



**Terms & Conditions**  
**G-Cloud 13**

## OUTCOMES BASED HEALTHCARE® – G-Cloud 13 Terms & Conditions

This Agreement (the “Agreement”) is between Outcomes Based Healthcare Ltd.® (“OBH®”), a company, with offices located at 11-13 Cavendish Square, London, England W1G 0AN and ..... (the “Buyer”). Each a “party” or “Party” and together the “parties” or “Parties”.

### 1. Services.

1.1 The provision of Services by OBH® shall be documented and effected by the preparation and agreement of a new Call-Off Contract (as defined below). Such Call-Off Contract shall take effect upon the date it is executed, or such other date as specified in the Call-Off Contract (“Call-Off Contract Start Date”). The terms of this Agreement will be incorporated by reference in each Call-Off Contract. When fully executed by OBH and the Buyer, each Call-Off Contract will form a separate agreement between OBH and the Buyer for the provision of the applicable Services.

1.2 The Buyer subscribes to the OBH Services selected on each Call-Off Contract on the terms set forth herein. The Services may include the following:

- a. **Access to OBH Solution(s):** Buyer access via the Internet to the OBH Solution(s), for which the Buyer subscribes and as set out in the relevant Call-Off Contract during the Term, solely for the Buyer’s internal businesses purposes and solely for use by the Authorised Users. OBH shall provide to the Buyer during the Term support, operation and maintenance of the System used to provide access to the OBH Solution(s) for which Buyer subscribes on each Call-Off Contract. The Buyer shall, at its own expense, acquire, install, configure and maintain all hardware, software and other equipment as may be required for Authorised Users to connect to and access the System via the Internet.
- b. **Support Services** Advisory services to help prepare the Buyer for commissioning and/or successful utilisation of the OBH Solution(s), as set out in the relevant Call-Off Contract. OBH will agree the scope of Support Services in advance with the Buyers, to ensure their needs are met and they receive the level of support required. Unless otherwise expressly agreed in the relevant Call-off Contract, Support Services shall be performed on a time and materials basis.

### 2. Restrictions on Use.

2.1 The Buyer may not:

- a. sell, resell, assign, share, lease or make the OBH Solution(s), or any portion thereof, available to any third party without OBH’s explicit written consent,
- b. modify or make derivative works of the OBH Solution(s) or any portion thereof,
- c. create internet “links” to the System or “frame” or “mirror” any portions of the OBH Solution(s) on any other server or wireless or internet-based device
- d. reverse engineer, disassemble or decompile any component of any OBH Solution(s) or the System,
- e. use the Services, the System or any OBH Solution(s) in order to build a competitive product or services or
- f. otherwise use the Services, the System or any OBH Solution(s) in any manner that exceeds the scope of use permitted under a Call-Off Contract or this Agreement.

2.2 In addition, the Buyer may not use the System to:

- a. send or store infringing, obscene, threatening, libellous or otherwise unlawful or tortious material
- b. send or store computer viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs
- c. interfere with or disrupt the integrity or performance of the OBH Solutions(s), the System, or in each case the data contained therein or

d. attempt to gain unauthorised access to the **OBH** Solution(s) or the System.

2.3 The Buyer shall, at all times, comply with all applicable laws in using the Services, the System, the **OBH** Solution(s) and in each case the data generated by the same.

2.4 The Buyer shall not remove any copyright, trademark, proprietary rights, disclaimer or warning notice included on or embedded in any part of the Services, **OBH** Solution(s) or System.

### 3. Users.

3.1 Only Authorised Users may use and access the **OBH** Solution(s).

3.2 Each Authorised User will be assigned a unique user identification name and password for access to and use of the **OBH** Solution(s) (a "User ID"). The Buyer may only have as many User IDs activated at one time for the **OBH** Solution in question as the number of User IDs specified for that **OBH** Solution in the relevant Call-Off Contract. No User ID may be shared by more than one Authorised User. The Buyer shall be responsible for ensuring the security and confidentiality of all User ID's provided to Buyer and related passwords; provided that **OBH** shall not disclose User IDs or passwords to any other party or entity.

3.3 The Buyer acknowledges that it will be fully responsible for all liabilities incurred through use of any such User ID and that any transactions under a User ID will be deemed to have been performed by the Buyer.

3.4 The Buyer agrees to maintain a current list of User IDs authorised to access and use the **OBH** Solution(s) on behalf of the Buyer and to promptly notify **OBH** in writing of any changes to such list.

3.5 The Buyer may request that **OBH** provides them with details of active User IDs. Such right may be exercised with reasonable prior notice and insofar as it doesn't interfere with **OBH**'s normal conduct of business.

### 4. Fees and Payments.

4.1 **Payment Terms.** In consideration of the Services provided by **OBH**, the Buyer shall pay the fees set forth in the relevant Call-Off Contract (the "Fees"). **OBH** shall invoice Buyer according to the terms of the Call-Off Contract(s). All valid invoices are due and payable in full no later than thirty (30) days after the date of invoice, unless otherwise specified in the relevant Call-off Contract. Payment shall be made to arrive on or before the due date at **OBH**'s bank account. Late invoices are subject to interest of 1.5% per month, or the maximum permitted by law, whichever is less, plus all expenses of collection. **OBH** reserves the right to suspend and/or terminate access to the Services if any Fees payable hereunder are past due and the Buyer fails to cure such non-payment within ten (10) days of receipt of written notice from **OBH**. Such a suspension of Services shall not relieve the Buyer from its obligation to pay all amounts due under the relevant Call-Off Contract.

4.2 **Calculation of Fees.** The Buyer acknowledges that the Fees payable by the Buyer may be based in part on Service levels or options selected by the Buyer on a Call-Off Contract. **OBH** shall be entitled to adjust the subscription fee according to the Buyer's actual usage of the Services in the manner set forth in the Call-Off Contract. Where time and material rates are charged, a work day will consist of seven and a half (7.5) hours. Each hour over seven and a half (7.5) hours in a single day will be charged on a pro-rata basis (the daily rate divided by seven and a half (7.5) hours to determine the charge per hour).

4.3 **Prepaid Services.** All prepaid Services must be used within the Term. Any prepaid Services not utilised during the Term shall be forfeited and no refund shall be given, unless otherwise agreed between **OBH** and the Buyer.

4.3 **Third Party Charges.** **OBH** reserves the right to pass through to the Buyer the amount of any third-party data costs assessed by **OBH**'s third party data providers attributable to the Services provided to the Buyer hereunder.

4.4 **Taxes.** Fees and all other amounts mentioned in this Agreement and any Call-Off Contract do not include any sales, property, use, value added, or ad valorem taxes based upon this Agreement, relevant Call-Off Contract or any Services (collectively "Taxes"), all of which shall be paid by the Buyer. If any Value Added Tax is applicable, such taxes will be charged at the appropriate rate. In the event that **OBH** is required by applicable law to pay or remit such Taxes, the Buyer shall reimburse **OBH**. The Buyer shall not pay for taxes on **OBH**'s net income.

### 5. Buyer Data.

**5.1 Ownership of Buyer Data.** The Buyer retains ownership of all Buyer Data. The Buyer warrants that it has obtained all rights, consents and permissions necessary to use and input the Buyer Data into the **OBH** Solution(s) and Services, and to grant the rights to **OBH** set forth in clause 5.2 below and that the Buyer's performance of this Agreement and any and all Call-Off Contracts will not conflict with the Buyer's privacy policy or any term or obligation of any other agreement to which the Buyer is a party. The Buyer is solely responsible for the Buyer Data and will not provide, post or transmit any Buyer Data or any other information, data or material that:

- a. infringes or violates any Intellectual Property Rights or, publicity/privacy rights, law or regulation and shall ensure that it has obtained all necessary consents to enable **OBH** to use the Buyer Data as contemplated by this Agreement and relevant Call-Off Contract; or
- b. contains any viruses or programming routines intended to damage, or surreptitiously intercept or expropriate any system, data or personal information.

**5.2 Access to Buyer Data.** In order to enable **OBH** to provide Services to the Buyer as contemplated under this Agreement and relevant Call-Off Contract, it will be necessary for the Buyer to disclose to **OBH** and enable **OBH** to have access to Buyer Data. **OBH** will use the Buyer's Data only as required to provide the Services and in accordance with the provisions of this Agreement and relevant Call-Off Contract.

**5.3 No Control over Buyer Data.** The Buyer acknowledges that **OBH** exercises no control over or liability for Buyer Data. The Buyer shall ensure that the provision by or on behalf of the Buyer of the Buyer Data complies with all applicable laws and regulations. All Buyer Data submitted under a Buyer's User ID will be deemed to have been submitted by the Buyer.

**5.4 Data Encryption.** When and if applicable, the Buyer will supply **OBH** with appropriate data file extracts in accordance with the **OBH** file extract specification delivered by **OBH**. The Buyer will ensure that all files delivered to **OBH** will conform to this specification or meet a mutually acceptable format. The Buyer may be required to transmit all Buyer Data to **OBH** only in an encrypted format, and **OBH** will be responsible for the security and protection of such Buyer Data after **OBH** has extracted and decoded the Buyer Data from the secure method of transfer.

**5.5 Business Rules.** **OBH** shall assist the Buyer to define and document the appropriate business rule requirements for the configuration of the **OBH** Solution(s) to be provided to the Buyer hereunder; provided, however, that the Buyer shall be solely responsible for

- a. the determination of the appropriate business rules required to satisfy the specific business requirements of the Buyer in its use of the **OBH** Solution(s) and
- b. any decisions made by the Buyer based upon the reports and information generated by the **OBH** Solution(s) based upon such business rules.

**5.6 System Testing.** Subject to all applicable laws and the confidentiality obligations in this Agreement, **OBH** may use data capture and analysis tools to analyse data and information in an aggregated form for the purpose monitoring and improving system performance and generating statistics and system metrics.

**5.7 Monitoring Rights.** The Buyer acknowledges and agrees that **OBH** may monitor the Buyer's use of the **OBH** Solutions(s), including Buyer Data.

## **6. Ownership.**

**6.1** As between the parties, **OBH** (and its licensors, where applicable) own and will retain all right, title and interest (including all Intellectual Property Rights) in:

- a. the Services, the System, the **OBH** Solution(s);
- b. any software or hardware provided by **OBH** to the Buyer to facilitate the Buyer's utilisation of the Services;
- c. any domain names provided by **OBH** in connection with the provision of the Services;
- d. all Derived Data;
- e. all business rules, all report formats generated by the Services and all **OBH** Confidential Information; (including any business rules incorporated into the **OBH** Solution or System); and

- f. any revisions, modifications, enhancements and derivative works of any items described in (a) to (e) (inclusive) above.

6.2 The Buyer (and its licensors, where applicable) own and will retain all right, title and interest (including all Intellectual Property Rights) in the Buyer Data.

6.3 **Use of Buyer Data.** The Buyer acknowledges and agrees that as part of the Services **OBH** shall aggregate, analyse, combine, and create derivative data from Buyer Data. The Buyer hereby grants to **OBH** a non-exclusive, irrevocable, sub-licensable, worldwide, royalty-free licence to use, store, transmit, display, copy, modify, adapt, enhance, amend or exploit any Buyer Data embedded within or forming part of the Derived Data for the purpose of its business use, provided that, when **OBH** does so outside of the context of the Services to the Buyer for which the Buyer provided the Buyer Data, **OBH** shall present the Aggregated Buyer Data in a form that does not identify the Buyer or permit the tracing of individual data elements to the Buyer or other persons. **OBH** hereby grants to the Buyer a non-exclusive, irrevocable (except in the event of non-payment of Fees or breach of the Agreement and/or relevant Call-Off Contract), sub-licensable, worldwide, royalty-free licence to use, store, transmit, display, copy any Derived Data provided to it by **OBH** as part of the Services for the sole purpose of its non-commercial internal business use.

6.4 **OBH** retains all rights not expressly granted herein to the Buyer hereunder.

## 7. Confidentiality.

7.1 The term "Confidential Information" shall mean any and all information which is disclosed by either party to the other verbally, electronically, visually, or in a written or other tangible form which is either identified or should be reasonably understood to be confidential or proprietary, including but not limited to this Agreement and each Call-Off Contract and the terms, conditions and pricing contained herein.

7.2 **OBH** Confidential Information includes, but is not limited to, **OBH's** proprietary technology, trade secrets, computer programs, software, formulas, data, designs, know-how, inventions, techniques, marketing plans, documentation, strategies, and forecasts.

7.3 Buyer Confidential Information includes, but is not limited to, Buyer Data, financial data, personnel records, patient records, medical records, health information, information regarding third party claims, marketing information and any other data or information in any form relating to the business affairs of the Buyer.

7.4 Confidential Information does not include information of the other party that is

- a. publicly available,
- b. already in such party's possession and not subject to a confidentiality obligation,
- c. obtained by such party from third parties authorised to make such disclosure, or
- d. independently developed by such party without reference to or use of the other party's Confidential Information.

7.5 Each party agrees that it will not disclose the other party's Confidential Information to any third party, except as authorised by this Agreement and/or relevant Call-Off Contract. Each party agrees that it will disclose Confidential Information of the other party only to those of its employees and contractors who need to know such information and who have previously agreed to be bound by the non-disclosure terms and conditions of this Agreement and/or relevant Call-Off Contract. Each party agrees that it will treat all Confidential Information of the other party with the same degree of care as it accords its own Confidential Information; each party represents that it exercises reasonable care to protect its own Confidential Information.

7.6 No violation of this Section shall occur by reason of a disclosure of Confidential Information in response to a valid order by a court or other governmental body, provided that the party subject to such order provides the other party with commercially reasonable prior written notice of such disclosure in order to permit the other party to seek confidential treatment of such information, and provided that the party subject to such order has been advised by counsel that such disclosure is required by law.

## 8. Term and Termination.

### 8.1 Term.

- a. The Agreement shall commence on the Effective Date and, unless terminated earlier in accordance with its terms, shall continue for the Initial Term.
- b. Each Call-Off Contract shall commence on the Call-Off Contract Start Date and, unless terminated earlier in accordance with its terms, shall continue for the Term as specified in the Call-Off Contract or if no Term is specified, for the Initial Term.
- c. The Initial Term means: Twenty-four months from contract signature. Upon completion of the Initial Term, this Agreement (and any relevant Call-Off Contracts) shall be terminated with immediate effect, unless otherwise agreed between the parties in writing.

## 8.2 Termination with Cause.

- a. Either party may terminate this Agreement upon written notice to the other party if the other party defaults in the performance of any of its material obligations under this Agreement (except for a default in payments by the Buyer which shall be subject to clause 8.3, which default has not been substantially cured within thirty (30) days after written notice has been given to the defaulting Party specifying the default.
- b. Either party may terminate a Call-Off Contract upon written notice to the other party if the other party defaults in the performance of any of its material obligations under that Call-Off Contracts (except for a default in payments by the Buyer which shall be subject to clause 8.3), which default has not been substantially cured within thirty (30) days after written notice has been given to the defaulting Party specifying the default.
- c. **OBH** may suspend access to the **OBH** Solution(s) in the event it reasonably believes the Buyer to be in violation of Section 2 of this Agreement.

**8.3 Termination for Non-payment.** If the Buyer defaults in the payment when due of any amount due to **OBH** and does not cure such default, within ten (10) days after written notice has been given to the Buyer, **OBH** may terminate the Agreement and/or the relevant Call-Off Contract.

## 8.4 Effect of Termination.

- a. Upon termination or expiration of this Agreement and/or any Call-Off Contract for any reason, **OBH** may at its discretion immediately terminate by written notice the Agreement and/or any other Call-Off Contracts (as applicable).
- b. Upon termination or expiration of this Agreement and/or any Call-Off Contract for any reason, each party shall return to the other party all property (including but not limited to any Confidential Information) of the other party in its possession or control (save to the extent that the same is required to be retained for the purposes of providing or receiving the benefit of the Services under or pursuant to a separate Call-Off Contract).
- c. **OBH** will immediately cease performing all Services provided pursuant to the terminated Call-Off Contract (s) and all Buyer and Authorised User access to the relevant Services shall be immediately terminated.
- d. Upon termination or expiration of this Agreement, **OBH** shall make available for download by the Buyer via secure FTP no later than 30 days after the date of such termination or expiration of the Agreement a copy of the Buyer Data contained in the **OBH** Solution(s). Following such period **OBH** shall be entitled to delete the Buyer Data in its possession.

**8.5 Survival.** The following provisions shall survive the termination or expiration of this Agreement and relevant Call-Off Contract: Section 2 ("Restrictions on Use"), Section 3 ("Users"), Section 4 ("Fees and Payments"), Section 5 ("Buyer Data"), Section 6 ("Ownership"), Section 7 ("Confidentiality"), Section 8 ("Term and Termination"), Section 9("Disclaimer of Warranty"), Section 10 ("Internet Disruption"), Section 11 ("Limitation of Liability"), Section 14 ("General Provisions") and Section 15 ("Definitions").

## 9. Limited Warranties and Disclaimer of Warranties.

**9.1 OBH** warrants that the Services will conform in all material respects to the specifications contained in the Call-Off Contract and that any Services shall be provided in a workmanlike and professional manner by competent personnel.

9.2 Except as expressly set forth in this section 9, neither **OBH** nor its suppliers make any representations or warranties or conditions, express or implied, including, without limitation, any implied warranties of title, non-infringement of third party rights, merchantability or fitness for a particular purpose or any implied warranties arising out of course of performance, course of dealing or usage of trade. Without limiting the generality of the foregoing, **OBH** does not warrant that:

- a. the **OBH** Solution(s) will operate in combination with other hardware, software, systems or data not provided by **OBH**, except as expressly specified by **OBH** in such Call-Off Contract,
- b. that the operation of the **OBH** Solution(s) will be uninterrupted or error free.

9.3 **OBH** will have no obligation under Section 9.1 or 9.2 if any non-conformance or failure of, or error in, the Services or **OBH** Solution(s) is caused by:

- a. modification of the **OBH** Solution(s) by any person other than **OBH** or its agents,
- b. the use or attempted use of any software, hardware, attachment, feature or device other than that supplied by and/or specifically approved in writing by **OBH**,
- c. failure of the Buyer to provide any information, data, support or assistance required under this Agreement and/or relevant Call-Off Contract or otherwise necessary for **OBH** to perform its obligations hereunder or
- d. any use of the **OBH** Solution(s) that is not in accordance with this Agreement, the Call-Off Contract or related documentation provided by **OBH**.

## **10. Internet Disruption.**

10.1 The Buyer's access to the Services may be subject to limitations, delays or other disruptions inherent to use of the internet. In no event shall **OBH** be liable for any damages (whether in contract or in tort) attributable to the public internet infrastructure or Buyer's ability to connect to the internet.

## **11. Limitation of Liability.**

11.1 Nothing in this Agreement or any Call-Off Contract shall exclude or limit either party's liability in respect of:

- a. death or personal injury caused by its negligence;
- b. fraud or fraudulent misrepresentation;
- c. as regards the Buyer, any claim by **OBH** for Fees; and
- d. any liability which may not otherwise be limited or excluded under applicable law.

11.2 Neither party shall be liable for:

- a. special, incidental, indirect or consequential damages; or
- b. any loss of profit, loss of business, loss of revenue, loss of contracts, loss of goodwill, loss or, damage to or corruption of data, loss of anticipated savings whether such losses are of the type specified in 11.1.a or otherwise ; arising out of this Agreement or any Call-Off Contract ( in respect of all claims, losses or damages, of whatever nature, whether arising from tort (including negligence), contract (or under indemnity), under statute, non-fraudulent misrepresentation, or otherwise), even if such party has been advised of the possibility of such damages.

11.3 Subject to Section 11.1 and 11.2 **OBH**'s total cumulative liability in respect of all claims, losses or damages, of whatever nature, whether arising from tort (including negligence), contract (including indemnity), under statute, non-fraudulent misrepresentation, or otherwise shall not exceed:

- a. in respect of each Call-Off Contract the total Fees actually paid to **OBH** by the Buyer under that Call-Off Contract in the twelve (12) month period immediately preceding the formal written notice of the first claim for liability (where a claim is made after the termination of the Call-Off Contract, this limitation shall be calculated as being an amount equivalent to the amount of total Fees paid in the final twelve (12) months of the Call-Off Contract);
- b. in respect of all claims arising under or in connection with this Agreement and the Services (including all Call-Off Contracts) the total Fees actually paid to **OBH** by the Buyer in the twelve (12) month period immediately preceding



the formal written notice of the first claim for liability hereunder (where a claim is made after the termination of this Agreement, this limitation shall be calculated as being an amount equivalent to the amount of total Fees paid in the final twelve (12) months of this Agreement or last Call-Off Contract (as applicable)); and

- c. all claims that the Buyer may have against **OBH** will be aggregated to satisfy this limit and multiple claims will not enlarge this limit.

## 12. Indemnity.

12.1 Subject to Section 12.3, **OBH** shall at its own expense defend, or at its option settle any third-party claim or action against the Buyer to the extent alleging that the Services, when used by the Buyer as provided in this Agreement, infringe a third party United Kingdom patent, copyright, trade secret or trademark, and **OBH** shall pay all costs (including reasonable attorney's fees) arising there from and damages finally awarded against the Buyer or paid in settlement thereof. **OBH's** indemnification obligations under this Section are conditioned upon the Buyer giving **OBH**:

- a. prompt written notice of such claims;
- b. reasonable assistance in defending the claim; and
- c. sole authority to control the defense of such claim.

12.2 **OBH** may, at its option and expense, and as the Buyer's exclusive remedy hereunder

- a. replace the **OBH** Solution(s), without additional charge, with a functionally equivalent and non-infringing product;
- b. modify the **OBH** Solution(s) to avoid the infringement;
- c. obtain a license for the Buyer to continue use of the Services at no additional charge to the Buyer; or
- d. cease providing the infringing portion of the Services and refund to the Buyer a portion of the Fees paid for the infringing Services as follows: (i) if termination occurs during the Initial Term, **OBH** shall refund to the Buyer the unamortized portion of any Setup Fees (as set out in the relevant Call-Off Contract) paid for the Services (assuming straight-line monthly amortization of the full amount of such Fees over the duration of the Initial Term); and (ii) if termination occurs at any time during the Term, **OBH** shall refund any prepaid Subscription Fees for the unexpired portion of the then current billing period.

12.3 **OBH** shall have no liability under Section 12.1 or otherwise for any third-party claims arising from or caused by

- a. any use of the Services that is not in accordance with this Agreement and/or relevant Call-Off Contract,
- b. compliance with the Buyer's designs, specifications or instructions or for any Buyer Data.
- c. The indemnification rights of the Buyer pursuant to this Section shall be the exclusive remedy of the Buyer against **OBH** with respect to any infringement claims related to use of the Services or the **OBH** Solution(s).

## 13. Data Protection Laws.

13.1 **OBH** agrees to comply with its obligations under Data Protection Laws (i) prior to 25 May 2018 the Data Protection Act 1998 and any laws or regulations implementing Directive 95/46/EC (Data Protection Directive); (ii) on or after 25 May 2018 the EU General Data Protection Regulation 2016/679(GDPR), and all national implementing legislation; and (iii) all other applicable laws, or regulations replacing, amending, extending, re-enacting or consolidating any of the legislation referred to in (i) or (ii) above from time to time. **OBH** is registered with the Information Commissioner's Office with Registration No: # ZA098768. **OBH** also agrees to comply with the NHS Code of Practice on Confidentiality, November 2003 and UK Caldicott principles for the handling of patient information.

## 14. General Provisions.

14.1 **Assignment.** The Buyer may not assign its rights or delegate its duties hereunder without **OBH's** prior written consent. This Agreement and each Call-Off Contract shall be binding on each party's successors and permitted assignees.

14.2 **Subcontract of Services.** The Buyer agrees that **OBH** may subcontract certain portions of the Services to be performed by affiliates or other third parties in connection with this Agreement and/or relevant Call-Off Contract, provided that no such arrangement shall relieve **OBH** of any of its obligations hereunder.

14.3 **Change in Services.** **OBH** has the right to change, modify, and otherwise convert the technology used to provide the Services and terms under which the Services are offered, provided that the basic functionality and quality of the Services will not be materially affected.



**14.4 Force Majeure.** Except as otherwise provided, if performance hereunder (other than payment) is interfered with by any condition beyond a party's reasonable control, including, but not limited to disruption of Internet access or services, the affected party, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such condition.

**14.5 Governing Law; Venue.** This Agreement and each Call-Off Contract is made and shall be governed by and construed in accordance with English law, excluding its choice of law principles. Exclusive jurisdiction and venue of any actions connected with this Agreement and each Call-Off Contract shall be in English courts. In any action or proceeding to enforce rights under this Agreement and each Call-Off Contract, the prevailing party shall be entitled to recover costs and attorneys' fees.

**14.6 Independent Contractors.** The parties are independent contractors, and no agency, partnership, franchise, joint venture, or employment relationship is intended or created by this Agreement and/or relevant Call-Off Contract. Neither party shall make any warranties or representations on behalf of the other party.

**14.7 Notice.** All notices shall be in writing and sent by regular mail, certified mail, overnight courier, facsimile (if confirmed by mail), or delivered personally to the addresses indicated on the most recent Call-Off Contract executed by the parties, or such other address as either party may indicate by at least ten (10) days prior written notice to the other party. Notices to **OBH** shall be sent to the attention of **OBH** Chief Operating Officer. Notice will be effective on the date shown on the delivery receipt or facsimile confirmation or, in the case of regular mail, actual receipt.

**14.8 Non-Solicitation.** The Buyer shall not during the Term and for a period of one year following its expiration or termination, directly or indirectly, solicit, recruit, employ, retain or hire, either as an employee, agent, subcontract or independent contractor, any employee of **OBH** without **OBH** prior written consent.

**14.9 Severability.** If any provision herein is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

**14.10 No Third Party Beneficiaries.** **OBH** and the Buyer agree that, except as otherwise expressly provided in this Agreement and/or relevant Call-Off Contract, there shall be no third-party beneficiaries to this Agreement or relevant Call-Off Contract.

**14.11 Publicity.** Neither party shall issue publicity or general marketing communications concerning the other party without such other party's prior written approval. Notwithstanding the foregoing, the Buyer agrees that it shall use commercially reasonable efforts to:

- a. assist **OBH** in its preparation of a press release announcing the Buyer as a new **OBH** client within fifteen (15) days after the Effective Date;
- b. provide **OBH** with a file containing the Buyer's logo(s) for use on **OBH**'s Website and in its sales collateral;
- c. assist **OBH** in the preparation of a case study during the Initial Term for external use that detail the Buyer's use of the Services, featuring specific results on return on investment associated with the Buyer's use of the Services; and
- d. serve as a reference to media and/or industry analysts and to **OBH** potential Buyers.

**14.12 TUPE.** The Buyer shall indemnify **OBH** against all costs, claims, demands and expenses directly or indirectly incurred by the **OBH** in relation to any agent or employee of the Buyer or any third party whose contract of employment is deemed to have transferred to **OBH** pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended or replaced) as a result of or in connection with the entry by **OBH** into this Agreement and relevant Call-off Contract.

**14.13 Entire Agreement; Waiver.** This Agreement and each Call-Off Contract (including any attachments) sets forth the entire understanding and agreement of the parties and supersedes any and all oral or written agreements or understandings between the parties, as to the subject matter of this Agreement and each Call-Off Contract. Only a subsequent agreement signed by both parties may change this Agreement and/or any Call-Off Contract. The waiver of a breach of any provision of this Agreement and/or relevant Call-Off Contract will not operate or be interpreted as a waiver of any other or subsequent breach. The terms and conditions of any purchase order or other ordering document issued by Buyer in connection with this Agreement and/or relevant Call-Off Contract that are in addition to or inconsistent with the terms and conditions of this Agreement and/or relevant Call-Off Contract shall not be binding and shall not be deemed to modify this Agreement and/or relevant Call-Off Contract unless agreed to in writing by an authorised representative of **OBH**.

## 15. Definitions.

- a. "Authorised Users" means the named employees or contractors of the Buyer or a Buyer Affiliate authorised to use the Services pursuant to a Call-Off Contract and whose identity has been reported in writing to **OBH** (and in the case of contractors, are not competitors of **OBH**).
- b. "Buyer Affiliate" means any legal entity that the Buyer controls through the Buyer's beneficial ownership of more than 50% of the voting interests in that entity.
- c. "Buyer Data" means any data or information entered by the Buyer and/or Authorised Users into the **OBH** Solution(s) or provided to **OBH** by the Buyer or Authorised Users for use with the Services excluding Derived Data.
- d. "Call-Off Contract" means each ordering document setting out the specific Services agreed in writing executed by authorised representatives of both the Buyer and **OBH** and entered into in connection with this Agreement.
- e. "Derived Data" means any information, data (including aggregated data), trends, analyses, metadata or other data which may be created or derived by **OBH** from or based upon the Buyer Data; Order Form.
- f. "Intellectual Property Rights" means any intellectual property or proprietary rights, including without limitation copyright rights, moral rights, trademarks (including logos, slogans, trade names and service marks), patent rights (including patent applications and disclosures), know-how, inventions, rights of priority, and trade secret rights, or any similar right recognized in any country or jurisdiction in the world. in each case whether registered or not and, where these rights can be registered, any applications to register or rights to apply for registration of any of them, and where applicable any goodwill therein;
- g. "**OBH** Solution(s)" means the **OBH** software application Solution(s) in object code format and related user documentation subscribed for by the Buyer on a Call-Off Contract, together with any documentation, tools, utilities, methodologies, specifications, techniques or other materials, know-how related thereto.
- h. "Order Form" means the order form set out in Part A of the Call-Off Contract to be used by a Buyer to order G-Cloud Services.
- i. "Services" means the services ordered by the Buyer as set out in the Order Form of each Call-off Contract.
- j. "System" means the **OBH** Solution(s) in combination with all hardware, software, communications systems, network and other infrastructure used by **OBH** to host and operate the **OBH** Solution(s) and provide the Services.
- k. "Support Services" means advisory services to help prepare the Buyer for commissioning and/or successful utilisation of the **OBH** Solution(s), as set out in the relevant Call-Off Contract.
- l. "Term" means the period indicated as the term of the Call-Off Contract executed by **OBH** and the Buyer, as set out in the

AUTHORISED REPRESENTATIVES OF THE BUYER AND **OBH** HAVE READ AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT AND ALL DOCUMENTS ATTACHED HERETO.

The parties have caused this Agreement to be effective as of ..... (the “Effective Date”).

**On Behalf of (The Buyer)**

Authorised Signature

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Printed Name and Title

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Business Address

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**On Behalf of OBH**

Authorised Signature

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Printed Name and Title

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Business Address

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