

SYMMETRY LIMITED CLOUD MASTER SERVICES AGREEMENT

CMSAXXXXXX

BETWEEN:

(1) SYMMETRY LTD of The Hophouse
Company Number The Old Brewery Business Park
(3151660) 7-11 Lodway
Pill
BS20 0DH

("SYMMETRY")

and

(2) «Company_Name» of «Address_Line_1»
«Address_Line_2»
«City»
«State»
«Postcode»

("CUSTOMER")

THIS CLOUD MASTER SERVICES AGREEMENT GOVERNS A CUSTOMER’S RIGHT OF ACCESS AND USE OF SERVICES (the “AGREEMENT”). CAPITALISED TERMS HAVE THE DEFINITION OUTLINED BELOW.

BY ACCEPTING THIS AGREEMENT, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM “CUSTOMER” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

The Services may not be accessed for purposes of monitoring their availability, performance, or functionality, or for any other benchmarking or competitive purposes.

SYMMETRY’s direct competitors are prohibited from accessing the Services, except with SYMMETRY’s prior written consent.

This Agreement was last updated on 01 February 2024. It is effective, between CUSTOMER and SYMMETRY as of the date of CUSTOMER's acceptance of this Agreement and applies to all Cloud Services Schedules, Professional Services Schedules, Appendices and Annexes (as amended), unless specifically stated.

Signed for and on behalf of:

CUSTOMER

Signed_____

Name_____

Title_____

Date_____

Signed for and on behalf of:

SYMMETRY LIMITED

Signed_____

Name_____

Title_____

Date_____

1. DEFINITIONS

"Affiliate"	means any entity that directly or indirectly controls, or is controlled by, or is under common control with the subject entity. "Control", for the purposes of this definition, means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of the subject entity.
"CUSTOMER Data"	means any electronic files, materials, data, text, audio, or other information that is transmitted, stored, retrieved or processed as part of the Services provided by the CUSTOMER to SYMMETRY as part of the CUSTOMER's use of the Services,
"Documentation"	means the applicable operating manuals, technical literature and all other related materials as updated from time to time, supplied electronically by SYMMETRY in relation to the Services.
"Fees"	means the subscription fees as specified in the Cloud Services Schedule payable by CUSTOMER payable in accordance with Clause 5, and any other fees, such as Professional Services fees or increase in usage fees.
"Intellectual Property Rights"	means any patents, trademarks, service marks, design rights (in each case whether or not registered or registrable) or applications for any of the foregoing, copyright, database rights, know-how, trade or business names and other similar rights or obligations in each case whether registrable or not in any country (including but not limited to the UK).
"Non-SYMMETRY Applications"	means any web-based, mobile, offline, or other software functionality that interoperates with the Services, that is procured by the CUSTOMER or by Symmetry on behalf of the CUSTOMER or by a third party.
"Cloud Services Schedule"	means the ordering document specifying the Services to be provided according to this Agreement.
"Malware"	means any software program or code intended to destroy, interfere with corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros.
"Read Only License"	means a 7-year license (typically ordered at the end of the Agreement term) for the purposes of reporting, viewing and exporting the CUSTOMER's data. A Read Only License does not allow the CUSTOMER to modify or create data.
"Services"	means the services ordered by CUSTOMER under a Cloud Services Schedule and made available online by SYMMETRY, as described in the Documentation. The Services includes the SYMMETRY Software and the Documentation but excludes CUSTOMER Data, Non-SYMMETRY Applications and any Professional Services.
"SYMMETRY Software"	Means the software that allows CUSTOMER to use certain functionality in connection with the Services.

2 SERVICES

- 2.1 **Provision of the Services.** Subject to the terms of this Agreement, including payment of the Fees in accordance with clause 5.1 below, SYMMETRY will: a) make the Services available to CUSTOMER pursuant to this Agreement, the applicable Cloud Services Schedule and Documentation; b) provide applicable SYMMETRY standard support at no additional charge as set out in Annex [A](#) and [B](#) during SYMMETRY normal working hours (9am-5pm Mon-Friday except for UK public and bank holidays); c) use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for: i) planned downtime (for which SYMMETRY shall give advance electronic notice as soon as reasonably practicable); ii) any unavailability caused by events beyond SYMMETRY's reasonable control, including, for example, a Force Majeure act as further detailed at clause 12.13 of this Agreement; and d) provide the Services in accordance with laws and government regulations applicable to SYMMETRY's provision of the Services to its CUSTOMERS generally (i.e., without regard for CUSTOMER's particular use of the Services) and subject to CUSTOMER's compliance with the terms of this Agreement.
- 2.2 **Suspension of Services.** SYMMETRY may suspend CUSTOMER's access and use of the Services that SYMMETRY reasonably and in good faith believes is in violation of this Agreement (including failure to pay the Fees in accordance with clause 5.2 below). SYMMETRY agrees to provide CUSTOMER with reasonable notice in advance of any suspension or disablement before its implementation unless such suspension or disablement is necessary to comply with applicable laws or prevent imminent harm to the Services or any third party, in which case, SYMMETRY agrees

to notify CUSTOMER to the extent allowed by applicable law of such suspension or disablement as soon as practicably possible.

- 2.3 **SYMMETRY Personnel.** SYMMETRY will be responsible for the performance of its personnel (including its employees and contractors) and their compliance with SYMMETRY's obligations under this Agreement.
- 2.4 **Size Band Limits.** The Services are priced according to the CUSTOMER's annual turnover, income, size of organisation as advised to CUSTOMER at the time of quotation by SYMMETRY (or other metric as agreed between the parties in writing) ("**Band Limit**"). SYMMETRY reserves the right to request a banding review during any subscription period if SYMMETRY reasonably believe there is a growth of more than 25% year on year in the CUSTOMER's Band Limit. If CUSTOMER exceeds its contractual Band Limit, then CUSTOMER agrees to execute an additional Cloud Services Schedule in order to bring the CUSTOMER into the applicable banding in order to remain compliant under the terms of this Agreement and pay any additional Fees in accordance with clause 5 below.
- 2.5 **Future Functionality.** The CUSTOMER hereby acknowledges that it has not entered into this Agreement on the basis of any future service or functionality that SYMMETRY may offer in the future. SYMMETRY agrees to provide any such future service or functionality, if and when it is made generally available by SYMMETRY and CUSTOMER accepts that this is not a commitment on the part of SYMMETRY to deliver any other service or functionality. Furthermore, nothing in this Agreement shall restrict SYMMETRY from using in the design, development, or implementation of its services any anonymised data, information, or techniques that it learns from services provided that are of general applicability to the marketplace.
- 2.6 **Non-SYMMETRY Applications.** SYMMETRY may make Non-SYMMETRY Applications available to CUSTOMER for use in connection with the Services. The CUSTOMER understands and accepts that SYMMETRY makes no warranties of any kind in relation to any Non-SYMMETRY Applications and the associated license by the respective provider and assumes no liability for CUSTOMER's use of the same.

3. CUSTOMER RESPONSIBILITIES & RESTRICTIONS

- 3.1 **CUSTOMER Responsibilities.** The CUSTOMER agrees to provide a list of all entities accessing or intending to access and use the Services during the Initial Subscription Period and all Subsequent Subscription Periods (as defined in clause 11 below). The CUSTOMER will be responsible for: a) its compliance with this Agreement and Documentation; b) the accuracy, quality and legality of all CUSTOMER Data; c) the means by which the CUSTOMER has acquired the CUSTOMER Data and CUSTOMER's use of the CUSTOMER Data with the Services and the inter-operation of any Non-SYMMETRY Applications with which CUSTOMER uses the Services and CUSTOMER Data; d) using commercially reasonable efforts to prevent unauthorised access to or use of the Services and CUSTOMER Data; and shall notify SYMMETRY promptly of any unauthorised access or use and provide SYMMETRY with such cooperation and assistance related to such unauthorised use as SYMMETRY may reasonably request to terminate such use.
- 3.2 **CUSTOMER Restrictions.** The CUSTOMER's use of the Services is subject to the Band Limit specified in the applicable Cloud Services Schedule. The CUSTOMER will not: (a) make the Services available to anyone other than CUSTOMER, Affiliates, proving they are licenced or use the Services for the benefit of anyone other than CUSTOMER or its Affiliates except to the extent expressly permitted by SYMMETRY in a Cloud Services Schedule; unless permitted by applicable law; (b) directly or indirectly reverse engineer, decompile, disassemble the Services, SYMMETRY Software or any other software, documentation or data related to access and the use of the Services; (c) sell, resell, license, sublicense, distribute, make available, rent or lease any Service, or include any Service in a service bureau or outsourcing offering (except to the extent expressly permitted by SYMMETRY in a Cloud Services Schedule); (d) use the Services or Non-SYMMETRY Applications to store or transmit infringing, libellous, or otherwise unlawful or tortious material, or to store or transmit material in violation of any third party privacy rights; (e) use the Services or Non-SYMMETRY Applications to store or transmit any Malware; (f) interfere with or disrupt the integrity or performance of any Services or third party data; (g) attempt to gain any unauthorised access to the Services or its related systems and/or networks; (h) modify, translate, or create derivative works based on the Services or any SYMMETRY Software (except to the extent expressly permitted by SYMMETRY in a Cloud Services Schedule); (i) remove any proprietary notices or labels. With respect to any SYMMETRY Software that is distributed or provided to the CUSTOMER for use on the CUSTOMER premises or devices, SYMMETRY hereby grants the CUSTOMER a non-exclusive, non-transferable, non-sublicensable license to use such SYMMETRY Software only in connection with the Services and this Agreement.

4. PROFESSIONAL SERVICES

- 4.1 **General Terms.** CUSTOMER may wish to receive certain professional, educational, operational, or technical services (collectively "**Professional Services**") specified either as Products & Services in the applicable Professional Services Schedule accompanying the applicable Cloud Services Schedule. SYMMETRY and CUSTOMER may, from time to time, execute additional Professional Services Schedules. The Professional Services Schedule will at minimum, include: (a) a description of the Professional Services and any work product or other tangible and all training materials to be developed and or provided to CUSTOMER (each a "**Deliverable**"); (b) the scope of Professional Services; and (c) the applicable Fees and payment terms for such Professional Services. To the extent payment terms are not specified in a Professional Services Schedule the payment terms in this Agreement shall apply.

4.2 Deliverables, Ownership.

- a. **Deliverables.** Unless otherwise set forth in the applicable Professional Services Schedule, SYMMETRY shall own all rights, title and interest in and to the Deliverables (excluding any CUSTOMER Property, defined below) and related Intellectual Property Rights. For the duration of each Professional Services Schedule and subject to terms and conditions of this Agreement, SYMMETRY hereby provides the CUSTOMER with a limited, non-exclusive, non-transferable, and terminable license to use the Deliverables solely for the CUSTOMERs internal operations in connection with its authorised use of the Services.
- b. **SYMMETRY Tools.** Nothing shall be construed to assign or transfer any Intellectual Property Rights in the proprietary tools, libraries, know how, techniques and expertise ("**SYMMETRY Tools**") used by SYMMETRY to develop the Deliverables and to the extent that such SYMMETRY Tools are delivered with or as part of the Deliverables, they are licensed, not assigned, to the CUSTOMER on the same terms as the Deliverables.
- c. **CUSTOMER Property.** The CUSTOMER shall own all rights title and interest in and to any CUSTOMER Property. "**CUSTOMER Property**" means any technology, CUSTOMER specific business processes, or deliverables, specifically as such materials are designated as CUSTOMER-owned property. SYMMETRY shall have the right to use any CUSTOMER Property solely for the purpose of providing the Professional Services to the CUSTOMER.

4.3 **Professional Services Warranty.** In regards to Professional Services only, SYMMETRY warrants that: (a) it and each of its employees, consultants and subcontractors (if any), that it uses to provide and perform Professional Services has the necessary knowledge, skills, experience, qualifications, and resources to provide and perform the Professional Services in accordance with the Professional Services Schedule; and (b) the Professional Services will be performed for and delivered to CUSTOMER in a professional and workmanlike manner in accordance with the laws and governmental regulations applicable to the performance of such Professional Services. The CUSTOMER acknowledges that SYMMETRY's ability to successfully perform Professional Services is dependent upon the CUSTOMERs provision of timely information, access to resources and participation. If through no fault or delay of CUSTOMER the Professional Services do not conform to this foregoing warranty, and the CUSTOMER notifies SYMMETRY within seven (7) days of SYMMETRY's delivery of the Professional Services, SYMMETRY will re-perform the non-conforming portions of the Professional Services at no cost to the CUSTOMER.

4.4 **Professional Services Scheduling.** Unless otherwise specified in the Professional Services Schedule, Professional Services are performed on a time and materials basis, based on a 6 hour day. If the CUSTOMER for any reason cancels or defers the engagement within 14 days prior to the scheduled commencement date, CUSTOMER agrees to pay SYMMETRY 50% of the estimated Professional Services Fee plus non-recoverable expenses and 100% of the estimated Professional Services Fees plus non-recoverable expenses if cancellation or deferment of the engagement takes place 7 days or less prior to the commencement date. Such Fees shall be waived in the event SYMMETRY is able to redeploy the Professional Services personnel to another Professional Services engagement prior to the scheduled commencement date.

4.5 If services are Prepaid, billing will take place on the return of a signed Professional Services Schedule and is payable prior to commencement of Services, any Prepaid rates shown are after a discount to reflect the fact that the sum will be paid in full before the start of any work. This discount will be lost and become payable if payment is delayed, we will charge an increase reflecting to our current price list. Where T&M work is undertaken and an estimate has been given, if the work exceeds this estimate we will contact you to ask for your written permission to continue, work will not continue past the estimate unless this permission is received. If we agree to complete a piece of work free of charge, and this is cancelled by the CUSTOMER we will not reschedule this free of charge work again

4.6 All work on the Professional Services Schedule is to be used before the agreement end date, days / hours and cannot be transferred to new agreements and the agreement end date will not be extended.

5. FEES

5.1 **Fees.** In consideration of the supply of the Services, the CUSTOMER will pay SYMMETRY the then applicable Fees specified in the applicable Cloud Services Schedule and/or Professional Services Schedule in accordance with the terms of this clause 5 (unless specified otherwise). Payment obligations are non-cancellable, and Fees paid are non-refundable, and usage limits cannot be decreased during the first year of access to the Services and thereafter only upon 90 days prior written notice and agreement from SYMMETRY.

5.2 **Payment Terms.** Unless otherwise specified in the Cloud Services Schedule, the CUSTOMER agrees to pay all Fees quarterly in advance by Direct Debit (on a date to be agreed between the parties) or within thirty (30) days of the date of an applicable invoice. Unpaid amounts are subject to a late fee of 4% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate suspension or termination of the Services. Unless otherwise stated in a Cloud Services Schedule and/or Professional Services Schedule, all Payments shall be made in pounds sterling (GBP£).

5.3 **Services Fee Increases.** SYMMETRY reserves the right to increase its Fees using the Consumer Price Index (CPI) or any other metric as notified in advance in writing by SYMMETREY. Any increase will take effect annually from the 1st of March following the Initial Subscription Period (as defined in clause 11.1). This does not include changes in Fees dependent on increased usage, which maybe change at any time. Any Fee increases applied under this clause 5.3 are in addition to the turnover banding Fee increases as described in clause 2.4 above.

- 5.4 **Taxes.** Unless otherwise stated, all Fees are exclusive of all applicable taxes (including local sales tax and VAT), levies or duties imposed by taxing authorities, including without limitation value-added and withholding taxes, and CUSTOMER shall be responsible for payment of all such taxes, levies, or duties, excluding any taxes based on SYMMETRY's income.

6. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS

- 6.1 **Definition.** Either Party may disclose Confidential Information to the other Party during the term of this Agreement. **"Confidential Information"** means all information disclosed by a party (**"Disclosing Party"**) to the other (**"Receiving Party"**), which is in tangible form and labelled "confidential" or the like, or that reasonably should be understood to be confidential given the nature of the information and the circumstances of the disclosure. The following information will be considered Confidential Information whether or not marked or identified as such: (a) the Services; (b) CUSTOMER Data; (c) the terms of this Agreement including all Cloud Services Schedules (including pricing), Schedules and Annexes; and (d) the Disclosing Party's strategic roadmaps, product plans, product designs and architecture, technology and technical information, security audit reviews, business and marketing plans, and business processes. Confidential Information of the CUSTOMER includes non-public data provided by the CUSTOMER to SYMMETRY to enable the provision of the Services. The Confidential Information of each party includes business and marketing plans, technology and technical information, product plans and designs and business processes disclosed by such party. Confidential Information does not include any information that: (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party, without breach of any obligation owed to the Disclosing Party; (c) is received from a third party without breach of any obligation owed to the Disclosing Party; (d) was independently developed by the Receiving Party; or (e) is required to be disclosed by law provided that to the extent legally and reasonably permissible the Receiving Party gives the Disclosing Party prior notice of such disclosure and reasonable assistance, at the Disclosing Party's expense, if the Disclosing Party seeks to contest such disclosure.
- 6.2 **Permitted Use and Disclosure.** The Receiving Party will only use the Confidential Information for the purpose of complying with its obligations or exercising its rights under this Agreement or to receive the benefit of the Services. The Receiving Party agrees to take precautions to protect such Confidential Information in a manner no less stringent than it would protect its own Confidential Information to: (a) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement; and (b) except as otherwise authorised by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its Affiliates, employees and contractors who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party, containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Cloud Services Schedule to any third party other than its; Affiliates, legal counsel, and accountants without the other party's prior written consent provided that a party that makes any such disclosure to its Affiliates, legal counsel or accountants will remain responsible for such Affiliates, legal counsel's, or accountant's compliance with this clause 6.2. Notwithstanding the foregoing, SYMMETRY may disclose the terms of this Agreement to a subcontractor or Non-SYMMETRY Application provider, to the extent necessary to perform its obligations under this Agreement and always under the terms of confidentiality materially as protective as the obligations under clause 6.
- 6.3 **Ownership by SYMMETRY.** SYMMETRY exclusively owns and retains all right, title and interest in and to: (a) the Services and SYMMETRY Software, Documentation and all improvements, enhancements, or modifications and SYMMETRY's Confidential Information, (b) any software, applications, inventions or other technology developed in connection with the Services, and (c) all Intellectual Property Rights related to any of the foregoing. No title to or ownership of any Intellectual Property Rights related to the Services is transferred to the CUSTOMER pursuant to this Agreement. SYMMETRY reserves all rights not explicitly granted to the CUSTOMER.
- 6.4 **Ownership by CUSTOMER.** The CUSTOMER exclusively owns and retains all right, title and interest in and to the CUSTOMER Data and CUSTOMER's Confidential Information.
- 6.5 **Feedback.** The CUSTOMER hereby grants SYMMETRY a worldwide, perpetual, irrevocable, royalty free licence to use and incorporate into its services any suggestions, improvements, modifications, or other feedback provided by CUSTOMER that SYMMETRY may adopt for any of its services.

7. DATA PROTECTION

- 7.1 SYMMETRY agrees to implement and maintain appropriate administrative, physical and technical safeguards designed to secure the Services and the CUSTOMER Data against accidental or unlawful loss, access or disclosure while in the possession or under the control of SYMMETRY. The terms of the of the data processing addendum at bluqube.co.uk/agreement-terms (**"DPA"**) are hereby incorporated by reference and shall apply to the extent CUSTOMER Data includes Personal Data, as defined in the DPA under which both parties agree to comply with the terms of the DPA. Where the CUSTOMER specifically directs SYMMETRY to act as a Processor (as defined in the DPA) for the benefit of the CUSTOMER, SYMMETRY warrants that it shall comply at all times with the provisions of the DPA applicable to SYMMETRY's obligations as a Processor of Personal Data and shall further process all Personal Data (as defined in the DPA) on behalf of the CUSTOMER in accordance with the DPA.

8. WARRANTIES AND DISCLAIMER

- 8.1 **Mutual Warranty.** Each party warrants that it has the necessary rights to enter into this Agreement.

8.2 **SYMMETRY Warranty.** SYMMETRY warrants that while the corresponding Fees are paid: (a) it shall use all reasonable efforts consistent with prevailing industry standards to maintain and provide the Services with the functions specified in the Documentation when used in a manner that conforms to the terms and conditions of this Agreement and Documentation; (b) to provide the Services in a reliable and professional manner; and (c) it is in compliance with, and will perform the Services in compliance with all applicable law and regulations. Subject to clause 11.3, Termination for Cause, the CUSTOMER's sole and exclusive remedy and SYMMETRY's entire liability for a breach of the above warranty, shall be for SYMMETRY to use commercially reasonable efforts to modify the Services to substantially achieve in all respects the functionality described in the Documentation and if SYMMETRY is unable to restore such functionality, the CUSTOMER shall be entitled to terminate the applicable Cloud Services Schedule and receive a pro-rated refund of the Fees pre-paid to SYMMETRY for the corresponding unused portion of the remaining pre-paid period. The warranties in this clause 8.2 are made to and for the benefit of CUSTOMER only.

8.3 **CUSTOMER Warranty.** The CUSTOMER warrants that: (a) it has all the necessary and applicable rights, title, and interest in and to the CUSTOMER Data to grant the rights to SYMMETRY contemplated by this Agreement.

8.4 **Disclaimer.** Except as provided in this clause 8.4, and to the maximum extent permitted by applicable law, SYMMETRY does not warrant that the Services will be uninterrupted or error free; nor does it make any warranty as to the results that may be obtained from use of the Services. The Services are provided 'as is' and SYMMETRY disclaims all warranties, express or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose and non-infringement.

9. INDEMNITY

9.1 **Indemnification by SYMMETRY.** SYMMETRY will defend the CUSTOMER against any alleging third party claim that the Services infringes a third party Intellectual Property Right, including but not limited to any United Kingdom patent, copyright or misappropriation of any trade secret, and will indemnify the CUSTOMER for the resulting costs and damages finally awarded against the CUSTOMER to such third party by a court of competent jurisdiction or agreed to in settlement, provided the CUSTOMER promptly notifies SYMMETRY of any and all threats, claims and proceedings related to the Services and the CUSTOMER gives sole control to SYMMETRY over the defence and settlement. The foregoing obligations do not apply with respect to any portions or components of the Services: (i) not supplied by SYMMETRY; (ii) made in whole or in part in accordance with the CUSTOMER specifications; (iii) that are modified after delivery by SYMMETRY; (iv) combined with other products, processes or materials where the alleged infringement relates to such combination; (v) where the CUSTOMER continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement; or (vi) where the CUSTOMER's use of the Services is not strictly in accordance with terms of this Agreement. If, due to a claim of infringement against the CUSTOMER pursuant to this clause 9.1, SYMMETRY may at its option and expense: (i) replace or modify the Services to be non-infringing; (ii) obtain for the CUSTOMER a license to continue using the Services; or (iii) if neither of the foregoing is commercially feasible, terminate this Agreement and the CUSTOMER's rights hereunder and provide the CUSTOMER a refund of any prepaid, unused Fees for the Services.

9.2 **Indemnification by CUSTOMER.** The CUSTOMER will defend SYMMETRY against any alleging third party claim that the CUSTOMER's use of the Services is in breach of this Agreement, infringes a third-party Intellectual Property Right, including but not limited to, any United Kingdom patent, copyright, or misappropriation of any trade secret, provided the CUSTOMER is promptly notified of any and all threats, claims and proceedings related to the use of the Services and given sole control over the defence and settlement. The CUSTOMER will indemnify SYMMETRY for the resulting costs and damages finally awarded against SYMMETRY to such third party by a court of competent jurisdiction or agreed to in settlement.

9.3 **Exclusive Remedy.** This clause 9 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this clause.

10. LIMITATION OF LIABILITY

10.1 Notwithstanding anything to the contrary in this Agreement each party shall be liable to the other for death or personal injury of a person caused by its negligence and fraud (including without limit fraudulent misrepresentation) which shall not be limited.

10.2 Except as stated in clause 10.1 above, SYMMETRY's total aggregate liability for all claims made under or relating to this Agreement, however arising shall not exceed the total amount paid by CUSTOMER and its Affiliates for the Services giving rise to the liability in the three (3) months preceding the first incident out of which the liability arose, whether or not the party has been advised of the possibility of such damages. The foregoing limitation shall apply whether an action is on contract or tort and regardless of the theory of liability but will not limit the CUSTOMER's payment obligations under the Fees clause above.

10.3 Neither party shall be liable to the other for loss of profits (or loss of anticipated profits), loss of or damage to data, records, cost of procuring substitute goods, services, or technology, nor for any special, indirect, incidental or consequential damages.

11. TERM & TERMINATION

- 11.1 **Term of Agreement.** This Agreement commences on the date CUSTOMER first accepts it and shall remain in effect for the period specified in the applicable Cloud Services Schedule (the "**Initial Subscription Period**") unless terminated in accordance with clause 11.3 below.
- 11.2 **Renewal.** Following expiration of the Initial Subscription Period, the Cloud Services Schedule(s) under this Agreement shall automatically renew for further 12-month periods subject to payment of the corresponding Fees ("Subsequent Subscription Period"). Each party will have the ability to provide written notice to the other of its intention not to renew a Subsequent Subscription Period upon at least 90 days' notice prior to the end of the then current Subsequent Subscription Period of such Cloud Services Schedule. For the avoidance of doubt, any promotion or discounted Fees offered by SYMMETRY during the Initial Subscription Period, or any Subsequent Subscription Period will not apply during any new Subsequent Subscription Period unless specified in an Cloud Services Schedule.
- 11.3 **Termination for Cause.** Either party may terminate this Agreement for cause, upon thirty (30) days' written notice in the event of a material breach and such breach remains uncured at the expiration of such period or if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- 11.4 **Obligations Upon Termination.** If the Agreement is terminated due to a breach by SYMMETRY, the CUSTOMER will be entitled to a refund of the balance of the Fees already paid covering the remaining number of days in the relevant Subsequent Subscription Period following the effective date of termination. In the event this Agreement is terminated due to a breach by the CUSTOMER, all Fees due will become payable immediately. In no event will termination relieve the CUSTOMER of its obligation to pay the Fees due to SYMMETRY for the period of the Services provided prior to the date of termination. Furthermore, upon termination or expiration for any reason of this Agreement, the CUSTOMER rights to use the Services shall cease and CUSTOMER will, within 30 days of termination or expiration, destroy all copies of the SYMMETRY Software, Documentation and Confidential Information of SYMMETRY and if requested by SYMMETRY provide a written certification signed by an authorised representative of the CUSTOMER certifying that all Confidential Information has been destroyed. SYMMETRY will grant limited access to the Services for a period of thirty (30) days following termination for the purposes of the CUSTOMER's retrieval of the Content, but thereafter SYMMETRY shall delete any stored CUSTOMER Data in accordance with SYMMETRY's Retention Policy, available upon request. All clauses of this Agreement, which by their nature should survive termination, will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

12. GENERAL PROVISIONS

- 12.1 **Affiliates.** An Affiliate may use the Services provided under this Agreement, if licenced correctly, and/or may enter into a Cloud Services Schedule for the Services, governed by the terms of this Agreement. By entering into a Cloud Services Schedule and by making use of the Services, such Affiliate agrees to be bound by the terms of this Agreement as if it were an original party to this Agreement. The CUSTOMER represents and warrants that it has sufficient rights and authority to make this Agreement binding upon each Affiliate. The CUSTOMER and each of its Affiliates shall be jointly and severally liable for any damages, costs or liabilities arising from such Affiliate's use of the Services. The CUSTOMER will remain responsible for all acts and omissions of each Affiliates in connection with each such Affiliate's use of the Services, including, without limitation, the breach of the applicable terms of this Agreement.
- 12.2 **Severability.** If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force, effect and enforceable.
- 12.3 **Assignment.** This Agreement is not assignable, transferable or sub licensable by the CUSTOMER except with SYMMETRY's prior written consent (such consent not to be unreasonably withheld).
- 12.4 **Integration; Order of Precedence.** This Agreement, together with any Cloud Services Schedule(s), Professional Services Schedules, Schedules and any Annexes, which are incorporated and included into this Agreement, constitutes the entire agreement between the parties and supersedes any and all prior agreements or communications between the parties with regard to the subject matter hereof. The parties expressly disclaim any reliance on any and all prior RFP's, agreements, understandings, verbal and/or written communications related to the Services to be provided by SYMMETRY. In the event of a conflict between terms of this Agreement and a Cloud Services Schedule or Cloud Professional Services Schedule, the terms of the Cloud Services Schedule or Cloud Professional Services Schedule shall prevail.
- 12.5 **Contractual Relationship.** No agency, partnership, joint venture, or employment is created as a result of this Agreement and the CUSTOMER does not have any authority of any kind to bind SYMMETRY in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and legal fees.
- 12.6 **Notices.** All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by e-mail; the day after it

is sent, if sent for next day delivery by recognised overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

- 12.7 **Dispute Resolution.** If there is a disagreement or dispute regarding this Agreement, the parties shall in the first instance attempt to resolve this between a representative from SYMMETRY and one from the CUSTOMER. If the matter remains unresolved for a period of 14 days, the parties agree to use all reasonable endeavours to schedule a meeting between the CEO (or equivalent) of SYMMETRY and the CEO (or equivalent) of the CUSTOMER within 21 days. Only if the matter remains unresolved at the end of this 35-day period shall either party be entitled to refer the matter to the courts, provided that nothing in this clause 12.7 shall prevent either party from seeking a preliminary injunction or other judicial relief at any time if in its judgement such action is necessary to prevent irreparable damage.
- 12.8 **Governing Law.** This Agreement shall be governed by and construed under the laws of England without regard to the conflicts of law provisions thereof and the parties submit to the exclusive jurisdiction of the English courts.
- 12.9 **Press Releases; References.** The parties shall work together in good faith to issue at least one mutually agreed upon announcement within six (6) months of the effective date of this Agreement, and the CUSTOMER agrees to reasonably cooperate with SYMMETRY to serve as a reference account upon request. SYMMETRY agrees that use of the CUSTOMER's logo shall be optional, subject to the written consent of the CUSTOMER and in accordance with the CUSTOMER's logo use guidelines as provided to SYMMETRY.
- 12.10 **Export.** The Services, any other SYMMETRY technology and derivatives thereof may be subject to export laws and regulations of the United Kingdom and other jurisdictions. CUSTOMER shall not permit access or use of any of the Services in an embargoed country or in breach of any UK export law or regulation.
- 12.11 **Rights of Third Parties.** Nothing in this Agreement shall confer, or is intended to confer, on any third party any benefit or the right to enforce any term of this Agreement.
- 12.12 **Non-Solicitation.** Neither Party will offer employment to, not employ any staff of the other party after commencement of this Agreement and prior to the date 12 months after termination or expiration of this Agreement, without the prior written consent of the other party.
- 12.13 **Force Majeure.** In the event that either party is prevented from performing, or is unable to perform, any of its obligations under this Agreement due to any cause beyond the reasonable control of the party invoking this provision (including, without limitation, for causes due to war, fire, earthquake, flood, hurricane, riots, pandemic, acts of God, internet service provider failures or delays, denial of service attacks, or other similar causes) the affected party's performance will be excused and the time for performance will be extended for the period of delay or inability to perform due to such occurrence; provided that the affected party (a) provides the other party with prompt notice of the nature and expected duration of the event, (b) uses commercially reasonable efforts to address and mitigate the cause and effect of such event, (c) provides periodic notice of relevant developments, and (d) provides prompt notice of the end of such event.