

TERMS & CONDITIONS

1. STRUCTURE OF THIS AGREEMENT

- 1.1 The Agreement comprises: (a) the Contract Summary; (b) Schedule A; and (c) these Conditions. If there is any conflict or ambiguity between the terms of the documents listed in this condition 1.1, a term contained in a document later in the list shall have priority over one contained in a document earlier in the list. For clarity, where necessary, provisions in these Conditions override Schedule A and those in Schedule A override those in the Contract Summary.
- 1.2 These Conditions shall apply to and be incorporated in to the Agreement and prevail over any inconsistent terms or conditions contained in or referred to in the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.
- 1.3 Definitions and interpretation of most of the capitalised wording contained in this Contract are described in Clause 13 below. In other instances, certain capitalized wording is defined in the clause to which it specifically relates.

2. SERVICES TO BE PROVIDED, COMMENCEMENT AND DURATION OF AGREEMENT

- 2.1 The Agreement shall come in to force upon both Cloud Central and the Customer signing the Contract Summary.
- 2.2 Cloud Central shall commence the provisions of the Services on the Commencement Date and the Agreement shall continue for the duration of the Initial Term.
- 2.3 Provided that the Agreement is not otherwise terminated, the Agreement shall automatically renew following the expiry of the Initial Term, for further periods of 12 months (each 12-month period being a **Renewed Term**). Either party may terminate the Agreement at the expiry of the Initial Term or the Renewed Term, by serving at least 90 days written notice on the other party, prior to the expiry of the Initial Term or the then Renewed Term (as the case may be).
- 2.4 Cloud Central shall provide the Services in relation to the System only and the Customer accepts and acknowledges that no Services will be provided in relation to any other systems other than the System, unless Cloud Central agrees (in writing) to include those systems, within the scope of the Agreement.
- 2.5 The Customer accepts and acknowledges that, in delivering the Services, Cloud Central must work with subcontractors and other third parties whose products and services form part of the System (**Third Parties**). Cloud Central shall not be restricted by Customer in making best use of such Third Parties in performing the Services and shall provide Cloud Central with such assistance as it reasonably requests, to liaise with all and any Third Parties.

3. PERIOD OF SERVICE AVAILABILITY AND ELIGIBILITY OF ITEMS ADDED TO THE SYSTEM

- 3.1 The Services shall be performed during the Hours of Cover only.
- 3.2 If the Customer requests that the Services are performed outside of the Hours of Cover, those Services will be delivered on a reasonable efforts basis at Cloud Central's sole discretion and subject to the Customer paying Cloud Central's charges in effect at that time.
- 3.3 In the event that the Customer wishes to add items to the System that have not been supplied by Cloud Central, Cloud Central shall have the right to inspect such items before any cover is provided and either:
 - (a) agree to maintain such items which will then be added to the System and charged in accordance with Cloud Central's prevailing rates, unless otherwise agreed in writing by Cloud Central; and/or
 - (b) provide a quotation to upgrade such items so that they can be supported under the terms of the Agreement.

4. CLOUD CENTRAL'S KEY RESPONSIBILITIES

- 4.1 Cloud Central will:
 - (a) respond to support requests from Customer and, where contracted as part of the Services (as noted in Schedule A), monitor the Customer's System for performance and faults during the Hours of Cover;
 - (b) endeavour to escalate and resolve all issues in an appropriate and timely manner, maintaining good communication with the Customer at all times;
 - (c) perform preventative and remedial maintenance as detailed in Schedule A prompted by calls for assistance from the Customer or its monitoring of the System. Remedial maintenance performed includes resolution of problems by remote access, by telephone and/or e-mail. Onsite attendance by a Cloud Central service engineer is at the sole discretion of Cloud Central and may be subject to additional charges (as notified by Cloud Central to Customer) unless otherwise as stated in this Agreement;
 - (d) use reasonable endeavours to provide the Services in all material respects, in accordance with the provisions of Schedule A; and
 - (e) use reasonable endeavours to meet any performance times specified in Schedule A.
- 4.2 Cloud Central shall not in any circumstances have any liability to the Customer under the Agreement if it is prevented from, or delayed in, performing its obligations under the Agreement or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Cloud Central or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.
- 4.3 Cloud Central shall not in any circumstances have any liability to the Customer under the Agreement if it is prevented from, or delayed in, performing its obligations under the Agreement due to any act and/or omission of the Customer (or its employees, agents or contractors) and/or due to any failure by Customer to comply with its obligations under the Agreement.

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5. CUSTOMER'S KEY RESPONSIBILITIES

5.1 The Customer will:

- (a) maintain and use the System in accordance with (i) the operating instructions, regularly performing all operating maintenance and backup routines; and (ii) comply with the terms of all and any software licenses that form part of the System;
- (b) notify Cloud Central immediately, upon becoming aware, if the System needs attention or is otherwise not operating correctly;
- (c) provide Cloud Central, in a timely manner, such access to the System, premises and data and such office accommodation and other facilities, as is requested by Cloud Central, in connection with the Agreement;
- (d) provide in a timely manner such information as Cloud Central may request and ensure that such information is accurate in all material respects;
- (e) be responsible (at its own cost) for preparing the relevant premises for the supply of the Services and take all reasonable precautions to ensure the health and safety of Cloud Central personnel while working on those premises;
- (f) not allow any third parties other than the personnel of Cloud Central to adjust, repair or maintain the System;
- (g) take such steps as directed by Cloud Central to assist in the performance of the System and the resolution of faults. The Customer shall co-operate with Cloud Central in all matters relating to the Services and appoint a Key Contact, who shall have authority to contractually bind the Customer on matters relating to the Services; and
- (h) be responsible for the protection and recovery of any data held on disk or other recording devices and shall be responsible for taking regular back-ups of that data.

5.2 The Customer shall not:

- (a) alter or modify the System in any way nor permit the System to be combined with any other software programme;
- (b) use in conjunction with the System any accessory, attachment, additional equipment, device or software programme unless it has been supplied by or approved in writing by Cloud Central; or
- (c) attempt to adjust, repair, modify or maintain the System nor request, permit or authorise anyone other than Cloud Central to carry out any adjustments, repairs, modifications or maintenance of the System.

5.3 If Cloud Central's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall in all circumstances be liable to pay to Cloud Central on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to Cloud Central confirming such costs, charges and losses to the Customer in writing.

5.4 The Customer shall not, without the prior written consent of Cloud Central, at any time from the date of the Agreement to the expiry of twelve months after the completion of the Services, solicit or entice away from Cloud Central or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of Cloud Central, except that Customer shall not be in breach of this clause 5.4 if it hires an employee or sub-contractor of Cloud Central as a result of a recruitment campaign not specifically targeted to any employees or sub-contractors of Cloud Central.

5.5 Each party estimates the impact that a breach of condition 5.4 would have upon its business which is herein specified as liquidated damages in the amount of one times the current gross annual salary of the personnel concerned. Each party accepts that this is a reasonable estimate of the loss and agrees to pay the same upon demand in the event of its breach of condition 5.4.

6. EXCLUSIONS AND CHANGE CONTROL

6.1 For clarity, this Agreement only applies to the System as described in Schedule A or as subsequently amended in writing by the parties.

6.2 For clarity, this Agreement does not relate to any problems caused by the Customer using hardware, software or associated services in a way that is not recommended by the manufacturer or Cloud Central. Any remedial measures that are needed as a result of any of these situations may be undertaken by Cloud Central (at its sole discretion) subject to Customer paying charges in addition the Standard Monthly Support Charge, at Cloud Central's then prevailing tariff rates. Every effort in these circumstances will be made to agree such charges with Customer before the work is undertaken.

6.3 Any remedial work required to the electricity supplies and/or other devices attached to the System are not covered under the Agreement unless supplied by Cloud Central and listed in Schedule A (as it may be amended by Cloud Central, in writing, from time to time).

6.4 If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.

6.5 If either party requests a change to the scope or execution of the Services, Cloud Central shall, within a reasonable time, provide a written estimate to the Customer of:

- (a) the likely time required to implement the change;
- (b) any variations to Cloud Central's charges arising from the change;
- (c) the likely effect of the change to the delivery of the Services;
- (d) any other impact of the change on the terms of the Agreement.

6.6 If Cloud Central requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it;

6.7 If the Customer wishes Cloud Central to proceed with the change, Cloud Central has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, its implementation and any other relevant terms of the Agreement to take account of the change.

7. DATA PROTECTION

- 7.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This condition 7.1 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 7.2 To the extent that the Customer is the data controller and Cloud Central is the data processor (where data controller and data processor have the meanings as defined in the Data Protection Legislation) the provisions of conditions 7.3 to 7.6 shall apply.
- 7.3 Without prejudice to the generality of condition 7.1, Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Cloud Central for the duration and purposes of this Agreement.
- 7.4 Without prejudice to the generality of clause 7.1, Cloud Central shall, in relation to any Personal Data processed in connection with the performance by Cloud Central of its obligations under this Agreement:
- (a) process that Personal Data only on the written instructions of the Customer unless Cloud Central is required by the laws of any member of the European Union or by the laws of the European Union applicable to Cloud Central to process Personal Data (**Applicable Laws**). Where Cloud Central is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, Cloud Central shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Cloud Central from so notifying the Customer;
 - (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
 - (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained;
 - (e) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (f) notify the Customer without undue delay on becoming aware of a personal data breach;
 - (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to Customer on termination of the Agreement unless required by Applicable Law to store the Personal Data; and
 - (h) maintain complete and accurate records to demonstrate its compliance with this condition 7.4.
- 7.5 The Customer acknowledges that Cloud Central is reliant on the Customer for direction as to the extent to which Cloud Central is entitled to use and process the Personal Data. Consequently, Cloud Central will not be liable for any claim brought by a data subject or any action of any regulator (including, for the avoidance of doubt any fine) arising from any action or omission by Cloud Central to the extent that such action or omission resulted directly from the Customer's instructions.

8. CHARGES AND PAYMENT

- 8.1 Monthly recurring charges will be invoiced on a calendar monthly basis and collected in advance.
- 8.2 Where monthly charges are incurred additionally for usage, if applicable, these will be invoiced in arrears, usually in the following month.
- 8.3 Further charges may arise when Cloud Central agrees to provide additional products &/or services. Where these will form part of the System, the Customer will be advised of any changes to the monthly recurring charges along with any other terms associated with their provision and delivery &/or use at the time orders are placed for these. Additional charges will be invoiced as products are delivered or services are provided or commence unless otherwise agreed in writing.
- 8.4 The Customer shall reimburse all reasonable expenses properly and necessarily incurred by Cloud Central in the course of providing the Services, subject to the production of receipts or other appropriate evidence of payment by Cloud Central.
- 8.5 All charges are exclusive of all VAT or other government excise, sales, use, occupational or like taxes now in force or enacted in the future.
- 8.6 Payment for invoiced charges will be collected by direct debit in the month in which each invoice has been raised & the Customer hereby agrees to complete & submit the associated direct debit forms to Cloud Central as soon as its orders have been accepted.
- 8.7 Without prejudice to any other remedy, Cloud Central may give the Customer one month's written notice to vary any or all of its Standard Monthly Support Charge, if for any reason, the cost of Cloud Central performing its obligations under this Agreement, are increased by circumstances beyond its reasonable control.
- 8.8 Without prejudice to any other right or remedy that Cloud Central may have, if the Customer fails to pay Cloud Central on the due date Cloud Central may suspend the Services (or any part of them) until payment has been made in full.

9. LIMITATION OF LIABILITY & INDEMNITY

- 9.1 The following provisions set out the entire financial liability of Cloud Central (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- (a) any breach of the Agreement howsoever arising;
 - (b) any use made by the Customer of the Services; and
 - (c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Agreement.

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- 9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.
- 9.3 Nothing in these conditions limits or excludes the liability of either party:
- (a) for death or personal injury resulting from its negligence; or
 - (b) for fraud or fraudulent misrepresentation; or
 - (c) for any liability incurred either party which cannot be limited or excluded by law.
- 9.4 Subject to conditions 9.1-9.3, Cloud Central shall not in any circumstance be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
- (a) loss of profits; or
 - (b) loss of business; or
 - (c) depletion of goodwill or similar losses; or
 - (d) loss of anticipated savings; or
 - (e) loss of goods; or
 - (f) loss of contract; or
 - (g) loss of use; or
 - (h) loss or corruption of data or information; or
 - (i) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 9.5 Subject to conditions 9.1-9.3 above, each party's total liability to the other, in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise arising in connection with the performance or contemplated performance of the Agreement or otherwise under or in connection with the Agreement shall be limited to the value of the Standard Support Monthly Charge paid in the twelve (12 month) period preceding the date on which the claim arose.
- 9.6 Subject to condition 9.1 above, the Customer shall indemnify and defend Cloud Central in respect of any claims by third parties, which are occasioned by, or arising from any performance by Cloud Central pursuant to the instructions of the Customer.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 All Intellectual Property Rights arising from the Services shall be owned by Cloud Central. Cloud Central hereby licenses all such rights to the Customer free of charge and on a non-exclusive, non-transferable and worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Services as is envisaged by the parties. This licence will automatically terminate on expiry or termination of the Agreement (howsoever arising).
- 10.2 The Customer acknowledges that the Customer's use of rights in Pre-existing Materials is conditional on Cloud Central obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle Cloud Central to license such rights to the Customer.

11. TERMINATION

- 11.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Agreement without liability to the other if the other party:
- (a) fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or
 - (b) commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - (c) is subject to an Insolvency Event.
- 11.2 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.
- 11.3 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Cloud Central that accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.
- 11.4 Upon expiry or termination of this Agreement, the parties shall co-operate fully to ensure an orderly migration of the Services from Cloud Central to a third-party service provider at a cost to be agreed between the parties or, in the event that costs cannot be mutually agreed, at Cloud Central's prevailing day rates in effect at that time.

12. GENERAL

- 12.1 *Assignment:* The Customer may not assign or transfer this Agreement or any of its rights herein without the prior written consent of Cloud Central.
- 12.2 *Changes/Variations:* Other than simple notifications regarding changes to contact details or changes in the Standard Monthly Support Charge resulting from additions or changes to the System, any variations to this Agreement can only be made in writing evidenced by the signature of both parties.
- 12.3 *Confidentiality:* Each party agrees and undertakes to the other that during the period of this Agreement and thereafter it will keep confidential all and will not use for its own purposes nor without the prior written consent of the other disclose to any third party any information of a confidential nature (including without limitation trade secrets and information of commercial value) which may have become known to such party from the other party and which relates to the other party, unless such information is public knowledge or

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already known to such party at the time of disclosure or subsequently becomes public knowledge other than by breach of this Agreement or, subsequently becomes lawfully into the possession of such party from a third party.

- 12.4 *Dispute resolution*: Both parties agree to use reasonable endeavours to resolve any disputes that arise. Neither party shall engage in any legal proceedings until such endeavours have been exhausted and, in any case, no sooner than three (3) months after the dispute was first brought to the attention of all parties.
- 12.5 *Entire agreement*: This Agreement once signed by both parties represents the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 12.6 *Invalidity*: If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this agreement is deemed deleted under this condition 12.6, the parties shall negotiate in good faith to amend such provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 12.7 *Notices*: Any notice must be delivered by first class post to the relevant address of the other party set out in this Agreement or as varied subsequently in accordance with these terms.
- 12.8 *Third party rights*: This Agreement is made only for the benefit of the parties who have signed it and is not enforceable by any other person under the Contracts (Rights of Third Parties) Act 1999 or other applicable laws.
- 12.9 *Waiver*: No failure or delay by any party to this Agreement in exercising any of its rights shall be deemed to be a waiver of that right.
- 12.10 *Signatures*: The Parties may sign this Agreement using electronic signatures.
- 12.11 *Governing Law and jurisdiction*: The Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England. Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

13. DEFINITIONS AND INTERPRETATION

13.1 Definitions:

Agreement: means the contract between the Customer and Cloud Central, comprising these Conditions, Schedule A and the Contract Summary.

Cloud Central: Cloud Central Convergence Ltd, company registration number 04543396.

Commencement Date: means the date of commencement of the Services, as referred to in the Contract Summary.

Conditions: means the terms and conditions set out in this document.

Contract Summary: means the document appended to these Conditions signed by both Customer and Cloud Central which forms part of the Agreement.

Customer:

Data Protection Legislation: all applicable privacy and data protection laws including the Data Protection Act 2018, the General Data Protection Regulation ((EU) 2016/679) and any applicable national implementing laws, regulations and secondary legislation in England and Wales relating to the processing of Personal Data and the privacy of electronic communications, as amended, replaced or updated from time to time, including the Privacy and Electronic Communications Directive (2002/58/EC) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426).

Hours of Cover: means the period in which the Services will be provided by Cloud Central, as set out in Schedule A.

Initial Term: the initial term of the Agreement as stated in the Contract Summary.

Insolvency Event: means an event where a party is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the other (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the assets of the other or the other enters into or proposes any composition or arrangement with its creditors generally or any analogous event occurs in any applicable jurisdiction

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Personal Data: shall have the meaning provided to it in the Data Protection Legislation.

Pre-existing Materials: materials which existed before the commencement of the Agreement.

Schedule A: the document appended to these Conditions that describes the Services and the System, which forms part of the Agreement.

Services: the services to be provided by Cloud Central under the Agreement, as more particularly described in Schedule A.

Standard Monthly Support Charge: means the fees payable by the Customer to Cloud Central for the Services, as set out in the Contract Summary.

System: the system referred to in Schedule A, for which the Services will be provided in relation to.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

13.2 Unless the context requires otherwise, words in the singular shall include the plural and in the plural include the singular.

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