

Terms and Conditions

These Terms and Conditions (Agreement) are between Cloudsis (Company) and you (Customer).

These Terms and Conditions (together with the Orders and any other documents referred to therein) govern your access and usage of our hosted services, both within the UK and internationally. Please read this document carefully before accessing or using hosted desktops and email services. By accessing or using our hosted services you (the "Customer") indicate that you have read, understood and accept these Terms and Conditions and agree to be bound by them. If you do not agree to be bound by these Terms and Conditions, you should not access or use our hosted services in any manner.

We may change these Terms and Conditions from time to time and so you should check these terms and conditions regularly. Your continued use of our hosted services will be deemed acceptance of the updated or amended Terms and Conditions. If you do not agree to the changes, you should cease using our hosted services. If there is any conflict between these Terms and Conditions and specific local terms appearing elsewhere on the hosted desktop and email services then the latter shall prevail. We will inform you by email of any planned changes to these Terms and Conditions to seek your agreement.

1.1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Additional Service(s): any Service(s) not included within your Order, out-of-scope work, or services involving or relating to Self-Licensed Products.

Additional Fees: the charges for Additional Service(s).

Amendment Notice: any notice of variations to the Fees in respect of the Service(s) as may be issued from time to time.

Application: the application that is the subject of the Services.

Authorised Users: those employees and independent contractors of the Customer who are entitled to use the Application through the Hosting Services under this Agreement, which number shall not exceed the number specified in your Order.

Commencement Date: the date the Company confirms to you that a Service has been activated, the commencement of work by the Company pursuant to an Order, or such other date as agreed by us in writing (whichever is the earlier).

Company Software: any software (other than the Applications) owned by the Company or its licensors which is used by the Company to operate the Hosting Environment.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such, identified as Confidential Information pursuant to clause 11.5, or otherwise of a confidential nature.

Configuration Services: the configuration and related work referred to in clause 2, to be performed by the Company to configure software as detailed in your Order.

Customer Data: the data input into the information fields of the Application by the Customer, by Authorised Users, by the Company or sub-contractors on the Customer's behalf.

Disk Quota: the maximum amount of disk space made available to the Customer, as set out in the Order, or as otherwise agreed by the parties in writing from time to time.

DPA: the Data Protection Act 1998, all subordinate legislation passed pursuant thereto and Directive 95/46/EC together with any amendments, revisions, re-enactments or consolidations thereof.

Fees: the fees payable by the Customer for the provision of Services by the Company.

Hosting Environment: the facility in which the Company holds data and runs programs and includes the Company Software, servers and hardware used by the Company as part of the facility.

Hosting Services: the services provided to allow Authorised Users to access and use the Application, including hosting set-up and ongoing services as detailed in your Order.

Maintenance and Support: any error corrections, updates and upgrades that the Company may provide or perform with respect to the Application and Hosting Services, as well as any other support or training services provided to the Customer under this Agreement but limited to 'general application' use, faults and failures of the provision of the Service only and excludes any services relating to Self Licensed Software.

Normal Business Hours: 7.00 am to 6.00 pm local UK time, Monday to Friday, excluding public holidays in the United Kingdom.

Order: an order made by the Customer for the Services in the form of an Order Form.

Order Form: The Company order form by which the Customer may apply (online where permitted) to receive the Services.

Self Licensed Software: any software that the Customer has purchased and/or licensed or for which it is required to have its own licence.

Services: the Configuration Services, the Hosting Services and/or Maintenance and Support as applicable, given the context in which the term Services is used.

Service Levels: the service levels set out in Service Level Agreement Document.

Third Party Licence(s): the licence(s) under which an Application owner or licensor permits the Application to be used, whether under the Hosting Services or otherwise.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A person includes a corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Words in the singular shall include the plural and vice versa.

1.6 A reference to one gender shall include a reference to the other genders.

1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.8 A reference to writing or written includes faxes and emails.

1.9 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraph of the relevant schedule.

2. CONFIGURATION SERVICES

The Company shall perform the Configuration Services (if any) as specified in the Order.

3. HOSTING SERVICES, MAINTENANCE AND SUPPORT

3.1 The Company shall perform the Hosting Services and Maintenance and Support services as specified in the Order.

3.2 In relation to Authorised Users:

1.the Customer's access to the Hosting Services shall be limited to the number of individual Authorised Users, being employees or independent contractors of Customer, which number shall not exceed the number specified in your Order, or as otherwise agreed by the parties in writing from time to time.

2.the Customer shall maintain a list of current Authorised Users of the Application and provide such list to the Company as may be reasonably requested by the Company from time to time;

3.the Customer shall ensure that each Authorised User keeps a secure password for use of the Application; it is recommended that such password is changed no less frequently than every 42 days and that each Authorised User keeps his password confidential;

4.the Company may, from time to time, audit the use of the Application and the name and password for each Authorised User; and

5.if such audit reveals that passwords have been provided to individuals who are not Authorised Users, and without prejudice to other rights, the Customer shall promptly disable such passwords and shall not issue any new passwords to such individuals.

3.3 In relation to Application:

1.the Company hereby grants to the Customer on and subject to the terms and conditions of this Agreement and any Third Party Licences a non-exclusive, non-transferable licence to allow Authorised Users to access the Application through the Hosting Services and to use the Application solely for the Customer's business purposes;

2.Applications are provided for online use as part of the Services only. Applications are hosted on the Company's servers within the Hosting Environment;

3.the Customer shall not store, distribute or transmit any material through the Hosting Services that is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;

4.the rights provided under this clause 3.3 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer; and

5.the Customer shall not:

i. attempt to duplicate, modify or distribute any portion of the Application;
or

ii. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form any of the Application, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties; or

iii. use the Application or Hosting Services to provide services to third parties;
or

iv. transfer, temporarily or permanently, any of its rights under this Agreement, or

v. attempt to obtain, or assist others in obtaining, access to the Application;

vi. use the Application except in accordance with this Agreement and the Third Party Licences;

vii. download, install, store or make copies of any Application provided

as part of the Services;

viii. sublicense the Application;

1.the Company will where practical and necessary either provide Customer with a copy of any Third Party Licences required for the Applications or direct the Customer to the appropriate website which displays the applicable Third Party Licence terms.

4. CONFIGURATION SERVICES

4.1 The Company shall follow archiving procedures for Customer Data, as such procedures are adopted by the Company from time to time. In the event of any loss or damage to Customer Data,

the Customer's sole and exclusive remedy shall be for the Company to use reasonable commercial efforts to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Company in accordance with such archiving procedure. The Company shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.

4.2 Within a reasonable period following the Customer's written request the Company will return all Customer Data on a suitable data storage device provided by the Customer.

4.3 The Company reserves the right to charge the Company's standard administration fee for the return of Customer Data.

4.4 The Customer warrants that the Customer Data will not infringe the rights of any third party, contravene any law or industry code, nor contain any illegal, undesirable or inappropriate content.

5. DISK QUOTA

5.1 The Customer shall not be able to use more than its allocated Disk Quota. The Customer will normally be notified by email if its Disk Quota has been reached.

5.2 The Company will agree to increase the Disk Quota if requested by the Customer by email, in which case the Customer must pay an additional fee for such additional Disk Quota, in accordance with the Company's standard rates at the time.

6. THE COMPANY OBLIGATIONS

6.1 The Company undertakes that the Services will be performed with all reasonable skill and care.

6.2 Notwithstanding the foregoing, the Company does not warrant that the Customer's use of the Application and the Services will be uninterrupted or error-free. Our up-time in 2019 was 99.996%, and in 2018 was 99.997%, so interrupted working is negligible on our systems. We cannot guarantee uninterrupted service, as we have no control over 3rd Party providers such as your ISP

(internet service provider). We also cannot guarantee the integrity of your software, if for example an update done by your software provider causes errors in the application. Nonetheless if the service is interrupted and caused by ourselves or one of our subcontractors we will pay compensation as scheduled in our SLA .

6.3 The Company shall have no responsibility for data stored on any PC or laptop or other local drives of Authorised Users, the Customer or anyone else. No such data or drives shall be included in any backup process provided as part of the Services.

6.4 This Agreement shall not prevent the Company from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services which are similar to those provided under this Agreement.

7. CUSTOMER'S OBLIGATIONS

The Customer shall:

1.abide by the companies Fair Use Policy and any other policies of the Customer issued from time to time.

2.provide the Company, in a timely manner, with:

i. all necessary co-operation and assistance in relation to this Agreement and the Services; and

ii. all necessary access to such information, data and facilities as may be required by the Company from time to time; in order to render the Services, including but not limited to Customer Data, security access information and software interfaces to the Customer's other business applications;

1.provide such personnel assistance, as may be reasonably requested by the Company from time to time

2.comply with all applicable laws and regulations with respect to its activities and obligations under this Agreement;

3.notify the Company as soon as it is aware of any fault or defect giving rise to a need for support;

4.ensure that all software on all computers, devices and computer systems, or which are connected to those computer systems, with and from which Authorised Users connect to and use the Application is properly licensed for the actual use to which it is put and is up to date using the latest available software patches and service packs;

5.ensure that any costs relating to the maintenance, support, installation, relocation and re-installation (after technical issues) of Self Licensed Software and databases are paid for by the Customer.

6.ensure where possible that all Self Licensed Software or databases should be accompanied by a third party support contract;

7.provide and maintain and be responsible for a suitable internet connection on which Authorised Users can access the Services. The Company is not responsible for any loss of Service(s) caused by failure or loss of the Customers internet connection; To put this into perspective, an average session requires a speed of around 50 to 60 K per permanent user on site which is significantly lower than the capacity generally available.

8.ensure that the latest commercially available version of robust anti-virus and firewall software is installed on and kept up-to-date on all computers, devices and computer systems with and from which Authorised Users connect to and use the Services and the Application;

9.carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in Customer's provision of such assistance as agreed by the parties, the Company shall not be liable for any failures, delays or breaches and may adjust any timetable or delivery schedule set out in this Agreement as reasonably necessary; and

10.retain back-up copies of its data, emails and passwords and have sufficient local disc space (where appropriate). You shall not interfere with equipment, machines or servers used by the Company or disrupt the network associated with the Services.

8. FEES, ORDERS, PAYMENT AND VARIATION OF FEES

8.1 The Customer shall pay the amounts as agreed for:

1.the set up fees for Hosting Services and Configuration Services;

2.the monthly Application licence, hosting, data quota and Maintenance and Support fees for use and maintenance and support of the Application and Hosting Services;

3.Additional Authorised Users; and

4.Additional Services.

8.2 Invoices will be issued to the Customer:

1. for the Services prior to, or at any time after the Commencement Date;
2. for the Additional Service(s), at any time after the provision of those Additional Service(s); and
3. for all Services provided by the Company.

8.3 The Customer must pay all invoices issued in accordance with this Agreement within 14 days from the date on the invoice, unless different payment terms are set out in the Order, or as otherwise agreed by the parties in writing from time to time. Time for payment shall be of the essence.

8.4 Payment of the invoices must be and may only be made by direct debit, unless specified otherwise in the Order. The Customer shall provide all necessary details and authorities for direct debit when placing any Order. If the Customer makes a payment in a manner other than via direct debit, the Customer shall be liable for the Company's standard payment administration fee. All deposits or advanced payments are non-refundable.

8.5 Should any request for payment be dishonoured or not paid by Customer or if Customer cancels the Direct Debit, Customer shall pay all additional costs and charges (including, without limitation, reasonable legal and collection costs) incurred as a result thereof and on each attempt to obtain payment under the Direct Debit, in addition to the amount due under the Direct Debit.

8.6 The Company shall be entitled to vary the Fees from time to time with effect from the date specified in any Amendment Notice which shall be no earlier than 4 weeks after the issue of the Amendment Notice. Fees are only likely to increase if we have to pass on an additional cost from one of our suppliers and in this case The Company would notify the Customer first.

8.7 Unless otherwise stated, all amounts and Fees stated or referred to in this Agreement are exclusive of value added tax (and any similar additional tax), which shall be added to invoice(s) at the appropriate rate.

8.8 If the Company has not received payment within five days after the due date, and without prejudice to any other rights of the Company, interest shall accrue on such due amounts at the rate of 3% over the base lending rate of HSBC Bank plc from time to time, commencing on the due date and continuing until fully paid, whether before or after any judgment. And admin fee of £25 will be also applicable per invoice.

8.9 This Agreement shall prevail over any inconsistent terms which the Customer may seek to introduce in, or attach to, any Order, purchase order or any other document. The Customer agrees that any such inconsistent terms shall have no effect and shall not govern the arrangement.

8.10 The Company may set off any amounts due and payable under this Agreement against amounts that may be payable by the Company to the Customer.

8.11 Invoices may only be disputed by you by providing the Company with written details of the dispute within 14 days of the invoice date, failing which the invoice shall be deemed to have been accepted by you. You shall remain liable to make payment of any undisputed portions of an invoice.

9. CHANGE CONTROL

9.1 If either party wishes to change the scope of the Services (including Customer requests for additional software applications or hosting services), it shall submit details of the requested change to the other in writing.

9.2 If either party requests a change to the scope or execution of the Services, the Company shall, within a reasonable time, notify the Customer if it is willing to make the change and provide a written estimate to the Customer of:

- 1.the likely time required to implement the change;
- 2.any variations to the Fees arising from the change; and
- 3.any other impact of the change on the terms of this Agreement.

9.3 If the Company requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.

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

10. PROPRIETARY RIGHTS

10.1 The Customer acknowledges and agrees that the Company and/or its licensors own all intellectual property rights in: (a) the Company Software, the Hosting Environment, the Application and Services all intellectual property rights existing prior to commencement of such Services; and (b) any other intellectual property rights generated in the course of providing (directly or indirectly) the Services and all rights arising therefrom ("Company IP"). Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Company Software, the Hosting Environment, the Application, Services or any related documentation or the Company IP.

10.2 The Company licenses to the Customer the right to access the Company IP on a non-exclusive basis to such extent as is necessary to enable the Customer to make reasonable use of the relevant Services for the duration of the Agreement.

10.3 The Services may include individual third party software or third party intellectual property rights ("Third Party IP") and the licence in clause 10.2 and the Customer's rights to use the Services is without prejudice to the Third Party IP. Any rights the Customer may have to access Third Party IP shall be limited to extent of the Company's right to access same and its ability to pass on such rights to the Customer.

11. CONFIDENTIALITY

11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement, or Confidential Information of the other party may otherwise be brought to its attention. Confidential Information, as defined at 11.1, refers to information that is proprietary or confidential to each party and is either clearly labelled as such, identified as Confidential Information pursuant to clause 11.5, or otherwise relates to any information about the business, service users, staff and stakeholders held by the Customer. A party's Confidential Information shall not include information that:

1. is or becomes publicly known other than through any act or omission of the receiving party; or
2. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
3. is independently developed by the receiving party, which independent development can be shown by written evidence; or is required to be disclosed by law, by any court of competent jurisdiction.

11.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement. The company's steps include all staff all signing confidentiality agreements upon joining the Company. In addition to this all staff are reviewed for the 10 years prior to joining the Company to ensure integrity. Company systems are protected by the latest firewall technology to ensure integrity of all data passing in and out of ?.

11.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party contracted by the Customer.

11.5 The Customer acknowledges that the Company Software, Configuration, the Hosting Environment, the Application, the results of any performance tests of the Application and the Services constitute the Company's and/or its licensors' Confidential Information.

11.6 The Company acknowledges that the Customer Data is the Confidential Information of the Customer.

11.7 This clause 11 shall survive any termination of this Agreement.

12. PERSONAL DATA

12.1 In providing the Services, the Company may need to process personal data for the purposes of its engagement and related matters and the Company may need to disclose this information to appropriate persons. In providing any personal data to the Company, the Customer confirms that it has obtained all necessary consents to the transfer to the Company and use for the purposes of this Agreement and related matters. The Customer shall, at all times, comply with the DPA.

13. INDEMNITY

13.1 The Customer shall defend, indemnify and hold harmless the Company, its directors and employees from and against all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and legal fees) arising out of or in connection with, directly or indirectly, use of the Application or Services by the Customer or anyone else, the Customer Data, or otherwise arising as a result of this Agreement.

14. LIMITATION OF LIABILITY

14.1 This clause 14 sets out the entire liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer, including in respect of:

- 1.any breach of this Agreement;
- 2.any use made by the Customer of the companies Software, the Hosting Environment, the Services, the Application or any part of them; and
- 3.any representation, statement or tortuous act or omission (including negligence) arising under or in connection with this Agreement.

14.2 Except as expressly and specifically provided in this Agreement:

- 1.the Customer assumes sole responsibility for results obtained from the use of the Application and the Services by the Customer, and for conclusions drawn from such use. The Company shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Company by the Customer in connection with the Services, or any actions taken by the Company at the Customer's direction;
- 2.all warranties, conditions and other terms implied by statute or common law or equity are, to the fullest extent permitted by law, excluded from this Agreement; and
- 3.The Company will not be liable to the Customer or any third party for any losses whatsoever caused by downtime arising out of routine or emergency maintenance or occasioned by third parties.

14.3 Nothing in this Agreement excludes the liability of the Company:

- 1.for death or personal injury caused by the Company's negligence; or
- 2.for fraud or fraudulent misrepresentation.

14.4 Notwithstanding anything else contained herein, the Services shall be provided without any guarantees, conditions or warranties as to their accuracy, completeness, reliability, suitability or currency and they are provided on an “as is where is” basis. The Company does not warrant that the Services will meet the Customer’s requirements, nor will they be free from external intruders (hackers), unauthorised virus or similar dissemination. Any timeframes or storage sizes are provided as an estimate only.

14.5 The Service Levels state the Customer's full and exclusive right and remedy, and the Company’s only obligation and liability in respect of the performance and/or availability of the Service, or their non-performance and non-availability.

14.6 The Company shall not be liable for any loss of profits, loss of income, loss or interruption of business, loss of anticipated savings, damage or corruption of data, loss or depletion of goodwill and/or similar losses or pure economic loss, or for any special, indirect or consequential loss costs, damages, charges or expenses however arising (and whether caused by tort (including negligence), breach of contract or otherwise, even if foreseeable) and incurred by you or anyone else.

14.7 Subject to clause 14.3, the Company’s total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to £10,000 or the price paid for the Services during the 12 months preceding the date on which the claim arose, whichever is the lower.

14.8 If the performance of obligations by the Company is prevented or delayed by an act or omission by you or your agents or employees, the Company shall not be liable for any cost, charges or losses sustained or incurred by you or anyone else that arise directly or indirectly from such prevention or delay.

15. TERM AND TERMINATION

15.1 This Agreement shall commence on the Commencement Date and shall continue for the agreed minimum period set out in the Order, unless otherwise terminated as provided in this Agreement. After the agreed minimum period, this Agreement shall automatically renew for monthly periods, unless either party notifies the other, in writing. One full calendar month notice is required.

15.2 Without prejudice to any other rights or remedies to which the Company may be entitled, if the Customer fails to pay any charges or Fees in accordance with this Agreement on their due date for payment, the Company shall have the right (without liability) to suspend the provision of any or all of the Services and your use of and access to the Services, or to terminate the Agreement, by giving written notice to you.

15.3 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement without liability to the other, by giving written notice to the other party, if:

1.the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

2.an order is made or a resolution is passed for the winding up of the other party (other than for the purpose of solvent reconstruction) or it makes any arrangement or composition with its creditors, or a receiver is appointed of any of the other party's assets or undertaking or it ceases, or threatens to cease, to trade or the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

15.4 On termination of this Agreement for any reason:

1.all licences granted under this Agreement shall immediately terminate;

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;

3.if the Company receives, no later than 10 business days after the effective date of the termination or expiry of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data, the Company shall use reasonable commercial efforts to deliver the back-up of the Customer Data to the Customer within 5 business days of its receipt of such a written request, 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). The Customer shall pay all reasonable expenses incurred by the Company in returning Customer Data;

4.the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced; and

5.the Company shall invoice the Customer for all amounts due but unbilled and it may delete all data, materials, content, configuration and settings in connection with the Services and any amounts or deposits already paid by the Customer shall not be refunded in any circumstances.

15.5 Without any obligation on the part of the Company or any liability to Customer, notwithstanding the provisions of clause 15.4, the Company may delete any virtual server utilised for the Customer two weeks after termination and it may also delete all data, materials, content, configuration and settings in connection with the Services.

16. HYPERLINKED MATERIAL AND LINKS.

16.1 The Company's websites and services may contain hyperlinks to other sites on the Internet which are not owned or controlled by the Company. The Company cannot assume any responsibility for any material on such sites, or any other material outside of the Cloudsis websites and services, which is accessed directly or indirectly by any such hyperlink.

16.2 In relation to any website related to the Services, you acknowledge that the Company has no control over any content of links contained therein and does not purport to monitor same. The Company shall not be deemed to have any control over such content or links.

17. FORCE MAJEURE

The Company shall have no liability to the Customer if it is prevented from or delayed in performing its obligations under this 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 the Company 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, explosion, severe weather, terrorism, or default of suppliers or sub-contractors, an act or omission of a third party, inability to obtain any materials, equipment, facilities or services, internet disruption, virus or breakdown of software, hardware, facilities or communications network.

18. WAIVER

18.1 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

18.2 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

19. SEVERANCE

19.1 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

19.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

20. ENTIRE AGREEMENT

20.1 This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

20.2 Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

21. ASSIGNMENT

21.1 The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

21.2 The Company may assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. This is unlikely and would only be for small

parts of specialist work. The terms and conditions with the Sub-Contractor would mirror those in this head contract.

22. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

23. PARTY RIGHTS

This Agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

24. NOTICES

24.1 Any notice required to be given under this Agreement shall be in writing and shall be sent by pre-paid first-class post to the other party at its address set out in this Agreement or an Order, or such other address as may have been notified by that party for such purposes, or sent by email to the other party's email address as set out in an Order.

24.2 A correctly addressed notice sent by pre-paid first-class post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time a read receipt acknowledgment has been received.

25. AMENDMENT OF AGREEMENT BY THE COMPANY

The Company reserves the right to add to and/or amend any conditions or any other aspect of this Agreement at any time.

26. GOVERNING LAW AND JURISDICTION

26.1 This Agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the laws of England.

26.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.

By using or agreeing to use the Service, the Customer agrees to all terms and conditions of this Agreement.

1. Additional Services

1.1. Additional Services are charged pro rata at the Company's then current rates at the time.

1.2. Support and installation work relating to the Customer's Self Licensed Software are charged at the Company's then current rate at the time.

1.3. PLEASE NOTE THAT ON-SITE WORK IS NOT COVERED BY THE COMPANY. On site work can be completed under other contracts or at an hourly rate. Terms and conditions will apply.

2. Hosting Services

2.1. From time to time the Company may alter the features and functions made available as part of the Hosting Service but will endeavour to keep the overall quality, quantity and variety of features and functions consistent.

2.2. The Customer is fully responsible for any action taken in respect of its account whether by the Customer or someone else using their password. The Customer shall notify the Company immediately if any unauthorised third party becomes aware of the account details.

2.3. The Standard Hosting Service is not suitable for highly graphical usage. The Customer should make certain that the Service is suitable for their organisation requirements before agreeing to these Terms and Conditions. In case that your software requires intensive graphical usage we can provide specific graphical desktops.

2.4. The Cloud Access requires the use of Microsoft's remote desktop connection software (which is supplied with Windows).

2.5. Due to backup restraints, restoring of data (except in the case of system failures) will incur additional charges on an ad-hoc basis, both for time and software used.

3. Maintenance and Support

3.1. Maintenance of the hosting equipment, facility, Application or other aspects of the Hosting Services may require interruption of the Hosting Services (Maintenance Events). The Company may interrupt the Hosting Services outside Normal Business Hours for unscheduled maintenance and will use reasonable endeavours to give the Customer advance notice. Any Maintenance Events which occur during Normal Business Hours, and which were not requested by the Customer, shall be considered downtime for the purpose of service availability measurement. The Company shall endeavour to keep any service interruptions to a minimum.

4. Maintenance

4.1. Maintenance includes all regularly scheduled error corrections, software updates and upgrades. Support for additional features developed by the Company, as requested by the Customer, may be purchased separately at the Company's then current rates at the time.

4.2. The Company shall maintain and update the platform supplied to the Customer as part of the monthly fee. This does not include Self Licensed Software or additional Applications.

4.3. The Company does not provide any technical support for Applications other than the Operative System unless the Client purchases a Support Agreement that covers additional Applications.

4.4. The Company shall provide monitoring of its Hosting Services.

4.5. The Customer shall provide support for data integration tools and processes developed or maintained by the Customer in order to connect the Application to the Customer's other software and databases. Support shall be provided during Normal Business Hours only and Support fees would apply according to the Support Plan acquired by the client.

4.6. The Company and the Customer may arrange for the provision of Support outside of Normal Business Hours providing that this (including the associated charges) is agreed:

1.in writing; and

2.before the Commencement Date; provided that such agreement will take effect only if the Company has the available resources to do so.

4.7. Support shall only be provided via telephone, remote access and email.

4.8. Requests for Support should be made by the Customer through the company Helpdesk.

4.9. The Company will endeavour to respond to requests for support within 4 working hours. This will NOT be the time it takes to resolve the issue, which shall vary depending upon the nature of the support required.

4.10. Customers should have their own support contract with suppliers of their Self Licensed Software. The Company will charge for any support of this Self Licensed Software, unless included in the monthly fee for the Service.

5. Fair Use Policy

Use of the Company's systems is subject to the following rules and guidelines. Each customer of the Company is responsible for ensuring that the use of all services provided complies with this Fair Use Policy.

5.1. Bandwidth, Data Storage and other limitations

Users must ensure that their activity does not improperly restrict, inhibit, or degrade any other user's use of the Services. In addition, users must ensure that their activity does not improperly restrict, inhibit, disrupt, degrade or impede the company's ability to deliver the Services and monitor the Services, backbone, network nodes, and/or other network services.

5.2. Inappropriate Activity

1.You cannot use (which includes, but is not limited to, transmission, distribution or storage) or permit anyone else to use the Service:

2.for any illegal purpose, in contravention of any local or international law;

3.to achieve unauthorised access to any computer systems;

4.for unauthorised access or distribution of any software, data, or material protected by trade secret, copyright, patent or other intellectual property rights;

5.for excessive data transfer which interferes with the experience of other users;

6.to interfere with the use of the equipment or services by other customers or disrupt the WorkPlaceLive backbone network nodes or services;

7.to harass, threaten, embarrass or cause distress, unwanted attention or discomfort upon another customer of the Service and/or the Internet community;

8.to post or transmit any unsolicited advertising, promotional material or other forms of solicitation to any person, except in those areas that are designated for such a purpose;

5.2.h.1. to knowingly transmit a computer virus to another user or the Internet generally;

5.2.h.2. in a way that would be a breach of privacy or confidentiality;

5.2.h.3. in a way that would breach the Fair Use Policy or similar usage policies of any network to which access is gained;

5.2.h.4. in contravention of instructions given by the Company

1.Users must not attempt to discover ("crack") the user identification or security of a host, network or account. This includes, without limitation, requesting data not intended for the user, logging into

a server or an account which the user is not authorised to access, or testing its security without the permission of its owner.

2.The user must not attempt to disrupt any service, host or network. This includes but is not limited to, the “flooding” of networks, deliberate attempts to overload a system or attempts to “crash” a system.

3.Any user who damages any system or network may be prosecuted. The Company will co-operate fully in efforts to trace such violations and will disclose user data and log files to the authorities if requested to do so.

4.Use or distribution of tools designed for compromising security, such as password guessing programs, cracking tools, packet sniffers or network probing tools, is prohibited.

5.You cannot use (which includes, but is not limited to, transmission, distribution or storage) or permit anyone else to use the Service to post or transmit any sexually explicit, threatening, abusive, harassing, defamatory, indecent, racially, ethnically or otherwise objectionable or offensive material.

6.It is prohibited to harass third parties through the use of language, the number of messages or the size of a message. “Mail Bombing” is prohibited.

7.Users must not send any messages to persons who do not wish to receive them (“junk mail” or “spamming”). Should a recipient indicate that they do not wish to receive any further e-mail, then this request must be complied with immediately.

8.Users must not send or forward any “chain letters” even if requested by the recipient.

5.3. Violation of Fair Use Policy

1.The Company reserves the right, in its sole discretion to: remove any material that violates, or the Company reasonably believes violates, the Company’s policies, including the Fair Use Policy;

2.block access to the Service;

3.make, on request of the relevant authorities, data available which might be used for criminal or other police or government investigations.