **'this agreement'**) and any other document incorporated by reference in this agreement set out the basis on which the Service Provider shall provide Managed Cloud Services to the Customer.

1. INTERPRETATIONS

In these Terms and Conditions:

- 1.1 **'Charges'** means the rates and charges set out herein and in the Service Schedules which are to be paid by the Customer to the Service Provider;
- 1.2 **'Charging Metric'** means the basis for calculation of an element of the Charges as set out in a particular Service Schedule;
- 1.3 **'Competitor'** means any legal person or entity who, in the reasonable opinion of the Service Provider, is a competitor to the Service Provider;
- 1.4 **'Confidential Information'** means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and Service Providers of either party, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
- 1.5 **'Customer Data'** means the data and information provided by the Customer in connection with the Managed Cloud Services, excluding operating systems and application configuration files;
- 1.6 **'DPA'** means the Data Protection Act 1998;
- 1.7 **'Equipment'** means any equipment used in the provision of the Managed Cloud Services;
- 1.8 **'Fair Market Value'** means the Service Provider's reasonable valuation of Equipment, calculated as follows: if calculated during the Minimum Service Term, by taking the price at which the Service Provider certifies it would have sold the Equipment (plus associated maintenance and support services) to the Customer on the date it was initially deployed, if the Customer had purchased the same from the Service Provider on a capital expenditure basis, and as thereafter depreciated on a straight-line basis over three years from the date of deployment; or if calculated at or after the end of the Minimum Service Term, the sum that could be expected to be received for the sale of Equipment in a sale between willing market participants at arms length, assuming (whether in practice true or not) that the Equipment is in a reasonable condition for its age and usage and that the unexpired term of any third party warranty or support existing in respect of the Equipment can be transferred to the purchaser;
- 1.9 **'Intellectual Property Rights'** means patents, trademarks, service marks, design rights (whether registerable or otherwise),

- 1.10 **'Longstop Date'** means a date set out in a Service Schedule by which the parties agree the implementation of the Managed Cloud Services must be completed;
- 1.11 **'Managed Cloud Services'** means the services to be provided by the Service Provider to the Customer as set out in one or more Service Schedules;
- 1.12 **'Minimum Service Term'** means the minimum term of each Service Schedule as set out therein;
- 1.13 **'Project Plan'** means a document prepared by the parties during the implementation of a Service Schedule and which contains the detailed tasks required to be performed by each party in order to complete implementation;
- 1.14 **'Service Credits'** means the sums which are specified in a Service Schedule and which shall be credited to the account of the Customer by the Service Provider in the event that the Service Provider fails to meet the SLAs in respect of the services provided thereunder;
- 1.15 **'Service Schedule'** means a duly signed and dated schedule annexed to this agreement and setting out Managed Cloud Services which are to be provided by the Service Provider to the Customer, and the Charges for those services;
- 1.16 **'Service Level Agreement'** or **'SLA'** means an agreed level of service set out in a Service Schedule against which the Service Provider's performance will be measured;
- 1.17 the singular includes the plural and vice versa;
- 1.18 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation".
- 1.19 the masculine includes the feminine and the neuter;
- 1.20 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof;
- 1.21 headings are included for ease of reference only and shall not affect the interpretation or construction of these Terms and Conditions;
- 1.22 references to "clauses" are, unless otherwise provided, references to the clauses of these Terms and Conditions;
- 1.23 terms or expressions which are capitalised and which do not have an interpretation herein but which are defined in the Call Off Agreement to which these Terms and Conditions are attached shall have the meaning set out therein.
- 1.24 terms or expressions which are capitalised but which do not have

an interpretation herein or in the Call Off Agreement shall be interpreted in accordance with the common interpretation within the information technology services industry where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning.

2. PRECEDENCE

- 2.1 In the event and to the extent only of any conflict or inconsistency in the provisions of the clauses of these Terms and Conditions and the provisions of the Call Off Agreement and/or the terms of any Service Schedule entered into hereunder, the following order of precedence shall prevail:
 - 2.1.1 the terms of the Call Off Agreement; then
 - 2.1.2 the terms of the Service Schedule; then
 - 2.1.3 the clauses of these Terms and Conditions.

3. SERVICE SCOPE

- 3.1 From time to time the Service Provider and the Customer may agree the specification and configuration of Managed Cloud Services to be provided by the Service Provider to the Customer and shall set out the same in one or more signed and dated Service Schedules prepared in duplicate.
- 3.2 Following acceptance of the Managed Cloud Services set out in a given Service Schedule by the Customer pursuant to clause 4, or earlier where agreed or as required under the terms of these Terms and Conditions, the Service Provider shall provide the Managed Cloud Services set out in each Service Schedule until the end of the Minimum Service Term set out in that Service Schedule or until ended early pursuant to these Terms and Conditions.

4. IMPLEMENTATION & ACCEPTANCE

- 4.1 Each party shall use its reasonable endeavours and provide adequate resources in order to complete the actions required in respect of each stage of an agreed Project Plan by the dates specified in that Project Plan, but, for the avoidance of doubt, time for performance shall not be of the essence of these Terms and Conditions.
- 4.2 In the event that the either party fails to fulfil an obligation by a date specified in a Project Plan for such fulfilment, then the parties shall negotiate (in good faith) a reasonable extension of time and the party responsible for the delay shall make reasonable arrangements to obtain such additional resources as are necessary to fulfil the said obligation as early as practicable and shall reimburse those reasonable and direct costs of the other party which are both reasonably and necessarily incurred as a direct result of such delay.
- 4.3 In the event that a Service Commencement Date is delayed

	beyond the Longstop Date (if any) specified in a relevant Service Schedule:		continue to meet the specifications (if any) set out in the relevant Service Schedule.		Customer's Data stored on those back-up tapes, the Service Provider shall pass on to the Customer any compensation received from the third party but shall otherwise have no liability to the Customer for such loss of the Customer's Data.
4.3.1	as the sole result of the default of the Service Provider, then the Customer shall be entitled to terminate that Service Schedule.	5.2	Where Equipment provided by one party (the 'Owner') is to be located at a site owned or controlled by the other party (the 'Recipient'), the Recipient shall:	6.3	Where the Managed Cloud Services do not include taking backups to tape, the Service Provider shall nonetheless be permitted (although not obligated) to take tape backups of the Customer's data for its own disaster recovery and business continuity purposes and to store these, in encrypted format, either on or off site
4.3.2	as the sole result of the default of the Customer, the Service Provider shall be entitled to commence charging for the Managed Cloud Services provided pursuant to that Service Schedule.	5.2.1	keep or procure that the Equipment is kept in good repair and condition (fair wear and tear excepted) and is insured against all usual risks;		
4.4	When the Service Provider considers that some or all of the Managed Cloud Services set out in a Service Schedule are ready for activation it shall so notify the Customer. Within fourteen days of such notification the Customer shall review the operation of the Managed Cloud Services in accordance with the agreed acceptance criteria to confirm that they function in material conformance with the agreed specifications. If the Managed Cloud Services fail in any material respect to conform with the agreed specifications, the Customer shall give the Service Provider a detailed description of any such non-conformance ('Error') in writing, within the fourteen day review period.	5.2.2	ensure that such Equipment is duly tagged or marked as belonging to the Owner;	6.4	Each party warrants that it shall comply with the DPA when performing the Managed Cloud Services under this agreement. The Customer shall be the Data Controller, and the parties hereby acknowledge that the Service Provider will be acting as Data Processor in respect of all data processing activities in relation to Customer Data that the Supplier carries out under this agreement. The Service Provider undertakes to the Customer that:
4.5	The Service Provider shall use reasonable commercial endeavours to correct any Error within a reasonable time and, on completion, shall re-submit the Managed Cloud Services to the Customer. The provisions of clause 4.4 and this clause 4.5 shall then apply again.	5.2.3	refrain from making alterations or additions or attempting repairs to the Equipment without the prior consent of the Owner;	6.5	
4.6	If the Customer does not provide any written comments in the fourteen day period described above, or if the Managed Cloud Services are found to conform with the relevant specification, then the Managed Cloud Services shall be deemed accepted and the Service Provider shall be entitled to begin charging for them.	5.2.4	subject to the Recipient's reasonable security requirements, provide the Owner with access to the Equipment on reasonable notice and return the Equipment to the Owner upon demand;	6.5.1	it shall process the Customer's Data only in accordance with the written instructions of the Customer and to the extent, and in such a manner, as is reasonably necessary to supply the Managed Cloud Services in accordance with this agreement or as is required by any applicable law;
4.7	When all of the Managed Cloud Services to be provided under a given Service Schedule are or are deemed to have been accepted (the 'Service Commencement Date') the Minimum Service Term for the Managed Cloud Services shall commence.	Customer Trade-in Equipment		6.5.2	it shall implement reasonable technical and organisational measures to protect the Customer's Data against unauthorised or unlawful processing and accidental loss, destruction, alteration or disclosure;
5.	EQUIPMENT	5.3	Where Equipment is to be traded in to the Service Provider, as set out in a particular Service Schedule, the Service Provider shall inspect the same within fourteen days of delivery to ensure it is fit for purpose and conforms in all material respects with the agreed specifications. The Service Provider shall give the Customer a detailed description of any non-conformance in writing, and the Customer shall have a reasonable period thereafter to correct such non-conformance. The Service Provider shall not be obliged to pay or give credit for any Equipment being traded in until the Equipment passes the Service Provider's inspection and is accepted by the Service Provider.	6.5.3	it shall not (and shall ensure that its personnel do not) publish, disclose or divulge any Customer's Data to any third party, nor allow any third party to process Customer's Data on the Service Provider's behalf without the prior written consent of the Customer;
	Generally	6.	CUSTOMER'S DATA	6.5.4	it shall not transfer Customer's Data outside the European Economic Area without the prior written consent of the Customer; and
5.1	Either or both parties may provide Equipment, as set out in a particular Service Schedule for use in the provision by the Service Provider of the Managed Cloud Services. Except where specifically provided otherwise, there shall be no transfer of title to any Equipment provided and the party providing the Equipment warrants that:	6.1	The Service Provider and the Customer shall each take reasonable precautions (having regard to the nature of their respective obligations under these Terms and Conditions) to preserve the integrity of the Customer's Data and to prevent any corruption or loss of the Customer's Data but, except where back-up services are specifically provided as part of the Managed Cloud Services provided to the Customer, the Service Provider shall not be required to maintain back-up copies of the Customer's Data.	6.5.5	it shall use reasonable endeavours to assist the Customer with any subject access request that the Customer receives relating to Customer's Data processed by the Supplier under this agreement.
5.1.1	it owns the Equipment or has permission to provide it for the purposes set out in the relevant Service Schedule; and	6.2	If the Managed Cloud Services include taking back-up copies of the Customer's Data to tape then, unless otherwise agreed, the Customer and the Service Provider will arrange for the regular collection by the Customer of the back-up tapes. The Service Provider shall not be responsible for back-up tapes once they have left the Service Provider's premises. If the Service Provider arranges for the archiving of back-up tapes with a third party at the Customer's request then, in the event of loss of the		
5.1.2	the Equipment is and shall remain (for at least the relevant Minimum Service Term) fit for the purpose set out in the relevant Service Schedule and shall meet or				

7. SERVICE PROVIDER OBLIGATIONS

- 7.1 The Service Provider warrants and represents that:
- 7.1.1 the Managed Cloud Services shall be provided and carried out by appropriately experienced, qualified and trained personnel with appropriate skill, care and diligence and in accordance with good industry practice; and
- 7.1.2 it shall perform the Managed Service materially in accordance with the specifications and terms set out in each Service Schedule.
- 7.2 Except as expressly stated in these Terms and Conditions, all warranties and conditions, whether express or implied by statute, common law or otherwise (including fitness for purpose) are hereby excluded to the fullest extent permitted by law. Without limitation, the Service Provider specifically denies any implied or express representation that the Managed Cloud Services will be fit to operate in conjunction with any hardware items or software products other than with those hardware items and software products that are identified in a Service Schedule as being compatible with the Managed Cloud Services; or to operate uninterrupted or error-free.

Remedies for breach

- 7.3 If the Service Provider fails to meet the SLAs set out in a Service Schedule in respect of any of the Managed Cloud Services, such failure is not as a result of any act or omission of the Customer or any circumstances beyond the reasonable control of the Service Provider and the Customer notifies the Service Provider within thirty days of the end of the relevant period (as set out in the Service Schedule) in which the Service Provider failed to meet the SLAs, then the Service Provider shall apply the Service Credits set out in the relevant Service Schedule in respect of that Contractual SLA against their subsequent Charges.
- 7.4 In the event that the Customer validly claims the maximum possible Service Credits in respect of any particular Service Schedule for four consecutive months then the Customer will be entitled, upon one month's notice in writing, to terminate that Service Schedule, provided that if the Customer wishes to terminate a Managed Service using Equipment owned by the Service Provider but used solely for provision of Managed Cloud Services to the Customer, the Customer shall buy such Equipment from the Service Provider for its Fair Market Value as at the date of termination, such payment to be made in equal monthly instalments over the remaining unexpired term of the Contract from the date of cancellation. Title to such Equipment shall transfer upon receipt by the Service Provider of the final instalment.
- 7.5 If the Managed Cloud Services do not conform with the warranty

in clause 7.1, the Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance.

8. CUSTOMER OBLIGATIONS

- 8.1 The Customer warrants and represents that:
- 8.1.1 it has taken and shall continue to take all reasonable steps, in accordance with good industry practice, to prevent the introduction, creation or propagation of any disruptive element (including any virus, worm and/or trojan) onto the Equipment managed by the Service Provider or through the supply of data or software owned by or under the control of the Customer;
- 8.1.2 it has the appropriate authority or relevant consents in connection with all data including but not limited to personal data to permit the Service Provider to process the same for all purposes in connection with these Terms and Conditions;
- 8.1.3 it shall use such monitoring software as the Service Provider may direct from time to time, and shall keep such monitoring software fully operational at all times, in order that the Service Provider may accurately calculate the amount of the Charges; and
- 8.1.4 it shall not, without the Service Provider's prior approval, allow any person other than a representative of the Service Provider to modify, repair or maintain any Equipment situated at the Customer's premises or premises under the Customer's control.
- 8.2 The Customer shall notify the Service Provider in writing of all rules, regulations and practices with which the Service Provider should comply whilst its employees are on the Customer's premises and the Service Provider shall use reasonable endeavours to comply with such applicable rules and regulations.
- 8.3 The Customer shall comply with all applicable health and safety regulations and take all reasonable precautions to ensure that any of its premises which the Service Provider may attend pursuant to these Terms and Conditions are operated in a safe manner and shall indemnify the Service Provider in respect of any loss, claim or damages the Service Provider may incur as a result of the Customer's failure to do so.

9. CHARGES

- 9.1 In consideration of the work carried out by the Service Provider, and in accordance with these Terms and Conditions and the Service Schedules, the Customer shall pay to the Service Provider the Charges that are set out in each Service Schedule.
- 9.2 The Service Provider shall charge the Customer for any additional

- work conducted on the Customer's behalf which is outside the scope of any particular Service Schedule at the Service Provider's standard professional services rates from time to time, provided that such additional work shall be agreed in advance by the Customer.
- 9.3 The Service Provider shall invoice the Customer for the Charges in accordance with the billing profile set out in each Service Schedule or, in respect of additional work pursuant to clause 9.2 within 30 days of completion of the same. All undisputed invoices shall be payable by the Customer within thirty days of the date of the invoice.
- 9.4 The Charges for each Managed Service shall be calculated in accordance with the Charging Metric set out in the relevant Service Schedule and the peak quantity used during the relevant billing period. If the quantity used is equal to or less than the Minimum Commitment then the Charges will be based upon the Minimum Commitment.
- 9.5 Reports generated from the Service Provider's monitoring software shall be conclusive and binding on the Service Provider and the Customer as to the determination of usage.
- 9.6 Subject to the process agreed between the parties for this purpose (the '**Change Control Procedure**'), the Customer may (other than where the Charging Metric is 'fixed') vary the quantity of the Managed Cloud Services used from time to time, provided that:
- 9.6.1 any such variation shall not exceed a maximum of 30% in any 3 month period;
- 9.6.2 a reduction in quantity of a Managed Service of 50% or more from the peak quantity of the Managed Service will require agreement in writing from the Service Provider; and
- 9.6.3 the Service Provider may refuse to allow a variation if any such variation would in the reasonable opinion of the Service Provider result in the total quantity of the Managed Service exceeding the specification of the Equipment upon which it is delivered ;
- 9.7 For the avoidance of doubt, the Customer may request to vary the quantity of a Managed Service up or down other than as permitted by clause 9.6 through the Change Control Procedure, but the Service Provider may, in its sole discretion (acting reasonably), refuse such a request or determine that such change would require an amendment to these Terms and Conditions.

Payment

- 9.8 The Charges and all other payments set out in these Terms and Conditions are exclusive of Value Added Tax. The Customer shall pay the Value Added Tax in addition to the Charges or other payments at the rate and in the manner prescribed by law from time to time.

9.9	Interest shall be payable on any late payments of the Charges or any other sums due from the Customer to the Service Provider under these Terms and Conditions at the rate of 4% per annum above the base rate from time to time of Lloyds TSB Bank plc.				
9.10	The Customer shall pay all invoices submitted by the Service Provider electronically via the Banks Automated Clearing Service (BACS) or by such other payment mechanism as may be reasonably required by the Service Provider from time to time.				
9.11	The Customer shall not be entitled by reason of any set off, counter-claim, abatement, or other similar deduction to withhold payment of any undisputed amount which is due to the Service Provider.				
Default					
9.12	If payment of all or part of the Charges or any other payment due under the terms of these Terms and Conditions is overdue then, unless the Customer has notified the Service Provider in writing that such payment is in dispute within 30 days of receipt of the corresponding invoice, the Service Provider shall have the right upon giving at least 30 days prior notice in writing of its intention to do so, to:				
9.12.1	suspend all or part of the Managed Cloud Services being provided under any Service Schedule until such payment is made. Any reasonable expenses incurred by the Service Provider resulting from the suspension and any subsequent restart of the Managed Cloud Services shall be added to the overdue amount; or				
9.12.2	treat such non-payment as a material breach of these Terms and Conditions.				
Cost Increases					
9.13	The Service Provider shall be entitled from time to time to increase the Charges in respect of any element of the Managed Service in respect of which a supplier to the Service Provider has increased its charges to the Service Provider by more than 10%. Such increase in the Charges shall not exceed the same percentage by which the Service Provider's costs have increased and the Service Provider shall give at least 30 days' notice in writing of any such proposed increase and shall provide reasonable evidence to the Customer of the increase in its charges.				
10. CONTRACT CHANGES					
Principles					
10.1	If either party wishes to change the scope of the Managed Cloud Services (including Customer requests for additional services), it shall submit details of the requested change to the other in writing and the Supplier shall, within a reasonable time, provide a				
	written estimate to the Customer of:				
	10.1.1 the likely time required to implement the change;				
	10.1.2 any variations to the Charges arising from the change;				
	10.1.3 the likely effect of the change on any Project Plan; and				
	10.1.4 any other impact of the change on the terms of these Terms and Conditions or any Service Schedule.				
10.2	The Customer and the Service Provider shall conduct discussions relating to proposed changes to these Terms and Conditions in good faith. Neither party shall unreasonably withhold or delay consent to the other party's proposed changes.				
10.3	If the parties agree to proceed with a change they shall record in writing (a 'CCN'), the effective date of the change, any agreed variations to: the specifications of the Managed Cloud Services; the Charges; the terms of any Service Schedule or these Terms and Conditions, and shall each append a copy of the CCN to their copy of the Call Off Agreement.				
10.4	No amendments other than a variation of the Charges pursuant to clause 9.13, or a cancellation of Managed Cloud Services pursuant to clause 7.4, shall be effective unless made in accordance with process set out in this clause.				
	Service Changes				
10.5	For the avoidance of doubt, the volumetrics or configuration of the Managed Cloud Services may be changed from time to time by agreement between the parties in accordance with the Change Control Procedure and such changes shall neither constitute nor require a change to the provisions of these Terms and Conditions or the terms of any given Service Schedule.				
	11. INTELLECTUAL PROPERTY RIGHTS				
11.1	Save as granted under these Terms and Conditions, neither the Customer nor the Service Provider shall acquire any right, title or interest in the other party's pre-existing Intellectual Property Rights.				
11.2	Any Intellectual Property Rights arising from and any other material provided by the Service Provider in the provision of, or in connection with, the Managed Cloud Services shall become and remain vested in the Service Provider. Subject to payment of the Charges, the Customer will be granted a non-exclusive, non-transferable, personal licence to use any such generated Intellectual Property Rights or materials during the term of the Call Off Agreement so far as is necessary for it to receive the benefit of the Managed Cloud Services and for its own internal business purposes only.				
11.3	Subject to this clause and to clause 14.5.2 the Service Provider shall indemnify the Customer against all damages, losses, liabilities, demands, and expenses resulting from any judgment or award that the receipt, possession and/or use (in accordance with				
	the specification set out in the relevant Service Schedule) of the Managed Cloud Services infringes any valid third party Intellectual Property Rights in the European Economic Area.				
11.4	To benefit from the indemnity in clause 11.3 the Customer must:				
11.4.1	promptly provide the Service Provider and its advisors reasonable access to premises and personnel and to all relevant assets, accounts, documents and records that it possesses or controls (with the right to take copies) for the purposes of investigating the matter;				
11.4.2	allow the Service Provider (at its request) to use its chosen advisers and to have the exclusive conduct of the proceedings;				
11.4.3	make no admission of liability or any other statement in respect of or settle the matter without obtaining the Service Provider's prior written consent (not to be unreasonably withheld or delayed); and				
11.4.4	promptly take any action and give any information and assistance as the Service Provider may reasonably request to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter or enforce against a third party the Customer's rights in relation to the matter.				
11.5	If any element of the Managed Cloud Services does, or in the Service Provider's reasonable opinion is likely to, infringe the Intellectual Property Rights of a third party, the Service Provider shall at its expense and option either: (a) procure the right for the Customer to continue using it; (b) replace it with non-infringing equivalents; (c) modify it to make it non-infringing; or (d) terminate that element of the Managed Cloud Services.				
	12. TUPE AND PERSONNEL				
12.1	The parties agree that none of the provisions of these Terms and Conditions, nor the implementation, operation or termination of the Managed Cloud Services under any Service Schedule is intended to transfer an undertaking from either party to the other and it is accordingly their understanding that TUPE will not apply in relation to, or as a result of, the implementation, operation or termination of these Terms and Conditions or any of its provisions.				
12.2	In the event that TUPE operates, the parties shall comply with their obligations under TUPE including but not limited to complying with their obligation to inform and consult under regulations 11 and 13.				
12.3	Notwithstanding the provisions of clause 12.1, and subject to clause 14.5.2, in the event that TUPE operates to transfer any contracts of employment of any employees from one party (or that party's subcontractor) to the other party or causes any such contracts of employment to take effect between such employees				

<p>and the other party or any claim is made that any such contracts of employment have so transferred, at any time as a result of the commencement, implementation, operation or termination of any Managed Service then the party from whom the contracts of employment have transferred shall indemnify the other party from and against all reasonable costs, claims, demands, damages, tribunal awards, expenses and liabilities (including any sums paid in settlement of any claim) which the Customer may incur in connection with the termination of the employment of such employees, the employment of such employees prior to termination (including all salaries, wages, holiday pay, bonuses, PAYE, National Insurance contributions, pension contributions and otherwise) or any act or omission of the party from whom the employees have transferred.</p> <p>12.4 During the term of these Terms and Conditions and for a period of twelve months after its termination neither party shall, without the prior written consent of the other, solicit the employment of any person who is employed by the other party in connection with the Managed Cloud Services or any part thereof PROVIDED THAT nothing in this clause shall prohibit either party from recruiting any such person who responds to a public or trade advertisement.</p>	<p>14.3 Nothing in these Terms and Conditions excludes or limits the liability of the Service Provider for:</p> <p>14.3.1 death or personal injury caused by the Service Provider's negligence;</p> <p>14.3.2 fraud or fraudulent misrepresentation; or</p> <p>14.3.3 any other liability which cannot lawfully be excluded or limited.</p> <p>14.4 Payment of Service Credits as set out in a given Service Schedule are the Customer's full and exclusive right and remedy, and the Service Provider's only obligation and liability, in respect of the performance and availability of the Managed Cloud Services set out therein, or their non-performance and non-availability and the correction or substitution of the Managed Cloud Services in accordance with clause 7.5 constitutes the Customer's sole and exclusive remedy for any other breach of the warranties set out in or under these Terms and Conditions.</p>	<p>15. TERM AND TERMINATION</p> <p>15.1 Without prejudice to any rights that the parties have accrued under these Terms and Conditions or any of their respective remedies, obligations or liabilities, either party may terminate the Call Off Agreement and all Service Schedules with immediate effect by giving written notice to the other party if:</p> <p>15.1.1 the other party commits a material breach of any material term of these Terms and Conditions and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;</p> <p>15.1.2 the other party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;</p> <p>15.1.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (in the case of a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;</p> <p>15.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;</p> <p>15.1.5 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);</p> <p>15.1.6 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;</p> <p>15.1.7 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;</p>
<p>13. CONFIDENTIALITY</p> <p>13.1 The terms of any confidentiality or non-disclosure agreement entered into by the parties prior to the date of this agreement shall continue to apply notwithstanding the execution of this agreement.</p> <p>13.2 The Customer agrees to participate in a press regarding the award of this agreement and the publication of a case study document that will be available for distribution in hard copy and/or electronic format to the Service Provider's customers and potential customers. The content of such documents will be agreed by the parties (acting reasonably) prior to release.</p>	<p>14.5 Subject to clause 14.3:</p> <p>14.5.1 the Service Provider shall not be liable whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise for any loss of profits, loss of business, depletion of goodwill or similar losses, or pure economic loss, or for any indirect or consequential loss, costs, damages, charges or expenses however arising;</p> <p>14.5.2 the Service Provider's total aggregate liability under the indemnities in clauses 11 and 12 and/or for loss of or corruption to the Customer's Data arising where the Service Provider is specifically required as part of a Service Schedule to take backups of the same shall be limited to £5,000,000; and</p> <p>14.5.3 in all other circumstances the Service Provider's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of these Terms and Conditions shall be limited to the Charges paid for the Managed Cloud Services during the 12 months preceding the date on which the claim arose.</p>	
<p>14. LIMITATION OF LIABILITY</p> <p>14.1 This clause 14 sets out the entire financial liability of the Service Provider (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of: any breach of this agreement; any use made by the Customer of the Managed Cloud Services; and any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with these Terms and Conditions or the Managed Cloud Services.</p> <p>14.2 Except as expressly and specifically provided in this agreement the Customer assumes sole responsibility for results obtained from the use of the Managed Cloud Services, and for conclusions drawn from such use. The Supplier shall have no liability for any damage</p>		

- 15.1.8 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- 15.1.9 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.1.1 to clause 15.1.9 (inclusive);

Consequences of Termination

- 15.2 Any provision of these Terms and Conditions or any Service Schedule which expressly or by implication is intended to come into or continue in force on or after termination of the Call Off Agreement shall remain in full force and effect and termination shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 15.3 On termination of the Call Off Agreement:
- 15.3.1 the Service Provider shall cease provision of any Managed Cloud Services still being provided;
- 15.3.2 each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party; and
- 15.3.3 if the Managed Cloud Services provided to the Customer include the taking of backups and the Service Provider receives, no later than thirty days after the effective date of the termination or expiry hereof, a written request for the delivery to the Customer of the most recent backup of the Customer Data, the Supplier shall use reasonable commercial endeavours to deliver the backup to the Customer within 30 days of its receipt of such a written request in the format stored or in a format as otherwise reasonably requested by the Customer at that time, provided that the Customer has, at that time, paid all fees and Charges outstanding at, and resulting from, termination (whether or not due at the date of termination). Once such thirty day period has expired or the Service Provider has, at the Customer's request, delivered to the Customer the most recent backup of the Customer Data (as applicable), the Service Provider may expunge from its system and otherwise destroy or dispose of all of the Customer Data in its possession or control. The Customer shall pay all reasonable costs and expenses incurred by the Service Provider in returning and disposing of Customer Data.
- 15.3.4 The Customer shall pay any outstanding undisputed

invoices within 30 days; and

- 15.3.5 The Service Provider shall submit invoices for any services that it has supplied, but for which no invoice has been submitted, and the Customer shall pay these invoices, if undisputed, within 30 days of receipt.
- 15.4 If a party is required by any law, regulation, or government or regulatory body to retain any documents or materials which it would otherwise be obliged to return or destroy under this clause, it shall be entitled to do so, but shall use reasonable endeavours to notify the other party in writing of such retention, giving details of the documents or materials that it must retain.

Purchase of Dedicated Equipment

- 15.5 If the Call Off Agreement is terminated by either party pursuant to clause 15.1 then, in addition to any other sums due as a result of such termination, the Customer shall purchase from the Service Provider any Equipment which is owned by the Service Provider and which is used at the time of termination solely for the provision of Managed Cloud Services to the Customer. The purchase price for such Equipment shall be the Fair Market Value. The Service Provider shall provide an invoice within 30 days of termination and the Customer shall pay the same within 30 days of receipt.

16. NOTICES

- 16.1 Any notice required to be given in writing to a party under or in connection with this agreement shall be delivered by hand or sent by special delivery or other next working day delivery service providing proof of delivery, at its registered office (if a company) or (in any other case) its principal place of business. For the avoidance of doubt, an e-mail or facsimile transmission shall not constitute valid written notice in accordance with this clause.
- 16.2 Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address, or otherwise at the time recorded by the delivery service.
- 16.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

17. DISPUTE RESOLUTION

- 17.1 Subject to the provisions of clause 17.2, any dispute arising under, or in connection with these Terms and Conditions shall be dealt with in accordance with this clause, and neither the Customer nor the Service Provider shall be entitled to commence or pursue any legal proceedings under the jurisdiction of the courts in connection with any such dispute, until the procedures set out in this clause have been exhausted.

- 17.2 Clause 17.1 shall be without prejudice to the rights of termination stated in clause 15 and in addition shall not prevent the Customer or the Service Provider from applying for injunctive relief in the case of:

- 17.2.1 breach or threatened breach of confidentiality;
- 17.2.2 infringement or threatened infringement of its Intellectual Property Rights; or
- 17.2.3 infringement or threatened infringement of the Intellectual Property Rights of any third party, where such infringement could expose the Customer or the Service Provider to liability.

- 17.3 All disputes between the Customer and the Service Provider arising out of or relating to these Terms and Conditions shall initially be referred by the Customer's point of contact for resolution to the Service Provider's point of contact for resolution (as each set out in the Call Off Agreement).

- 17.4 If any dispute cannot be resolved within fourteen days, then the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR.

18. STATUTORY INVALIDITY

The Customer and the Service Provider expressly agree that should any limitation or provision contained in these Terms and Conditions be held to be invalid under any particular statute or law, or any rule, regulation or by-law having the force of law, it shall to that extent be deemed to be omitted but, if either the Customer or the Service Provider thereby becomes liable for loss or damage which would have otherwise been excluded, such liability shall be subject to the other limitations and provisions set out herein.

19. TRANSFER AND SUB-CONTRACTING

- 19.1 The Service Provider shall be entitled to subcontract its obligations under these Terms and Conditions, but this shall not affect the Service Provider's obligations to the Customer and any liabilities under these Terms and Conditions and the Service Provider shall remain responsible for the obligations performed by its subcontractors to the same extent as if such obligations were performed by the Service Provider.
- 19.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any or all of its rights and obligations under these Terms and Conditions without the prior written consent of the Service Provider.

20. RIGHTS OF THIRD PARTIES

A person who is not a party to these Terms and Conditions has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of these Terms and Conditions. This does not affect any right or remedy of a third party which exists or is available apart from under that Act.

21. FORCE MAJEURE

- 21.1 A party shall not be in breach of these Terms and Conditions nor liable for any failure or delay in performance of any obligations under it (and, the time allowed for performance of such obligations shall be extended accordingly) arising from or attributable to acts, events, omissions or accidents beyond its reasonable control ('Force Majeure Event'), including but not limited to any of the following:
- 21.1.1 acts of God, flood, earthquake, windstorm or other natural disaster;
 - 21.1.2 epidemic or pandemic;
 - 21.1.3 war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
 - 21.1.4 terrorist attack, civil war, civil commotion or riots;
 - 21.1.5 nuclear, chemical or biological contamination, sonic boom or electromagnetic pulse;

- 21.1.6 any law or government order, rule, regulation or direction, or any action taken by a government or public authority;
- 21.1.7 fire, explosion (other than in each case one caused by a breach of contract by, or assistance of, the party seeking to rely on this clause or companies in the same group as such party) or accidental damage;
- 21.1.8 communications network failure, systems fault or unauthorised use of or access to the IT systems of the Service Provider or the Customer;
- 21.1.9 extreme adverse weather conditions;
- 21.1.10 interruption or failure of utility services, including but not limited to electric power, gas or water;
- 21.1.11 interruption or failure of cooling systems;
- 21.1.12 any labour dispute, including but not limited to strikes, industrial action or lockouts; or
- 21.1.13 collapse of building structures or failure of plant or machinery.

PROVIDED THAT:

- 21.1.14 it promptly notifies the other parties in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and
 - 21.1.15 it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 21.2 If a Force Majeure Event prevails then the corresponding obligations of the other party will be suspended to the same extent as those of the party first affected by the Force Majeure Event.
- 21.3 If the Force Majeure Event prevails for a continuous period of more than 90 days, the party not affected by the Force Majeure Event may terminate these Terms and Conditions by giving 30 days' written notice to the other party. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this agreement occurring prior to such termination.

22. WAIVER

- 22.1 The failure of the Service Provider or the Customer to insist upon strict performance of any provision of these Terms and Conditions or to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by these Terms and Conditions.
- 22.2 A waiver of any default shall not constitute a waiver of any other default.

23. LAW AND JURISDICTION

The Customer and the Service Provider accept the exclusive jurisdiction of the English courts and agree that these Terms and Conditions is to be governed by and construed according to English law.

24. ENTIRE AGREEMENT

- 24.1 Other than where expressly provided to the contrary, this agreement constitutes the entire understanding between the Customer and the Service Provider relating to the subject matter and supersedes any previous agreement or understanding between the parties in relation to such subject matter.

25. AUTHORITY

Each party hereto warrants that it has full capacity and authority and all necessary consents to enter into and to perform the Call Off Agreement and that the Call Off Agreement is executed by their duly authorised representative.