



**OnCloud
Consulting**
(Scotland) Ltd

OnCloud Consulting (Scotland) Limited

G-CLOUD 13 Services Agreement Terms and Conditions



**OnCloud
Consulting**
(Scotland) Ltd

Terms and Conditions

Services Agreement

By signing these Terms and Conditions, you authorise us to proceed on your Instructions, and you acknowledge that you have read the Terms and Conditions.

This Services Agreement ("the Agreement") is between:

OnCloud Consulting (Scotland) Limited with its registered office at 8/22 Portland Gardens,
Edinburgh EH6 6NJ (known as "OnCloud")

And _____

Of _____

(Known as "**Customer**"), together the Parties

The effective date of this agreement shall be: _____

Signed for and on behalf of:
Customer:

Signed:

Name:

Title:

Date:

Signed for and on behalf of:
OnCloud:

Signed:

Name:

Title:

Date:

OnCloud Consulting (Scotland) Ltd

Registered Office: 8/22 Portland Gardens, Edinburgh EH6 6NJ -
Registered in Scotland Number: SC611911



Terms and Conditions

1 DEFINITIONS

- 1.1 “Statement of Work” shall mean a document specifying the Services, Deliverables, Acceptance Criteria, Charges, Payment Schedule, Solution Design, Project Plan, Order Form (if applicable) and the Parties’ responsibilities in OnCloud’ standard form which together when signed by the Parties constitute a Work Package and an example of which is attached to this agreement as Appendix A.
- 1.2 “Solution Design” shall mean the document specifying the detailed technical or functional specifications to be provided that will be accepted by OnCloud and Customer.
- 1.3 “Project Plan” shall mean the document detailing the timing and the level of resource required by the Parties to perform the Services and create the Deliverables described in the Statement of Work
- 1.4 “Agreement” means this Agreement and any other schedules or appendices attached to this Agreement which is made in writing and is signed by an Authorised Signatory of each Party.
- 1.5 “Order Form” shall mean the document’s detailing the provisions of the Services, Third Party Software, incorporating the terms of this Agreement and example’s of which are attached to this Agreement as Appendix B.
- 1.6 “Consulting Day” shall mean a core working day of 7.5 hours from 9.00am to 5.30pm with an hour break for lunch, Monday to Friday, excluding UK public holidays.
- 1.7 “Confidential Information” means all information obtained by the Parties in connection with the discussions leading up to or in the performance of this Agreement in whatever format or media obtained (and whether verbal or written) which is marked or notified to the recipient as being confidential, or which in the normal course of business would be considered to be of a confidential nature, including but not limited to business plans, financial information, information of a price sensitive nature and information pursuant to Clause 12.13
- 1.8 “Service(s)” shall mean work performed pursuant to the Statement of Work and Solution Design.
- 1.9 “Deliverable(s)” shall mean any document, ideas or know how, all bespoke software, software configuration and related reports, specifications and user manuals developed by OnCloud in the course of performance of the Services.
- 1.10 “Material(s)” shall mean any design, specifications, instruction, software, data or other like documents supplied by either Party to this Agreement to the other for the performance of the Service.
- 1.11 “Charges” shall mean fees and expenses as further defined in Clause 3.1 and 3.2 and as set out in the Payment Schedule or Order Form.
- 1.12 “Go Live” of a Deliverable shall be defined as use of such Deliverable by more than one business or technical user in the live production environment unless otherwise described in a Statement of Work.
- 1.13 “Payment Schedule” shall be a document incorporated into a Statement of Work or Order Form detailing the agreed payment plan for the Work Package, in addition to, or



Terms and Conditions

replacing, Clause 3.

- 1.14 “Acceptance” shall occur in accordance with the procedures outlined in Clause 9 of this agreement.
- 1.15 “Third Party Software” shall mean software provided as part of the overall transaction that is purchased from a third Party to this Agreement or is otherwise supplied by Customer or OnCloud and is used to perform the Services or the Agreement.
- 1.16 “Work Package” shall mean a collection of Services, and Deliverables governed by a duly authorised Statement of Work that OnCloud will from time to time deliver to Customer.
- 1.17 “Authorised Signatories” means those people from time to time authorised to sign Statements of Work.
- 1.18 “OnCloud” means OnCloud Limited and any company which is its subsidiary, holding company or a subsidiary of its holding company where a company is a subsidiary of another company (its “holding company”) if that other company holds a majority of the voting rights in it, is a member of it and has the right to appoint or remove a majority of its board directors, or is a member of it and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in it or if it is a subsidiary (as defined above) of a company which is itself a subsidiary of that other company.
- 1.19 “Customer” means **Customer Name** and any company which is its subsidiary, holding company or a subsidiary of its holding company where a company is a subsidiary of another company (its “holding company”) if that other company holds a majority of the voting rights in it, is a member of it and has the right to appoint or remove a majority of its board directors, or is a member of it and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in it or if it is a subsidiary (as defined above) of a company which is itself a subsidiary of that other company
- 1.20 “Acceptance Criteria” means those tests which the Services and or Deliverables need to pass to achieve Acceptance according to Clause 9.
- 1.21 “Programme Plan” means Customer’s plan to implement the Work Package including but not limited to a training plan, a communication plan, and any other activities required to implement the Work Package.
- 1.22 “Dispute Resolution Procedure” means the procedure described in Clause 11.
- 1.23 “Expenses” means reasonable expenses for accommodation, travel and subsistence incurred whilst performing the Services.
- 1.24 “Payment Milestone” means a payment due from the Customer on the achievement by OnCloud of a Deliverable listed within a Payment Schedule.
- 1.25 “Acceptance Certificate” means OnCloud standard form of Acceptance of Deliverables attached as Appendix C.
- 1.26 “Change Control Notice” mean OnCloud standard form of change control attached as Appendix D.
- 1.27 “Key Roles” means those roles to be fulfilled by personnel from either Party and agreed by



Terms and Conditions

the Parties to be essential for the successful performance of the Services.

1.28 "Software Programs" means software available for sale from OnCloud and for which OnCloud is either the legal owner or is acting as a distributor for a 3d Party.

1.29 Unless the context otherwise requires, each reference in this Agreement to:

1.29.1 "writing", and any cognate expression, includes a reference to any communication effected by facsimile transmission, email or similar means.

1.29.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time.

1.29.3 "this Agreement" or to any other agreement or document referred to in this Agreement means this Agreement or such other agreement or document as amended, varied, supplemented, modified or novated from time to time and includes the Appendices.

1.29.4 Clauses and Appendices are references to Clauses and Appendices of and to this Agreement and references to Sub-Clauses and Paragraphs are, unless otherwise stated, references to Sub-Clauses or Paragraphs of the Clause or Appendix in which the reference appears.

1.30 In this Agreement:

1.30.1 all agreements on the part of any of the Parties to the Agreement which comprise more than one person or entity shall be joint and several.

1.30.2 any reference to the Parties includes a reference to their respective personal representatives, heirs, successors in title and permitted assignees.

1.30.3 any reference to a person includes any body corporate, unincorporated association, partnership or any other legal entity.

1.30.4 words importing the singular number include the plural and vice versa; and

1.30.5 words importing any gender include any other gender.

1.30.6 the words "includes" and "including" are not used by way of limitation.

1.31 The headings in this Agreement are for convenience only and shall not affect its interpretation.

2 SERVICES

2.1 OnCloud will provide to Customer, and Customer shall pay for, the Services in accordance with the terms of this Agreement and as set out in each Statement of Work or Order Form.

2.2 Customer may request and OnCloud may recommend changes to the Agreement and any applicable Statement of Work and such changes will be governed in accordance with Clause 10.



Terms and Conditions

- 2.3 OnCloud reserves the right to make changes to any Services or Work Package which is required to conform to changes to any applicable law, regulation or safety requirement or which do not materially affect their quality or performance. Such changes will be governed in accordance with Clause 10. For the avoidance of doubt this does not apply to ongoing support and maintenance of pre-existing Deliverables, the ongoing support of which is covered by agreements other than this Agreement, its Appendices and/or applicable Statements of Work.
- 2.4 Customer shall be responsible for giving OnCloud any necessary information, and for the accuracy of such information relating to a Work Package within a sufficient time to enable OnCloud to perform the Services applicable to that Work Package.
- 2.5 Customer shall undertake ultimate responsibility for the direction and control of a Work Package unless otherwise agreed and detailed in the applicable Statement of Work.
- 2.6 OnCloud shall use its reasonable endeavours to complete the work by the anticipated date of completion.
- 2.7 Should OnCloud suffer additional loss or incur extra expense or should the extent of the Services be increased by reason of any delay, variation, interruption or suspension of the Services arising from any act or omission of the Customer, its employees, agents or sub contractors, or delay that causes OnCloud not to comply with any of its obligations contained in this Agreement, including the timely provision of the Service and items specified in Clause 6, OnCloud suffering such loss or expense shall be entitled to compensation, not exceeding the daily time and materials cost and incurred expenses of maintaining the Staff allocated to the service for the duration of such delay. In this case, OnCloud suffering the loss or extra expense shall promptly notify the Customer of the reasons why it may incur in such additional costs so that the Customer shall have an early notice in order to minimise and assess the causes of such costs. The Parties agree to take reasonable steps to mitigate such costs as may be incurred as any result of any delay defined by this Clause. Should any delays to the Services being performed in accordance with the Scope of Work be at the default of Customer, OnCloud reserve the right to alter the payment dates as detailed in the Payment Schedule or Order Form, and the overall Charges.
- 2.8 The Parties shall maintain the Key Roles detailed in any applicable Statement of Work to the extent needed during the performance of the Services. Each will consult the other prior to replacing or removing any individual assigned to any of such Key Roles or the Key Role itself and other's consent shall not be unreasonably withheld or delayed. For the avoidance of doubt, the other Party's consent shall not be required where the cause of replacement or removal is beyond that Party's reasonable control, including but not limited to cases of long term sickness, voluntary leave of absence or dismissal.

3 CHARGES, PAYMENT AND TAXES

3.1 Fees for Services

The Charges for the performance of the Services are outlined and detailed in the Payment Schedule in each Statement of Work or Order Form or absent of a Payment Schedule the Charges shall be levied solely according to Clause 3. Charges may be levied on a time and materials basis (in which case any estimate of the time or days required to perform the Services, shall be deemed a non-binding estimate for Customer's budgeting and OnCloud's resourcing requirements) or on a fixed price basis (in which case the price is fixed for the scope of services described in the applicable Statement of Work). Any alterations to the Charges will be in the form of a change pursuant to Clause 10.



Terms and Conditions

3.2 ***Incidental Expenses***

Customer shall reimburse OnCloud for receipted Expenses reasonably incurred in performing the Services. Expenses shall be invoiced monthly at cost. All other out of pocket expenditure not covered by Expenses must be authorised in advance by the Customer. Where Expenses are necessary the following rules shall apply unless otherwise stated in an applicable Statement of Work:-

- (a) Travel by train shall not include first class travel (except where absolutely necessary)
- (b) Mileage will be chargeable at a rate of 45p per mile
- (c) Travel by air shall be in economy class unless travel time is > 4 hours
- (d) Hotel accommodation will be limited to a maximum of £250 per day
- (e) Meals and subsistence will be limited to a maximum of £50 per day
- (f) Parties may agree a flat rate per diem

3.3 ***Invoicing and Payment***

3.3.1 The following payment terms shall apply if the parties have agreed a Payment Schedule in the applicable Statement of Work or Order Form:

- (a) invoices will be issued by OnCloud in accordance with the Payment Schedule by reference to Payment Milestones; and
- (b) Charges will be payable no later than 10 (ten) days from the date of receipt of invoice.

3.3.2 The following payment terms shall apply if the parties have not agreed a Payment Schedule:

- (a) OnCloud shall invoice Customer monthly in arrears for incurred time and Expenses; and
- (b) Charges will be payable no later than 30 (thirty) days from the date of receipt of invoice.

3.4 Any amount which is not the subject of a bona fide dispute and which is payable by Customer to OnCloud under this Agreement which has not been paid in accordance with Clause 3.3 shall be deemed overdue and OnCloud may, without prejudice to any other rights which it may have in respect of Customer's failure to pay amounts when due: (i) suspend the provision of the Services (or any part thereof) until payment is received in full; (ii) suspend the provision of any services provided to Customer (including without limitation any hosting services) pursuant to any other agreement between OnCloud and Customer until payment under this Agreement is received in full; and/or (iii) require Customer to make a late payment charge. The aforementioned late payment charge will be calculated on a day to day basis from the date payment should have been made, until payment is received in full (together with interest) and such interest will be calculated at a rate of 2% above the applicable LIBOR rate for the time being in force during the period. Customer hereby acknowledges and agrees that the suspension of any services pursuant to (i) or (ii) above shall not:

3.4.1 suspend or absolve Customer of its obligations to make payments to OnCloud or otherwise comply with any obligations under the applicable agreement; nor



Terms and Conditions

3.4.2 be deemed a breach of the relevant agreement between OnCloud and Customer and shall not entitle Customer to any remedy as against OnCloud (whether at law or otherwise and including, without limitation, any service credits which might be available) in respect thereof.

3.5 ***Consulting Day***

3.5.1 OnCloud may agree to vary the Consulting Day to meet exceptional needs of Customer, but, subject to prior agreement with the Customer (such agreement not to be unreasonably withheld) reserves the right to charge additional fees for any hours worked in excess of 7.5 hours (the first 30 minutes will not be charged for) as follows:

3.5.2 For weekdays a charge of 125% of the standard hourly rate based on the rates defined in the applicable Statement of Work

3.5.3 For weekends and UK public holidays: 150% of the standard hourly rate based on the rates defined in the applicable Statement of Work for Saturdays and 200% of the standard hourly rate based on the rates defined in the applicable Statement of Work for Sundays and UK public holidays.

3.6 ***Taxes and Duties***

The charges do not include taxes or duties. All additional taxes or duties which OnCloud shall have to pay or collect in connection with the supply of Software Programs or Services will be billed to and paid for by the Customer. VAT will be charged in addition at the rate in effect at date of invoice. This shall not apply to taxes based on OnCloud' income.

3.7 ***Orders***

Customer shall issue a purchase order in accordance with the details on the Order Form where applicable. Where purchase orders are not raised by Customer in the normal course of business, Customer shall sign the Order Form.

Customer may order Software Programs from OnCloud and any such order constitutes a separate Work Package with accompanying Order Form and Payment Schedule.

4 **TERM AND TERMINATION**

4.1 ***Term***

4.1.1 This Agreement shall commence on its Effective Date and shall continue until completion of the Services or as terminated by either Party pursuant to Clauses 4.2, 4.2.1. and 4.2.2

4.2 ***Termination for Breach***

Either Party may terminate this Agreement if the other Party is in material breach of the Agreement following written notice specifying the breach and where the breach capable of remedy has not been cured within 30 (thirty) days of receipt of such written notice. Consent to extend the cure period should not be unreasonably withheld, so long as the Party in breach has commenced cure during the 30 (thirty) day notice period and pursues cure of the breach in good faith.



Terms and Conditions

4.2.1 Termination for Insolvency

Either Party may terminate this agreement without notice or cancellation charge, if the other Party suffers any of the following: a) a meeting has been convened for the passing of a resolution for its winding up, b) it enters into a voluntary arrangement with its creditors, c) it has appointed an administrator, d) is subject of a petition presented for its insolvency or e) anything analogous to the foregoing occurs under Scottish law in relation to it

4.2.2 Termination for Convenience

In addition to the above the Customer will, unless otherwise stated in the applicable Statements of Work, be entitled to terminate any applicable Work Packages individually or collectively at any time without cause, subject to giving OnCloud at least 60 calendar days prior written notice. For the avoidance of doubt Termination for Convenience cannot deny OnCloud reaching the end of a milestone. Should the 60 Calendar days notice mean a milestone end date is not reached then the termination date for convenience shall be the number of working days to complete the milestone plus 10 working days.

4.3 Effect of Termination

The Parties' rights and obligations under Clauses 3.3, 3.4, 3.5 and 4.3 and Clauses 5, 6 and 7 shall survive termination of this Agreement and/or any Work Packages together with any other clauses which are stated or by their nature are intended to continue after termination nor shall it affect any accrued rights or existing obligations already incurred whether relating to payment or otherwise. Termination of this Agreement and/or any Work Packages shall not prevent either Party from pursuing other remedies available to it, including but not limited to injunctive relief, nor shall termination relieve Customer of its obligations to pay all undisputed and due Charges that have accrued prior to such termination. Termination of an individual Work Package shall not affect the continuation of the Agreement or any other Work Package.

4.3.1 In the event of termination under Clause 4 OnCloud will, in agreement with the Customer, and during the notice period, complete such Services and Deliverables as deemed reasonable by the Parties such that the applicable Work Packages may be handed to the Customer for completion at some later date.

4.3.2 In the event of termination of this Agreement for any reason all property in the possession of either Party and belonging to the other which shall include, but not be limited to, Materials and Confidential Information, shall be returned immediately to the other Party.

4.3.3 In the event that this Agreement is terminated by OnCloud pursuant to Clause 4.2 or Clause 4.2.1, Customer acknowledges and agrees that OnCloud shall be entitled to immediately terminate, without liability and at its sole discretion, any other agreement between OnCloud and Customer by providing written notice to Customer. Customer acknowledges and agrees that the termination of any additional agreement pursuant to this Clause 4.3.3 shall not entitle Customer to any remedy as against OnCloud (whether at law or otherwise) in respect thereof.

4.4 Cancellation of Scheduled Services

4.4.1 OnCloud reserves the right to charge for scheduled Services described in a Statement of Work or Order Form (or otherwise constituting part of a Work Package) which are



Terms and Conditions

cancelled by Customer giving less than 14 days written notice.

5 INDEMNITY, WARRANTY AND LIABILITY

5.1 Indemnity

5.1.1 Either Party to this Agreement providing Materials ("Provider") will defend and indemnify the other Party to this Agreement receiving such Materials ("Recipient") against a claim that any Material furnished by the Provider and used by the Recipient as permitted by the Terms of this Agreement infringes any third Party's copyright or patent provided that (a) Recipient notifies Provider in writing within 30 (thirty) days of the claim; (b) Provider has sole control of the defence and all related settlement negotiations; and (c) Recipient provides Provider (at the providers expense) with the assistance, information and authority reasonably necessary to perform the above. All reasonable costs and expenses incurred by Recipient in providing such assistance will be reimbursed by Provider.

5.1.2 In the event that some or all of the Material is held or is believed by the Provider to infringe any third Party's copyright or patent, the Provider shall have the option, at its sole expense to,

(b) modify the Material to be non-infringing or supply substitute non-infringing Material to the Recipient provided that the replacement Material has the same level of performance and functionality; (b) to obtain for the Recipient the right to continue using the Material; or (c) to require return of the infringing Material from the Recipient and terminate all rights thereto. If such return materially affects either Party's ability to meet its obligations under this

Agreement, then either Party may, by written notice, terminate the Services in accordance with Clause 4. If Customer is the Recipient then upon such termination Customer shall be entitled to recover all fees paid by Customer for that portion of the Material, or in the event that the infringement renders the entire Work Package unusable, all the fees paid by the Customer for that Work Package.

5.1.3 The Provider shall have no liability in relation to any claim of infringement resulting from (a) the Recipient's use of a superseded or altered release of some or all of the Material if such infringement would have been avoided by the use of a subsequent unaltered release of the Material which is provided or offered to be provided to the Recipient provided that the replacement Material has the same level of performance and functionality; or (b) any information, design, specification, instruction, software, data or Material not furnished by the Provider.

5.2 Warranties

5.2.1 OnCloud warrants that it is the sole owner or has the right to use all intellectual property rights of all Materials utilised in accordance with the Services and, subject to Clause 7.3, the Services will be performed with reasonable skill and care consistent with generally accepted computer software services industry practices. To the extent permitted by law, all other warranties and conditions or other terms, whether express or implied, are expressly excluded, including the implied warranties or conditions of merchantability, satisfactory quality and fitness for a particular purpose.

5.2.2 OnCloud agrees that where Services are performed at Customer premises OnCloud will use reasonable endeavours to ensure that OnCloud personnel comply with the normal practices of Customer and will conform to all application laws and regulations including but not limited to relevant Health and Safety legislation and will make every effort to cause as



Terms and Conditions

little interference to the business of Customer as possible. Customer is to advise OnCloud of any specific Health and Safety requirements to conform to prior to approving a Statement of Work. Customer is to supply OnCloud personnel with Training and any Equipment to comply.

- 5.2.3 Both Parties agree that where participation by their respective personnel is necessary in the performance of this Agreement, such personnel shall possess the appropriate skills and experience for any tasks assigned to them.
- 5.2.4 OnCloud does not warrant that operation of the Deliverables will be uninterrupted or error free.
- 5.2.5** OnCloud does not warrant the performance of any Third Party Software acquired as part of the agreed Services and is not responsible for fixing any bugs, errors or omissions in the Third Party Software. OnCloud is not responsible for any delays in the project caused by Third Party Software and where a delay occurs because of bugs, errors or omissions in the Third Party Software undisputed charges will still be due in accordance with the agreed Payment Milestones in the Payment Schedule or in the absence of a Payment Schedule pursuant to Clause 3

5.3 Limitation of Liability

- 5.3.1 Nothing in this Agreement shall limit either Party's liability for personal injury or death caused by negligence or fraudulent misrepresentation.
- 5.3.2 OnCloud shall indemnify Customer for all sums which are legally payable as compensation in respect of loss of or damage to Customer's tangible property caused by OnCloud employees up to a maximum amount of £1,000,000 (One Million Pounds Sterling) per event or series of connected events.
- 5.3.3 Unless otherwise expressly stated in this Agreement, and whether or not a party has been advised of the possibility of such loss, neither party shall be liable in contract, tort or otherwise for:

- (a) Indirect or consequential loss;
- (b) Loss of revenue;
- (c) Loss of profits;
- (d) Loss of business or goodwill;
- (e) Loss of, damage to or corruption of data; or
- (f) Loss of availability

arising out of or in connection with or in relation to the provision of the Services or otherwise under, in connection with or in relation to this Agreement.

Subject to Clauses 5.3.1, 5.3.2 and 5.3.3 above, OnCloud's total liability in contract, tort or otherwise arising out of or in connection with the Services or otherwise under, in connection with or in relation to this Agreement shall be limited to £1,000,000.

- 5.3.4 OnCloud shall have no liability in relation to any breach of the Agreement by it to the extent that such breach is caused solely by any failure or delay by Customer or its agents, representatives, subcontractors or staff to comply with its obligations under this agreement.

6 Customer OBLIGATIONS

- 6.1 Where any work or Services are to be carried out at the Customer's premises then the

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Registered Office: 8/22 Portland Gardens, Edinburgh EH6 6NJ -

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Terms and Conditions

Customer shall, subject to compliance by OnCloud personnel with Customer's reasonable security requirements, allow OnCloud sufficient access to the area(s) where Service(s) are to be performed and will provide suitable office accommodation and facilities for any OnCloud staff working on its premises as required for OnCloud to perform the Services.

- 6.2 Customer will provide OnCloud with all necessary co-operation, information, equipment, data and support that may reasonably be required by OnCloud for the performance of its obligations hereunder, including access to suitably configured computer products at such times as OnCloud requests subject to OnCloud giving the Customer reasonable notice considering the type of such computer products. Specific dedication of Customer and OnCloud personnel and resources to the project shall be agreed in writing in the Solution Design and included in the applicable Statement of Work or Order Form.
- 6.3 Customer shall ensure that any premises to which OnCloud' employees or agents have access for provision of Services fully comply with health and safety regulations, other applicable legislation or regulations and normal industry practices and Customer will not expose such persons to unnecessary risk or danger to personal safety and Customer shall indemnify OnCloud against any liability in relation to any claim made by employees or agents arising from such an occurrence subject to OnCloud complying with its obligations pursuant to Clauses 5.2.2 and 5.2.7
- 6.4 Customer shall take all precautions to protect its data and shall ensure that a daily backup arrangement is implemented before and during the provision of the Services. Customer shall be responsible for restoring any lost or corrupted data unless such loss is caused by the negligence or default of OnCloud, in which case OnCloud' liability shall be limited to the reinstatement (where reasonably possible) of such data which would not have been included in normal backup arrangements.
- 6.5 Customer is responsible for the integrity of the data provided to OnCloud, for but not limited to, for migration and for data cleaning and for all direct consequences of any errors in such data and OnCloud will not warrant the integrity of that data. OnCloud does not warrant the integrity of the data following, but not limited to, a migration to the extent of any error that is Customer's responsibility.
- 6.6 Customer hereby agrees that where software (and/or hardware) and consultancy services are provided together as a solution, that the Customer will gain a separate benefit from both the software (and/or hardware) and the consultancy services provided.

7 PROPRIETARY RIGHTS

- 7.1 Subject to all pre-existing intellectual property rights, OnCloud hereby grants to Customer, once payment is received in full and subject to Customer's compliance with the licence provisions referred to herein, a perpetual non-exclusive, royalty free licence to use the Deliverables. Such right of use shall include the right to modify, copy, and sub-licence the Deliverables.
- 7.2 All OnCloud software developed by OnCloud before the date of this Agreement and introduced as part of the Services will remain the sole property of OnCloud.
- 7.3 Subject to Clause 7.7, nothing else in the Agreement will prevent OnCloud from developing new ideas, concepts, know-how or adding to its library of procedures from the Customer's deliverables.



Terms and Conditions

- 7.4 Subject to mutual agreement between the Parties Customer has the right, subject to an agreed payment, to opt to buy the intellectual property rights in one or more Deliverables ("Customer Owned Deliverables") and OnCloud warrants that it will not use such Customer Owned Deliverables in pursuit of its business without prior written agreement from Customer.

8 THIRD PARTY SOFTWARE

8.1 *Third Party Software Purchases*

Customer may purchase any third Party Software Programs through OnCloud by issuing a separate purchase order to OnCloud. On receipt of such order OnCloud will procure the third Party Software Programs from the relevant vender. Customer agrees that any purchase order to OnCloud to purchase the third Party Software Programs becomes irrevocable once issued.

- 8.2 The Customer will be responsible for procuring any third Party Software Programs that may be required for OnCloud perform the Services as set out in any Statement of Work, Order Form or Solution Design.

9 ACCEPTANCE AND PROCEDURES

9.1 *Acceptance Procedures*

- 9.1.1 On completion of the Services, or part thereof, OnCloud shall deliver to Customer a test copy of the Deliverables. Customer shall accept the Deliverables in accordance with the Acceptance Procedures laid out in Clauses 9.1.2 to 9.1.9.

- 9.1.2 Customer shall test the Deliverables and all parts thereof to ensure it performs in all material respects in accordance with the Solution Design and the agreed Acceptance Criteria.

- 9.1.3 If Customer finds the Deliverables performs in all material respects in accordance with the Solution Design and the agreed Acceptance Criteria the Deliverables shall be deemed to have passed the Acceptance Test. Customer shall notify OnCloud that the Deliverables have passed the Acceptance Test by signing an appropriate Acceptance Certificate (attached as Appendix C) within 30 days of receiving the test copy of the completed Deliverables from OnCloud unless otherwise agreed by both Parties and documented as such in the applicable Statement of Work.

- 9.1.4 If Customer finds the Deliverables or any part thereof does not perform in all material respects in accordance with the Solution Design and the agreed Acceptance Criteria Customer shall give notice to OnCloud of such failure and shall specify which parts of the Deliverables fail to meet the Solution Design or the agreed Acceptance Criteria. Such notice shall be given to OnCloud within 30 days of receiving the test copy of the Deliverables from OnCloud, unless otherwise agreed by both Parties and documented as such in the applicable Statement of Work.

- 9.1.5 If Customer is unable to test the applicable Deliverables or otherwise fulfil its obligations

under Clauses 9.1.3 and 9.1.4, Customer, acting reasonably shall notify OnCloud accordingly in writing within 7 days of receipt of Deliverables and the Acceptance



Terms and Conditions

Test shall be suspended. Any consequent delay shall be governed pursuant to Clause 2.7

- 9.1.6 If OnCloud has not received notification from the Customer in accordance with Clause 9.1.3,
9.1.4, or 9.1.5 then Customer shall have deemed to have accepted the Deliverables.
- 9.1.7 In the event that the Parties cannot agree if the Deliverables should be accepted or not, the Parties shall submit to expert determination via an independent body such as the Centre for Effective Disputes Resolution ("CEDR") to re-test the Deliverables to see if they do or do not meet the Solution Design and the agreed Acceptance Criteria and such expert's judgement shall be binding upon the Parties. For the avoidance of doubt apportionment of costs for such expert determination shall be determined by the expert and shall be binding upon the Parties
- 9.1.8 On receiving notification from the Customer pursuant to Clause 9.1.4 or as the result of Clause 9.1.7, OnCloud shall perform further Services within 30 days so that the Deliverables do meet the requirements of the Solution Design and the agreed Acceptance Criteria. If OnCloud is unable to change the Deliverables within 3 attempts, (each attempt to be no longer than 30 days), such that they are capable of meeting the Solution Design and agreed Acceptance Criteria then the Customer shall be entitled to terminate the Agreement pursuant to Clause 4 and upon such termination Customer shall be entitled to recover all fees paid by Customer for those Deliverables, or in the event that the failed Deliverables render the entire Work Package unusable, all the fees paid by the Customer for that Work Package
- 9.1.9 For the avoidance of doubt Go Live of any Deliverable shall be deemed as Acceptance of that Deliverable.

10 CHANGES

10.1 *Change Control Procedures*

- 10.1.1 The format for which a change can be made to the Agreement, any subsequent Work Package, Order Form or the Services is attached at Appendix D.
- 10.1.2 At any time during the execution of the Service the Customer may request and OnCloud may recommend variations to any part or parts of the content of the Services.
- 10.1.3 OnCloud shall notify the Customer in writing within ten working days of receipt of a written variation request or the making of a written variation recommendation of any fee cost, expenses and time required to investigate the effect upon this Agreement of implementing such variation, and if the Customer instructs OnCloud in writing to proceed with such investigation the Agreement shall be modified accordingly.
- 10.1.4 The result of such investigation shall be written advice to the Customer giving the effects upon the fees, the payment schedule and other Agreement matters, including estimated delivery dates and Services to be provided by the Customer, should the contemplated variation be implemented.
- 10.1.5 OnCloud may charge for costs and expenses incurred in respect of investigating the



Terms and Conditions

effect of implementing a change requested or authorised by the Customer, whether or not subsequently implemented but not for costs and expenses incurred in respect of investigating a variation recommendation unless subsequently authorised by the Customer.

10.1.6 Should the Customer then wish to proceed with the variation, the Customer shall inform OnCloud to this effect in writing within ten working days of receipt of such advice, and if mutually agreed this Agreement shall be deemed modified accordingly.

10.1.7 Until such time as any variation is formally agreed in writing between OnCloud and the Customer, OnCloud will, unless otherwise agreed, continue to perform and be paid for the Services as if such variation had not been required.

10.1.8 Any variation will become valid as a variation to this Agreement when agreed in writing and signed by Authorised Signatories of both Parties.

11 DISPUTE RESOLUTION PROCEDURE

11.1 *Dispute Procedure*

11.1.1 Where both Parties cannot agree on a particular item during the performance of this agreement either Party may call an extraordinary meeting of the Parties by service of not less than 5 days' written notice and each Party agrees to procure that at least its Service Managers shall attend all extraordinary meetings called in accordance with this Clause.

11.1.2 The members of the relevant meeting shall use their best endeavours to resolve disputes arising out of this agreement. If any dispute referred to a meeting is not resolved at that meeting then either Party, by notice in writing to the other, may refer the dispute to senior officers of the two Parties who shall co-operate in good faith to resolve the dispute as amicably as possible within 14 days of service of such notice. If the senior officers fail to resolve the dispute in the allotted time, then the Parties shall, within that period, on the written request of either Party enter into an alternative Dispute Resolution Procedure with the assistance of a mediator sourced via an independent body such as the Centre for Effective Disputes Resolution ("CEDR") and agreed by the Parties. The Parties shall then submit to the supervision of the mediator the exchange of relevant information and for setting the date for negotiations to begin.

11.1.3 Recourse to this Dispute Resolution Procedure shall be binding on the Parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the Parties in any future legal proceedings. Except for any Party's right to seek interlocutory relief in the courts, no Party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until 21 days after the Parties have failed to reach a binding settlement by mediation (at which point the Dispute Resolution Procedure shall be deemed to be exhausted).

11.1.4 If, with the assistance of the mediator, the Parties reach a settlement, such settlement shall be reduced to writing and, once signed by the duly Authorised



Terms and Conditions

Representative of each of the Parties, shall remain binding on the Parties.

11.1.5 The Parties shall bear their own legal costs of this Dispute Resolution Procedure, but the costs and expenses of mediation shall be borne by the Parties equally.

11.1.6 While the Dispute Resolution Procedure is in progress and any Party has an obligation to make a payment to another Party or to allow a credit in respect of such payment, the sum relating to the matter in dispute shall be paid into an interest bearing deposit account to be held in the names of the relevant Parties at a clearing bank and such payment shall be a good discharge of the Parties' payment obligations under this agreement. Following resolution of the dispute, whether by mediation or legal proceedings, the sum held in such account shall be payable as determined in accordance with the mediation or legal proceedings, and the interest accrued shall be allocated between the Parties pro rata according to the split of the principal sum as between the Parties.

12 GENERAL

12.1 *Non-Disclosure*

The Parties may provide to one another information that is confidential ("Confidential Information. Confidential Information shall not include information which

(a) Is or becomes a part of the public domain through no act or omission of the other Party; (b) was in the other Party's lawful possession prior to the disclosure and had not been obtained by the other Party either directly or indirectly from the disclosing Party; (c) is lawfully disclosed to the other Party by a third Party without restriction on disclosure; (d) is independently developed by the other Party; or (e) is disclosed by operation of law.

The Parties agree to hold each other's Confidential Information in confidence while the Services are being performed and for a period of three years thereafter.

12.2 *Relationship between the Parties*

OnCloud is an independent contractor; nothing in this Agreement shall be construed to create a partnership, joint venture, or agency relationship between the Parties. Each Party will be solely responsible for payment of all compensation owed to its employees, as well as employment related taxes.

12.3 *Governing Law*

This agreement and all matters arising out of or relating to this Agreement shall be governed by and interpreted in accordance with Scottish Law. The Parties agree to submit to the Court of sessions in Edinburgh.

12.4 *Notices*

All notices, including notices of address change, required to be sent hereunder shall be in writing and shall be deemed to have been given when mailed by special delivery mail to the first address listed in the applicable Statement of Work (if to Customer) or to the OnCloud address on the Statement of Work (if to OnCloud).



Terms and Conditions

12.5 Severability

In the event any provision or part thereof of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force and effect.

12.6 Waiver

No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

12.7 Subcontractors

OnCloud may use subcontractors or other entities specifically approved by Customer ("Approved Subcontractors"). OnCloud shall obtain and maintain in effect written agreements with each of its Approved Subcontractors who participate in any of OnCloud's work hereunder and OnCloud warrants that such Approved Subcontractors shall possess the appropriate skills and experience for any tasks assigned to them.

12.8 Force Majeure

If the performance of the obligations of either Party under this agreement is delayed, hindered or prevented for any reason beyond that Party's reasonable control (a Force Majeure Event) that Party upon giving prompt notice to the other, will be excused from the performance of its obligations pending resolution of the Force Majeure Event, should such an event occur both Parties will take all reasonable steps to avoid or remove the causes of the delay. If the Force Majeure Event continues for a period of 3 months either Party may terminate this agreement by giving 14 days notice to the other Party and pursuant to Clause 4.

12.9 Entire Agreement

This Agreement, including any Appendices or Statements of Work constitutes the complete agreement between the Parties and supersedes all previous Agreements, Statements of Work or representations, written or oral, concerning the Services.

12.9.1 Each Party acknowledges that, in entering into this Agreement or any subsequent Work Package, it is not relying on any representation, warranty, pre-contractual statement or other provision except as expressly provided in this Agreement and subsequent Statements of Work.

12.9.2 Without limiting the generality of the foregoing, neither Party shall have any remedy in respect of any untrue statement made to it upon which it may have relied in entering into the Agreement, and a Party's only remedy is for breach of contract. However, nothing in this Agreement purports to exclude liability for any fraudulent statement or act.

12.10 Variation

Neither this Agreement, nor any Statement of Work, Solution Design or Project Plan may be modified or amended except in writing signed by a duly Authorised Signatory of each Party and pursuant to Clause 10. It is expressly agreed that any terms and conditions of Customer's purchase order shall be superseded by the terms and conditions of this



Terms and Conditions

Agreement and any applicable Statements of Work or Order Forms.

12.11 Third Party Enforcement

This Agreement is enforceable by the original Parties to it and by their successors in title and permitted assignees. None of the provisions of this Agreement shall be enforceable by a third Party pursuant to The Contracts (Rights of Third Parties) Act 1999 or any other law which gives a person who is not a Party to a contract the right to enforce any of its provisions

12.12 Precedence

In the event of conflict between this Agreement and its Appendices or an applicable and properly executed Statement of Work, the terms of the Statement of Work shall prevail. The language of this Agreement is English and the English language version prevails over any other language version of this Agreement whether translated before or after this Agreement is signed

12.13 Data Protection

The Parties shall ensure that they shall at all times comply with the provisions and obligations imposed by the Data Protection Act 1998 and the Data Protection Principles together with any subsequent re enactment or amendment thereof in storing and processing personal data and all personal data acquired by either Party from the other shall be returned to the disclosing Party on request. Both Parties shall indemnify each other in respect of any unauthorised disclosure of personal data. The Parties hereby acknowledge that performance of a duty imposed by the Data Protection Act 1998 shall not constitute a breach of any obligation in respect of confidentiality which may be owed to the other Party

12.14 Non Solicitation

Each Party agrees that during the Term and for (12) twelve months after the end of the Term, it shall not directly or indirectly solicit with a view to offering employment or an engagement on behalf of itself or any other person or Organisation, any of the other Party's staff or Sub Contractors who were associated with the provision of the Services or the work under this Agreement within the previous (12) twelve months, without the other Party's prior agreement

in writing such agreement not to be unreasonably withheld. The Parties acknowledge that this Clause cannot and does not exclude their staff from responding to advertisements for employment that are placed in the public domain by the Parties in the normal course of business and that the Parties may treat such candidates as any other. In the event clause 12.14 is breached by either Party a fee of £25,000 per instance will become immediately payable by the Party that has breached to the effected Party.

12.15 Assignment

Neither Party may otherwise assign this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.

12.16 Export

Customer agrees to comply fully with all relevant export laws and regulations of the United Kingdom and United States ("Export Laws") to assure that neither the Developments or



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OnCloud Materials nor any direct product thereof are (1) exported, directly or indirectly, in violation of Export Laws; or (2) are intended to be used for any purposes prohibited by the Export Laws, including, without limitation, nuclear, chemical or biological weapons proliferation.



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APPENDIX A – STATEMENT OF WORK



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APPENDIX B – ORDER FORM

OnCloud Consulting (Scotland) Ltd

Registered Office: 8/22 Portland Gardens, Edinburgh EH6 6NJ -

Registered in Scotland Number: SC611911



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(Scotland) Ltd

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APPENDIX C - ACCEPTANCE CERTIFICATE

OnCloud Consulting (Scotland) Ltd

Registered Office: 8/22 Portland Gardens, Edinburgh EH6 6NJ -
Registered in Scotland Number: SC611911



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APPENDIX D – CHANGE CONTROL FORM