



## Appendix 1

### Terms and Conditions

These Terms and Conditions apply to the Services provided by ControlPlane to the Customer and, together with the Statement of Work, form a legally binding contract between ControlPlane and the Customer. ControlPlane and the Customer shall each be a **"Party"** and together the **"Parties"**.

#### 1. Definitions and Interpretation

1.1 The following definitions and rules of interpretation apply in the Agreement (unless the context requires otherwise):

1 **"Affected Party"** has the meaning given in Clause 15.1;

2 **"Affiliate"** means in relation to a Party, any entity that directly or indirectly Controls, is Controlled by, or is under common Control with that Party from time to time;

3 **"Agreement"** means the Statement of Work and its Appendices, including these Terms and Conditions;

4 **"Applicable Laws"** means all applicable laws, statutes, regulations and codes from time to time in force;

5 **"Business Day"** means a day, other than a Saturday, Sunday or public holiday in England;

6 **"Change Order"** means a written document setting out the agreed changes to the Statement of Work;

7 **"Confidential Information"** means all information in any medium or format (written, oral, visual or electronic, and whether or not marked or described as "confidential"), together with all reproductions (hard copy or electronic), extracts, summaries, or analyses of confidential information in any medium or format made by or on behalf of a Party, disclosed in whatever form by a Party directly or indirectly to the other Party, which relates to that Party, to its Affiliates, or to its (or its Affiliates') employees, directors, officers, members, customers and/or suppliers, and includes without limitation all know-how, trade secrets, financial, commercial, technical, tactical or strategic information of any kind;

8 **"Control"** has the meaning given in section 1124 of the Corporation Tax Act 2010, and **"Controls"**, **"Controlled"** and the expression **"Change of Control"** shall be construed accordingly;

9 **"ControlPlane"** has the meaning given in the Statement of Work;

10 **"ControlPlane Equipment and Materials"** means any equipment, tools, systems, cabling, facilities, software, documents, information, items, manuals and materials provided by ControlPlane to the Customer and used directly or indirectly in the supply of the Services and/or any Deliverables;

- 11     **“Customer”** means the Customer identified in the Statement of Work;
- 12     **“Customer Equipment”** means any equipment, including tools, software, systems, cabling or facilities, provided by the Customer or any of its Representatives which is used directly or indirectly in the supply of the Services;
- 13     **“Customer Materials”** means all documents, information, items, manuals and materials in any form, whether owned by the Customer or a third Party, which are provided by the Customer to ControlPlane in connection with the Services;
- 14     **“Data Protection Legislation”** means:
- (a)     to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data;
  - (b)     to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which ControlPlane is subject, which relates to the protection of personal data; and
  - (c)     to the extent the California Consumer Privacy Act 2018 applies, the law of the State of California which relates to the protection of personal data;
- 15     **“Deliverables”** means any products, items or goods to be developed, prepared or delivered by ControlPlane pursuant or ancillary to the Services, as specifically set out in the Statement of Work;
- 16     **“Effective Date”** means the date specified as such in the Statement of Work or, if no date is specified, the date on which the Statement of Work is signed by both Parties;
- 17     **“EU GDPR”** means the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law;
- 18     **“Fees”** means the sums payable for the Services and any Deliverables, as set out in the Statement of Work;
- 19     **“Force Majeure Event”** means any circumstance not within a Party’s reasonable control including, without limitation: (a) acts of God, flood, drought, earthquake or other natural disaster; (b) an epidemic or pandemic; (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (d) nuclear, chemical or biological contamination or sonic boom; (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; (f) collapse of buildings, fire, explosion or accident; (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the Affected Party, or companies in the same group as the Affected Party); (h) non-performance by suppliers or subcontractors (other than by companies in the same group as the Affected Party); and (i) interruption or failure of utility service;
- 20     **“Initial Term”** has the meaning given in Clause 2.1;
- 21     **“Intellectual Property Rights”** means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and

protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

22     **“Key Personnel”** means, in relation to each Party, the persons appointed by that Party in respect of the Services to be performed under the Statement of Work, as set out in the Statement of Work or otherwise notified in writing to the other Party;

23     **“Personal Data”** has the meaning given under the Data Protection Legislation;

24     **“Primary Contact for Notices”** means, in relation to each Party, the individual identified by that Party in the Statement of Work for the purposes of serving notices pursuant to Clause 16 (or any individual substituted by that Party by notice in writing to the other Party);

25     **“Renewal Term”** has the meaning given in Clause 2.1;

26     **“Representatives”** means, in relation to a Party, that Party’s employees, officers, agents, contractors, subcontractors, representatives and advisers;

27     **“Services”** means the services provided by ControlPlane to the Customer pursuant to the Agreement, as set out in the Statement of Work;

28     **“Statement of Work”** or **“SOW”** means the statement of work entered into between ControlPlane and the Customer setting out the name and contact details of the Customer, the Services and Deliverables to be provided by ControlPlane to the Customer pursuant to this Agreement, the Fees payable by the Customer in respect of such Services and Deliverables, and any other relevant or related matters;

29     **“Term”** means the duration that the Agreement is in force commencing on the Effective Date until terminated in accordance with the terms of the Agreement;

30     **“Terms and Conditions”** means these terms and conditions which comprise this Appendix 1 of the Statement of Work;

31     **“UK GDPR”** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018; and

32     **“VAT”** means value added tax or any equivalent tax chargeable in the UK.

1.2     Clause, paragraph and Appendix headings shall not affect the interpretation of this Agreement. References to Clauses are to Clauses of these Terms and Conditions, references to Appendices are to Appendices to the Statement of Work and references to paragraphs are to paragraphs of the Statement of Work. The Appendices form part of the Agreement and shall have effect as if set out in full in the body of the Agreement.

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

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

1.5 This Agreement shall be binding on, and enure to the benefit of, the Parties and their respective personal representatives, successors and permitted assigns, and references to any Party shall include that Party's personal representatives, successors and permitted assigns.

1.6 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.

## **2. Term**

2.1 This Agreement will begin on the Effective Date and will continue for an initial term of one (1) year unless it is terminated earlier in accordance with its terms (the "**Initial Term**"). After the Initial Term, this Agreement will automatically extend for additional one (1) year terms (each a "**Renewal Term**") unless terminated in accordance with the provisions of Clause 14 or Clause 15.4.

## **3. Statement of Work**

3.1 Any Services to be provided by ControlPlane to the Customer will be set out in a Statement of Work. No amendments may be made to the Statement of Work except in accordance with Clause 4 or Clause 17.4.

3.2 Each Statement of Work will, when agreed and signed, form a separate, legally binding contract between the Parties and will incorporate these Terms and Conditions. In the event of a conflict or inconsistency between the Statement of Work and these Terms and Conditions, the Statement of Work will prevail, followed by these Terms and Conditions.

## **4. Change Control**

4.1 A Party may propose changes to the Statement of Work; however, no proposed changes shall come into effect until a Change Order in respect of such changes has first been agreed and signed by both Parties.

4.2 If ControlPlane wishes to make a change to the Services, it shall provide a draft Change Order to the Customer. If the Customer wishes to make a change to the Services:

4.2.1 it shall notify ControlPlane and provide as much detail as ControlPlane reasonably requires of the proposed change, including the timing of the proposed change; and

4.2.2 ControlPlane shall, as soon as reasonably practicable after receiving such information, provide a draft Change Order to the Customer.

4.3 The Parties shall in good faith mutually discuss and agree the Change Order and, once agreed and signed, that Change Order shall amend the relevant Statement of Work.

4.4 ControlPlane may charge for the time it spends on preparing and negotiating any Change Order in respect of any change proposed by the Customer pursuant to Clause 4.2 on a time and materials basis.

## **5. ControlPlane's Responsibilities**

5.1 ControlPlane warrants and represents that:

- 5.1.1 it shall use reasonable endeavours to:
- (a) provide the Services, and deliver any Deliverables, to the Customer in accordance with the Statement of Work; and
  - (b) meet any performance dates or milestones specified in the Statement of Work (if applicable), but any such dates shall be estimates only and time for performance by ControlPlane shall not be of the essence of the Agreement;
- 5.1.2 the Services will be performed in a thorough and professional workmanlike manner, consistent with professional and industry standards by individuals with the requisite training, background, experience, technical knowledge and skills to perform the Services;
- 5.1.3 any Deliverables created or provided under the Agreement will be ControlPlane's original work or in the public domain, and will not infringe, misappropriate or violate the rights of any third party, including, without limitation, any intellectual property rights or any rights of privacy or rights of publicity; and
- 5.1.4 it shall comply with all Applicable Laws relevant to the provision of the Services and any Deliverables.
- 5.2 Where ControlPlane attends any of the Customer's premises to provide the Services, it shall use reasonable endeavours to observe all health and safety and security requirements that apply at such premises and that have been communicated to ControlPlane, provided that ControlPlane shall not be liable if, as a result of such observation, it is in breach of any of its obligations under this Agreement.
- 6. Customer's Obligations**
- 6.1 The Customer warrants and represents that:
- 6.1.1 it shall co-operate with ControlPlane in all matters relating to the Services, and shall provide ControlPlane and its Representatives, in a timely manner and at no charge, with:
- (a) access to the Customer's premises, computer and information technology systems, data and other facilities as required by ControlPlane in the provision of the Services, including but not limited to any access requirements set out in the Statement of Work; and
  - (b) all documents, information, items and materials in any form (whether owned by the Customer or a third party) required under the Statement of Work or otherwise reasonably required by ControlPlane in connection with the Services and ensure that they are accurate and complete;
- 6.1.2 it shall inform ControlPlane of all health and safety and security requirements that apply at the Customer's premises, where ControlPlane is required to attend such premises, and of any security requirements in accessing the Customer's information technology systems. If the Customer wishes to make a change to those requirements that will or may materially affect the provision of the Services, it may only do so via a Change Order;

- 6.1.3 it shall ensure that all of the Customer Equipment is in good working order and suitable for the purposes for which it is used and conforms to all relevant industry and legal standards or requirements;
  - 6.1.4 it shall obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable ControlPlane and its Representatives to provide the Services and any Deliverables, including without limitation in relation to the installation of the ControlPlane Equipment and Materials, the use of all Customer Materials and the use of the Customer Equipment, in all cases before the date on which the Services are to start;
  - 6.1.5 where any of the ControlPlane Equipment and Materials are in the Customer's control, it shall keep and maintain such ControlPlane Equipment and Materials in good condition and in accordance with ControlPlane's instructions from time to time, and not dispose of or use the ControlPlane Equipment and Materials other than in accordance with ControlPlane's written instructions or authorisation;
  - 6.1.6 ControlPlane's use of the Customer Equipment and the Customer Materials, and its access and use of the Customer's information technology systems, will not infringe, misappropriate or violate the rights of any third party, including, without limitation, any intellectual property rights or any rights of privacy or rights of publicity; and
  - 6.1.7 it shall comply with all Applicable Laws relevant to its activities under the Agreement, including any additional activities or responsibilities of the Customer as set out in the Statement of Work.
- 6.2 If ControlPlane's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer or any of the Customer's Representatives then, without prejudice to any other right or remedy ControlPlane may have, ControlPlane shall be entitled to an extension of time to perform its obligations equal to the delay caused by the Customer and may, at its discretion, charge the Customer an administration fee in respect of such delay.
- 7. Charges and Payment**
- 7.1 In consideration of the provision of the Services and any Deliverables by ControlPlane to the Customer, the Customer shall pay to ControlPlane the Fees in accordance with Clause 7.2.
  - 7.2 ControlPlane shall invoice the Customer for the Fees in accordance with the payment or invoicing provisions set out in the Statement of Work. If no payment or invoicing provisions are so specified, ControlPlane shall invoice the Customer at the end of each month for Services performed during that month. The Customer shall pay each invoice submitted to it by ControlPlane within thirty (30) days of receipt.
  - 7.3 The Fees do not include the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom ControlPlane engages in connection with the provision of the Services, which shall be payable by the Customer monthly in arrears, following submission of an appropriate invoice.
  - 7.4 Without prejudice to any other right or remedy that ControlPlane may have, if the Customer fails to pay ControlPlane any sum due under the Agreement by the due date:

- 7.4.1 the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%; and
- 7.4.2 ControlPlane may suspend part or all of the Services until payment has been made in full.
- 7.5 All sums payable to ControlPlane under the Agreement:
  - 7.5.1 are, unless stated otherwise, exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
  - 7.5.2 shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **8. Key Personnel**

- 8.1 ControlPlane shall appoint Key Personnel in respect of the Services to be performed under the Statement of Work. Unless otherwise agreed in writing or set out in the Statement of Work, ControlPlane's Key Personnel shall not have authority to contractually bind ControlPlane on any matters relating to the Services (including by signing Change Orders). ControlPlane's Key Personnel shall not be exclusive to the Services or the Statement of Work, and ControlPlane may replace its Key Personnel from time to time.
- 8.2 The Customer shall appoint Key Personnel in respect of the Services to be performed under the Statement of Work, including but not limited to co-implementation, architecture and security support. The Customer's Key Personnel shall have authority to contractually bind the Customer on all matters relating to the relevant Services (including but not limited to signing Change Orders). The Customer may replace its Key Personnel at any time upon prior written notice to ControlPlane.

## **9. Intellectual Property Rights**

- 9.1 All Intellectual Property Rights in ControlPlane's Services or any Deliverables provided under the Statement of Work shall remain with, and vest exclusively in ControlPlane, excluding any Customer Materials incorporated in such Services or Deliverables. Subject to the Customer's payment of the Fees, ControlPlane hereby grants the Customer and its Affiliates a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to use, copy and modify the Deliverables.
- 9.2 The Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials and the Customer Equipment, and the Customer hereby grants to ControlPlane a fully paid-up, non-exclusive, royalty-free, non-transferable licence to use, copy and modify the Customer Materials and the Customer Equipment for the term of this Agreement for the purpose of providing the Services and any Deliverables to the Customer.
- 9.3 ControlPlane shall retain ownership of all Intellectual Property Rights in the ControlPlane Equipment and Materials.

## **10. Data Protection**

- 10.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 10 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation.
- 10.2 It is acknowledged that for the purposes of the Data Protection Legislation, the Customer is the controller and ControlPlane is the processor in respect of the Customer's Personal Data. Without prejudice to the generality of Clause 10.1, the Customer will ensure that it has all necessary and appropriate consents and notices in place to enable the lawful transfer of the Customer's Personal Data to ControlPlane, and the lawful collection of the same by ControlPlane, for the duration and purposes of this Agreement.
- 10.3 Without prejudice to the generality of Clause 10.1, ControlPlane shall, in relation to any of the Customer's Personal Data processed in connection with the performance of the Services:
  - 10.3.1 process the Customer's Personal Data only on the documented instructions received from the Customer unless ControlPlane is required by the Data Protection Legislation or Applicable Laws to otherwise process the Customer's Personal Data. Where ControlPlane is relying on Applicable Laws as the basis for processing the Customer's Personal Data, ControlPlane shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit ControlPlane from so notifying the Customer on important grounds of public interest;
  - 10.3.2 ensure it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of the Customer's Personal Data and against accidental loss or destruction of, or damage to, the Customer's Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, and having regard to the state of technological development and the cost of implementing any measures;
  - 10.3.3 ensure that any personnel who have access to and/or process the Customer's Personal Data are obligated to keep the Customer's Personal Data confidential;
  - 10.3.4 assist the Customer, insofar as is possible (taking into account the nature of the processing and the information available to ControlPlane), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - 10.3.5 notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer's Personal Data;
  - 10.3.6 at the written direction of the Customer, delete or return the Customer's Personal Data and copies thereof to the Customer on termination of the Agreement unless ControlPlane is required by Applicable Law to continue to process the Customer's Personal Data; and
  - 10.3.7 maintain records to demonstrate its compliance with this Clause 10.



- 10.4 The Customer provides its prior, general authorisation for ControlPlane to:
- 10.4.1 appoint processors to process the Customer's Personal Data, provided that ControlPlane:
- (a) shall ensure that the terms on which it appoints such processors comply with Data Protection Legislation, and are consistent with the obligations imposed on ControlPlane in this Clause 10;
  - (b) shall remain responsible for the acts and omissions of any such processor as if they were the acts and omissions of ControlPlane; and
  - (c) shall inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to ControlPlane's reasonable satisfaction, that the objection is due to an actual or likely breach of the Data Protection Legislation, the Customer shall indemnify ControlPlane for any losses, damages, costs (including legal fees) and expenses suffered by ControlPlane in accommodating the objection.
- 10.4.2 transfer the Customer's Personal Data outside of the UK as required for the provision of the Services, provided that ControlPlane shall ensure that all such transfers are effected in accordance with Data Protection Legislation. For these purposes, the Customer shall promptly comply with any reasonable request of ControlPlane, including any request to enter into standard data protection clauses adopted by the EU commission from time to time (where the EU GDPR applies to the transfer) or adopted by the commissioner from time to time (where the UK GDPR applies to the transfer).
- 10.5 Either Party may, at any time on not less than thirty (30) days' written notice, revise this Clause 10 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).
- 10.6 ControlPlane's liability for losses arising from breaches of this Clause 10 is as set out in Clause 13.1.

## **11. Confidentiality**

- 11.1 Each Party undertakes that it shall not at any time during the Term, and for a period of five (5) years after termination of this Agreement, disclose to any person any Confidential Information of the other Party, except as permitted by Clause 11.2.
- 11.2 Each Party may disclose the other Party's Confidential Information:
- 11.2.1 to those of its Representatives who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with this Agreement. Each Party shall ensure that its Representatives to whom it discloses the other Party's Confidential Information comply with this Clause 11; and
  - 11.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 11.3 No Party shall use the other Party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.
- 11.4 The undertakings in Clauses 11.1 and 11.3 shall not apply to any Confidential Information which:
- 11.4.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving Party or its Representatives in breach of this Clause 11);
  - 11.4.2 was available to the receiving Party on a non-confidential basis before disclosure by the disclosing Party;
  - 11.4.3 was, is or becomes available to the receiving Party on a non-confidential basis from a person who, to the receiving Party's knowledge, is not bound by a confidentiality agreement with the disclosing Party or otherwise prohibited from disclosing the information to the receiving Party;
  - 11.4.4 is developed by or for the receiving Party independently of the information disclosed by the disclosing Party; or
  - 11.4.5 the Parties agree in writing is not confidential or may be disclosed.

## **12. Indemnity**

- 12.1 ControlPlane shall indemnify, defend, and hold harmless the Customer against all third-party claims, demands, suits, causes of action, awards, judgments, and liabilities, including reasonable legal fees and costs arising out of: (a) ControlPlane's fraud, negligence, or wilful or intentional misconduct; (b) any actual or alleged infringement, misappropriation, or violation of any Intellectual Property Rights of a third party by any Deliverable or in ControlPlane's performance of the Services; (c) any claim for bodily injury, death, or property damage to the extent caused by ControlPlane in connection with the Services; or (d) ControlPlane's breach of applicable law or this Agreement, except to the extent directly due to the Customer's own negligence or wilful or intentional misconduct.
- 12.2 The Customer shall indemnify and hold harmless ControlPlane and its Affiliates, and each of ControlPlane's and its Affiliates' respective officers, directors, employees, and agents, from and against all claims arising out of: (a) ControlPlane's use of the Customer's computer and information technology systems and network under this Agreement; (b) the Customer's fraud, negligence, or wilful or intentional misconduct; (c) any actual or alleged infringement, misappropriation, or violation of any Intellectual Property Rights of a third party arising from ControlPlane's use of the Customer Materials or the Customer Equipment; (d) any claim for bodily injury, death, or property damage to the extent caused by the Customer in connection with the Services; or (e) the Customer's breach of applicable law or this Agreement, except to the extent directly due to ControlPlane's own negligence or wilful or intentional misconduct.

## **13. Limitation of Liability**

- 13.1 ControlPlane's total liability to the Customer (including any legal and other costs and interest payable), whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to one million pounds (£1,000,000).

- 13.2 Neither Party shall be liable to the other Party, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, under or in connection with this Agreement for: (a) loss of profits; (b) loss of sales, production, opportunity or business; (c) loss of agreements or contracts; (d) loss of anticipated savings, discount or rebate; (e) loss or corruption of software, data or information; (f) loss of or damage to reputation or goodwill; and (g) any incidental, indirect, special, exemplary or consequential loss.
- 13.3 The Customer acknowledges and accepts that ControlPlane shall at no time be liable for any malicious code, malware, viruses, attacks, hacking, denial of service, or manipulation of any kind to or of the Customer's (or its Affiliates') information technology network and/or systems by a third party, including but not limited to as a direct or indirect result of ControlPlane's provision of the Services and/or any Deliverables.
- 13.4 Nothing in this Agreement limits any liability which cannot legally be limited, including liability for:
- 13.4.1 death or personal injury caused by negligence;
- 13.4.2 fraud or fraudulent misrepresentation; and
- 13.4.3 any other losses which cannot be excluded or limited by applicable law.

#### **14. Termination**

- 14.1 Either Party may terminate this Agreement by giving at least ninety (90) days' written notice to the other Party before the end of the Initial Term or any Renewal Term (in which case this Agreement will terminate on the expiry of the applicable Initial Term or Renewal Term).
- 14.2 Without affecting any other right or remedy available to it, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:
- 14.2.1 the other Party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of fifteen (15) days after being notified in writing to do so;
- 14.2.2 the other Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any event or procedure in the relevant jurisdiction that has an effect equivalent or similar to any of the events or procedures mentioned in this Clause 14.2.2;
- 14.2.3 the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 14.2.4 the financial position of the other Party deteriorates to such an extent that in the terminating Party's opinion the other Party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.
- 14.3 Without affecting any other right or remedy available to it, ControlPlane may terminate this Agreement:

- 14.3.1 by giving the Customer not less than thirty (30) days' prior written notice; or
  - 14.3.2 with immediate effect by giving written notice to the Customer if: (a) the Customer fails to pay any amount due under or in connection with this Agreement on the due date for payment and remains in default not less than thirty (30) days after being notified in writing to make such payment; (b) the Customer, after written notification from ControlPlane, fails to accord ControlPlane the reasonable access to its premises, equipment, personnel or other information necessary for ControlPlane to provide the Services; or (c) there is a Change of Control of the Customer.
- 14.4 On termination of this Agreement:
- 14.4.1 the Statement of Work and any licences granted by ControlPlane under this Agreement shall terminate automatically;
  - 14.4.2 the Customer shall immediately pay to ControlPlane all of ControlPlane's outstanding unpaid invoices, interest, and, in respect of the Services and any Deliverables supplied but for which no invoice has been submitted, ControlPlane may submit an invoice, which shall be payable immediately on receipt;
  - 14.4.3 the Customer shall return all of the ControlPlane Equipment and Materials, and ControlPlane shall return any of the Customer Materials and the Customer Equipment not used up in the provision of the Services; and
  - 14.4.4 the following Clauses shall remain in full force and effect: Clauses 1 (Definitions and Interpretation), 7 (Charges and Payment), 9 (Intellectual Property Rights), 11 (Confidentiality), 12 (Indemnity), 13 (Limitation of Liability), 14.5 (Termination), 16 (Notices), 17 (General) and 18 (Governing Law and Jurisdiction).
- 14.5 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.
- 15. Force Majeure**
- 15.1 Provided it has complied with Clause 15.3, if a Party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (the "**Affected Party**"), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
  - 15.2 The corresponding obligations of the other Party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
  - 15.3 The Affected Party shall:
    - 15.3.1 as soon as reasonably practicable after the start of the Force Majeure Event, but no later than five (5) Business Days from its start, notify the other Party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and

15.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

- 15.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than four (4) weeks, the Party not affected by the Force Majeure Event may terminate this Agreement by giving four (4) weeks' written notice to the Affected Party. Notwithstanding the foregoing, where ControlPlane provides, and/or can provide, the Services in whole or in part to the Customer irrespective of a Force Majeure Event, ControlPlane shall continue to provide such Services and the Customer shall pay the fees for such Services in accordance with this Agreement.

## **16. Notices**

- 16.1 Any notice given to a Party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case) or sent by email to its Primary Contact for Notices.
- 16.2 Any notice shall be deemed to have been received: (a) if delivered by hand, at the time the notice is left at the proper address; (b) if sent by pre-paid first-class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting; or (c) if sent if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. For the purposes of this Clause 16.2, business hours means 9.00 am to 5.00 pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 16.3 This Clause 16 does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **17. General**

- 17.1 The Customer shall not at any time during the Term and for twelve (12) months thereafter, solicit or entice away from ControlPlane or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of ControlPlane (or of any of its Affiliates) in the provision of such Services.
- 17.2 The Customer shall provide an irrevocable, perpetual, worldwide, royalty-free licence to ControlPlane to use the Customer's name and logo on its website and marketing materials. ControlPlane may make any announcement or other public disclosure in relation to the provision of its services and products to the Customer and its Affiliates.
- 17.3 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement, without ControlPlane's prior written consent. ControlPlane may at any time assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights under this Agreement, provided that ControlPlane gives prior written notice of such dealing to the Customer.
- 17.4 Subject to Clause 4, no variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
- 17.5 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or

delay by a Party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy. The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

- 17.6 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Agreement is deemed deleted under this Clause 17.6, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 17.7 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 17.8 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.
- 17.9 This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 17.10 This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one (1) agreement. Each Party shall, at its own cost, do all acts and execute all documents where necessary to give full effect to this Agreement.

## **18. Governing Law and Jurisdiction**

- 18.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 18.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.