

G-Cloud 15 Terms and conditions for Jisc Cloud Solutions

Important legal notice. *If you submit an order for any Jisc Cloud Solutions, you create a legally binding contract for your institution, organisation or company which is governed by the Call-Off Contract and these terms and conditions. Therefore, please read these terms and conditions for Jisc Cloud Solutions carefully and only submit your purchase order if they are acceptable to your institution, organisation or company.*

These terms and conditions apply to the provision of Services by Jisc to the Customer under the Call-Off Contract. The Services to be delivered may include managed services, professional services, software development services, consultancy and related services as described in the relevant Service Definition. Such Services may involve the reselling of products or services from third parties; in particular in respect of managed services such as cloud hosting this will involve the use of Amazon Web Services (AWS), Microsoft Azure or Google services for the provision of such services, and in respect of firewall services this will involve the use of products or solutions provided by our partners Fortinet or Cloudflare. Where these third parties are involved, the relevant Customer flow down terms and conditions shall be applicable in addition to these terms and conditions and by signing the Call-Off Contract for the Services, the Customer agrees to be bound by those applicable terms and conditions. Details of these additional flow down terms and conditions (including links to such terms and conditions) can be found below and within the relevant Service Definition.

1. Definitions

1.1. In these terms and conditions, the following terms will have the following meanings:

- 1.1.1. **Agreement** means the legally binding contract between Parties for the delivery and receipt of the Services consisting of the Call-Off Contract, Service Definition, these terms and conditions and any documents referenced in any of the foregoing as being incorporated in the Agreement, including the licence terms and conditions for any software made available as part of the Services. Where there is a conflict or inconsistency the following order of precedence shall apply (highest to lowest):
 - 1.1.1.1. the Call-Off Contract;
 - 1.1.1.2. these terms and conditions; and
 - 1.1.1.3. the Service Definition.
- 1.1.2. **Applicable Law** means all applicable laws, statutes, regulations, decree directives, legislative enactments, orders, binding decisions of a competent Court or Tribunal, rule, regulatory policies, guidelines, codes, other binding restriction, regulatory permits and licences applicable under law which are in force from time to time during the term of this Agreement to which a Party is subject from time to time;
- 1.1.3. **Authorised User** means any party authorised by the Customer to use the

Services.

- 1.1.4. **Business Day** means any day which is not a Saturday, Sunday or a public holiday in England and Wales.
- 1.1.5. **Business Hours** means between 09:00 and 17:00 on a Business Day
- 1.1.6. **Bribery Legislation** means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the Bribery Legislation;
- 1.1.7. **Call-Off Contract** means the G-Cloud call-off contract agreement (entered into following the provisions of the G-Cloud 15 Framework Agreement) for the provision of Services made between Jisc and the Customer into which these terms and conditions are incorporated;
- 1.1.8. **Confidential Information** means: (a) this Agreement, and in respect of each Party, all information and data of whatever nature whether disclosed orally, in writing or by any other means which relates to a Party's (or any Group company's) existing or potential customers and personnel, trade secrets, know-how, research, developments, technical and business information relating to products, methods and processes, and any other information whether or not designated as confidential information but which by its nature is confidential; (b) notes, reviews, analysis, reports and other information derived from any of the information in paragraph (a) above; and (c) information designated as confidential or commercially sensitive or which might reasonably be considered as such;
- 1.1.9. **Content** means the Customer's software (including machine images), data, text, audio, video, images, other content and any Customer systems and processes that interact with the Services;
- 1.1.10. **Contract Period** means the period of time agreed by the Parties and set out in the Call-Off Contract;
- 1.1.11. **Customer** means the corporate entity that enters into the Agreement with Jisc, as set out in the Call-Off Contract;
- 1.1.12. **Deliverable** means any of the materials developed, created, written or prepared by Jisc in the course of the Services, including any of the deliverables specified in the Call-Off Contract;
- 1.1.13. **Fees** means the amount to be paid by the Customer for the Services calculated in accordance with the applicable Service Definition(s) in respect of each type of Service;
- 1.1.14. **G-Cloud 15 Framework Agreement** means the framework agreement that governs the relationship between Jisc and Crown Commercial Services for the provision of the Services to the Customer;
- 1.1.15. **Group** means in relation to a Party, the Party, its subsidiaries, its holding companies and subsidiaries of such holding companies where **subsidiary** and **holding company** have the meanings ascribed in section 1159 of the Companies Act 2006;
- 1.1.16. **Intellectual Property Rights** any rights in or to intellectual property,

including copyright (including rights in computer software and related rights), patents, database rights, designs, trademarks, know-how or confidential information and any other rights in respect of any other industrial or intellectual property, whether registrable or not and wherever existing in the world and including all rights to apply for any of the foregoing rights;

- 1.1.17. **Jisc** means the corporate entity as defined in the Call-Off Contract;
- 1.1.18. **Managed Services** means the services described in the relevant Service Definition to be performed by Jisc in accordance with this Agreement;
- 1.1.19. **Modern Day Slavery** means the Modern Slavery Act 2015 and any subordinate legislation made under that Act from time to time together with all applicable anti-slavery and human trafficking laws, statutes, regulations, guidance or codes of practice issued by the relevant government department;
- 1.1.20. **Minimum Fee** means the greater of £1000 or 10% of the Fees;
- 1.1.21. **Objectionable** means unlawful or false or fraudulent or misleading or offensive or pornographic or obscene or derogatory or discriminatory or racist or defamatory or inflammatory or malicious or threatening or causing nuisance or causing anxiety or unsolicited mass mailing, flooding, mail-bombing, spamming; or infringing Jisc's rights or the rights of third parties or likely to expose Jisc to claims or liability, prosecution or disrepute, or otherwise actionable by any third party;
- 1.1.22. **Party** means Customer or Jisc, and together known as the Parties;
- 1.1.23. **Professional Services** means consultancy, design, development or customisation services as more fully described in the relevant Service Definition.
- 1.1.24. **Service Definition** means the detailed description of the Services offered by Jisc under this Agreement including the Managed Services and the Professional Services. The Service Definitions (including the service level agreements and the guidelines for use of the Services) are published on the G-Cloud 15 website.
- 1.1.25. **Services** means the services to be provided by Jisc, as set out in the Call-Off Contract and/or Service Definition. The Services may include software supplied by Jisc for use solely in connection with the Services.
- 1.1.26. **Start Date** has the meaning given to it at Clause 12.1.
- 1.1.27. **Third Party Materials** means the works and/or materials comprised in the Deliverables, the Intellectual Property Rights in which are owned by a third party.

Terms applicable to agreements for Professional Services

2. Professional Services

- 2.1. Jisc will provide the Services described in the Call-Off Contract and/ or Service Definition for the term specified in the Call-Off Contract, on and subject to the terms and conditions of this Agreement.

2.2. Jisc will provide the Services:

- 2.2.1. using reasonable skill and care;
 - 2.2.2. in a timely and professional manner;
 - 2.2.3. In accordance with the timetable set out in the Call-Off Contract; and
 - 2.2.4. in accordance with the standards generally observed in the industry for similar services.
- 2.3. Jisc will use reasonable endeavours to ensure the continuity of its personnel and their involvement in the Services.
- 2.4. Jisc has assumed contiguous Business Days during Business Hours for the purposes of its quotation for the Services. If the Customer wishes to suspend the work, it must give Jisc at least one week's prior written notice. In the absence of such notice, Jisc reserves the right to charge at its standard rates for assigned personnel who cannot be re-deployed to work for other customers. Jisc will require one week's notice to re-commence work following suspension.
- 2.5. If any change to the nature or scope of the Services or any other aspect of this Agreement is identified as being desirable by either the Customer or Jisc, a request may be submitted to the other Party to effect such change. Any such request will be sufficiently detailed to enable the other Party to assess the impact of the proposed change. Any change to the nature or scope of the Services or any other aspect of this Agreement will only become effective when Jisc provides written confirmation (including by e-mail) of the agreed change and any applicable terms.
- 2.6. Jisc will use reasonable endeavours to ensure that it does not introduce any virus or other specific vulnerability into any computer system used by the Customer and will ensure that no software, data or files residing on those systems will, at any time, be corrupted, damaged or rendered inaccessible by any act or omission of Jisc.
- 2.7. Jisc shall use all reasonable endeavours to perform the Services by the dates set out in the Call-Off Contract or Service Definition and in any project plan. Unless specifically agreed to the contrary in the Call-Off Contract or Service Definition, Jisc shall have no liability for liquidated or other damages arising out of such delay.
- 2.8. Where Jisc is delayed in the performance of its Services as a result of any circumstances outside its control including without limitation force majeure or delays caused by the Customer or its agents, Jisc shall have the right upon notice to the Customer to either (i) suspend the provision of the Services; (ii) terminate the Agreement or (iii) advise the Customer of the anticipated delay to the Services and the additional costs associated with retaining resources in order to deliver the Services.
- 2.9. In such circumstances Jisc shall be entitled to invoice for Services performed at that date, including where such delay impacts an interim milestone, Jisc shall have the right to invoice for work completed notwithstanding that such milestone has been delayed and the provisions of Clause 5 will apply.

3. Acceptance of Professional Service

- 3.1. Unless otherwise agreed, Professional Services are deemed to be accepted upon

completion of the Deliverables.

- 3.2. Where formal acceptance has been agreed, the following applies unless otherwise agreed:
 - 3.2.1. Jisc will notify the Customer when any item is ready for acceptance;
 - 3.2.2. Within five (5) Business Days of Jisc's notice, the Customer will confirm its acceptance in writing, or, if the Customer reasonably believes that the item does not substantially conform with the acceptance criteria agreed by the Parties, the Customer will confirm this in writing with sufficient details for Jisc to be able to understand the deficiency;
 - 3.2.3. As soon as reasonably possible, Jisc will correct rejected items and re-submit them for testing and acceptance as above;
 - 3.2.4. Any item will be deemed to be accepted if the Customer does not issue confirmation of acceptance or non-acceptance within the timescale in Clause 3.2.2; and
 - 3.2.5. commercial usage of any item constitutes acceptance of the item.
Commercial usage means use for any business purpose other than testing.

4. Customer's Obligations

- 4.1. The Customer will:
 - 4.1.1. provide access to its premises, computers and networks as is reasonably requested by Jisc;
 - 4.1.2. ensure that its personnel cooperate fully with Jisc in relation to the provision of the Services; and
 - 4.1.3. promptly provide Jisc with such information and documents as it may reasonably request for the proper performance of its obligations hereunder and be responsible for ensuring that such information is true, accurate, complete and not misleading in any material respect.
- 4.2. The Customer shall be responsible for procuring any third-party cooperation reasonably required by Jisc to enable Jisc to perform its obligations under this Agreement.
- 4.3. Should the Customer fail to perform any of its obligations under this Agreement then Jisc may request, under Clause 2.5, an appropriate change to this Agreement to reflect any delay, cost increase or other consequences arising from such failure.

5. Payment for Professional Services

- 5.1. The Customer will pay Jisc the Fees specified in the Call-Off Contract.
- 5.2. Jisc will issue an invoice for the Minimum Fee following execution of the Agreement. All other Fees will be invoiced monthly in arrears.
- 5.3. Without prejudice to Clause 2.9, where Jisc has not commenced with the provision of the Services and the Agreement is terminated by Jisc due to delays caused by the Customer or its agents in accordance with Clause 2.8, the Minimum Fee will be retained by Jisc.
- 5.4. All due and valid invoices will be paid by the Customer within thirty (30) days of receipt unless there is a bona fide dispute as to the amount of the invoice.

- 5.5. All Fees are stated exclusive of value added tax which will be added to the invoices at the prevailing rate and will be paid by the Customer accordingly.

6. Intellectual Property Rights in Deliverables

- 6.1. Jisc shall ensure that the Third Party Materials are sub-licensed by Jisc to the Customer in accordance with the relevant licensor's standard licensing terms.

Terms applicable to agreements for Managed Services

7. Jisc obligations

- 7.1. In return for the payment of the Fees, Jisc grants the Customer a non-exclusive, non- transferrable right to use the Services and to permit Authorised Users to use the Services for the duration of the Agreement.
- 7.2. Jisc will perform the Services with the skill and care of a competent provider of services of a type similar to the Services and in all material respects in accordance with the Call-Off Contract and applicable Service Definition. Jisc will use all reasonable efforts to achieve the KPIs; availability targets and respond, restore or fix times and any other service metrics and maintenance regimes set out in the Service Definition. Any service credits set out in the Service Definition are in full and final settlement of the relevant failure by Jisc. Service credits are used to purchase Services, monetary refunds do not apply. Any service credit balance remaining when the Agreement is terminated becomes null and void.
- 7.3. Jisc will maintain security measures aligned to ISO27001 and to the OFFICIAL standard classification.
- 7.4. Jisc shall not knowingly introduce any kind of harmful software, malware, viruses, trojan horses, worms, timebombs cancelbots into the Services and will take all reasonable steps within its control to prevent the introduction of any of the foregoing.
- 7.5. Jisc does not make any representations, whether express or implied, about whether the Services will operate in combination with any Customer equipment and software.
- 7.6. The obligations in this Clause 7 replace all conditions, representations and warranties which may otherwise be implied by statute, common law or otherwise and the Customer is responsible for selecting the Services appropriate to its needs. Jisc cannot assess whether such Services are suitable for Customer's purposes.
- 7.7. Where Jisc is delivering Services utilising the services of any third party provider, the licensing terms in respect of use of these services shall also apply in respect of such services; in particular:
- 7.7.1. in respect of cloud hosting this will involve the use of Amazon Web Services (AWS), Microsoft Azure or Google; and
- 7.7.2. in respect of web application firewall services this will involve the use of Fortinet or Cloudflare.
- 7.8. Where these third party providers are involved in the provision of the Managed Services this will be clearly set out in the Service Definition and the relevant licensing terms shall be applicable in addition to these terms and conditions. By

completing a Call-Off Contract or submitting a purchase order for the Services, the Customer agrees to be bound by all of these applicable additional terms. Details of the third party licensing terms (including links to such terms) can be found within the relevant Service Definition. The Customer acknowledges that no assurances in respect of the third-party services is provided, and no liability in connection therewith is assumed by Jisc under this Agreement and that this is reasonable as the Customer will have a direct contractual relationship with these providers governed by those licensing terms.

8. Acknowledgments and Warranty Limitations

- 8.1. The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, Jisc gives no warranty or representation that the Services will be wholly free from defects, errors and bugs.
- 8.2. The Customer acknowledges that the Services are designed to be compatible only with that software and those systems specified as compatible in the relevant Service Definition(s); and Jisc does not warrant or represent that the Services will be compatible with any other software or systems.

9. Customer Obligations

- 9.1. In return for the proper performance of the Service, the Customer shall pay the Fees to Jisc in accordance with Clause 10 below.
- 9.2. The Customer warrants that it has all necessary authority, rights, permissions and consents to enter into the Agreement and to the Content and to any third-party systems or services that it uses in connection with the Services. The Customer will abide by the licence terms and conditions published in the Service Definition(s) for all software forming part of the Services. The Customer shall ensure that the licence terms and conditions of all other software used by the Customer in connection with the Services permit such use.
- 9.3. The Customer shall ensure that all Authorised Users are sufficiently competent to meet the relevant obligations of the Customer set out in the Agreement. Where the Customer has an obligation under this Agreement, such obligation shall extend to its Authorised Users and the Customer shall procure compliance with such obligation by such Authorised Users. The Customer is liable for the actions, omissions, breaches and Fees incurred by Authorised Users.
- 9.4. The Customer shall not access, store, distribute or transmit any Objectionable Content nor use the Services for any Objectionable activity or purpose. Any such actions by the Customer or any Authorised User shall constitute a material breach of this Agreement.
- 9.5. The Customer shall not introduce any kind of harmful software, malware, viruses, trojan horses, worms, timebombs cancelbots into the systems or services of Jisc, its suppliers or customers.
- 9.6. The Customer must maintain the confidentiality and security of all logon credentials and the details of how to use the Customer's account. The Customer is responsible for all Fees incurred through unauthorised access of its account, unless such unauthorised access is solely caused by Jisc. If the Customer discovers any unauthorised access, it must immediately ask Jisc to suspend the Customer's account in which case the provisions of Clause 11 shall apply.

- 9.7. The Customer shall not, and shall ensure that Authorised Users shall not, attempt to circumvent any security measures relating to the Services or infrastructure nor access Jisc's infrastructure except in accordance with the instructions and APIs specified by Jisc.
- 9.8. The Customer is solely responsible for procuring and maintaining its systems and services from and to the Jisc service boundary. Where applicable, the Jisc service boundary is defined in the Service Definition(s).
- 9.9. The Customer is solely responsible for the development, operation, maintenance and use of the Content and for compliance with any third party AUP or other policies, regulations or laws relating to the same. The Customer uses third party products and services in connection with the Services at its sole risk and is liable for any costs incurred by Jisc as a result of the Customer's use of the same.
- 9.10. The Customer is responsible for properly configuring and using the Services and taking its own steps to maintain appropriate security, protection and backup of the Content, which may include the use of encryption technology to protect the Content from unauthorised access and routine archiving. Unless the Services include back up services, Jisc recommends that the Customer maintains an up to date copy of the Content by other means.
- 9.11. Unless otherwise set out in the Agreement the Customer is responsible for providing all support to its users and customers. Jisc shall provide support to the Customer for the Services as described in the Service Definition(s) but does not provide any support for the Customer's services or systems that interact with the Services.
- 9.12. The Customer may use the Services to provide services to its own customers but may not subcontract, sublicense, supply or re-sell the Services.
- 9.13. The Customer accepts that Jisc may be required by law to monitor the Content and use of the Services and to provide details of the same which may include identification of logon credentials and their usage. Jisc shall not be liable for any effect on the Services caused by the obligation to comply with any requests made under any statutory authority. The Customer agrees that without prejudice to Clauses 7.5 and 15, Jisc may also monitor the Customer's use of the Services and accumulate statistics for purposes connected with the Agreement and so as to be able to develop and improve the Services.
- 9.14. For the duration of the Agreement and for twelve months thereafter, the Customer shall not solicit the services or employment of any Jisc personnel. This provision does not apply to unsolicited approaches to the Customer or responses to any public recruitment campaign.

10. Fees and payment

- 10.1. The rates and charges comprising the Fees are as set out in the Call-Off Contract and the relevant Service Definition(s).
- 10.2. If the Customer fails to pay any amount properly due and payable by it under the Agreement, this will be a material breach for the purposes of Clause 12, and Jisc will additionally have the right to:
 - 10.2.1. charge interest on the overdue amount at the rate of 4 per cent per annum above the base rate for the time being of the Bank of England accruing on

a daily basis from the due date up to the date of actual payment, whether before or after judgment; and

- 10.2.2. on 5 Business Days' written notice (in the absence of receipt of a disputed invoice notice from Customer) suspend the provision of the Services until such amounts have been paid in full by the Customer and Jisc will be entitled to continue charging the Customer for the Services during such period of suspension.
- 10.3. Save where the Customer's non-payment relates to a bona fide dispute, the Customer will not have any right to withhold, or any right of set-off, with respect to payments due to Jisc under this Agreement.
- 10.4. Jisc may calculate Fees on an annual basis for the Customer's information. However, all Fees will be invoiced monthly in arrears throughout the Contract Period.
- 10.5. All invoices are due for payment within thirty (30) days of the invoice date. Jisc may charge interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 on any late payment.
- 10.6. Fees are quoted exclusive of VAT which will be paid by the Customer at the prevailing rate.
- 10.7. The Customer shall pay the appropriate consumption based charges charged by AWS, Microsoft or Google (as applicable). The Customer shall pay these to Jisc unless agreed by the Parties that such payment should be directly to AWS, Microsoft or Google (pursuant to an enterprise agreement between the Customer and the relevant cloud hosting provider). Where applicable, the charges payable to AWS, Microsoft or Google will be identified separately on Jisc's invoice along with details of the consumption of services by the Customer to which they relate.

11. Suspension

- 11.1. Without prejudice to any of its other rights or any rights of any of Jisc's cloud hosting providers, Jisc may suspend the Services in whole or part, upon written notice to the Customer where:
 - 11.1.1. Jisc in its sole and reasonable discretion, considers, or any third party claims, that the Customer is in breach of Clause 9.4; or
 - 11.1.2. the Customer exceeds the usage or financial cap for its account or in the event of non-payment of any invoice for a period of ninety (90) days; or
 - 11.1.3. Jisc reasonably believes that the owner of any Intellectual Property Rights in the Content has withheld, withdrawn or failed to give its permission for the Customer's use of the same; or
 - 11.1.4. Jisc reasonably believes there to be a material breach, or persistent lesser breach by the Customer of the Agreement; or
 - 11.1.5. Jisc is requested to do so by any statutory authority.
- 11.2. Jisc may suspend the Services until the circumstances causing the suspension have ceased.
- 11.3. The Customer will be obliged to pay the Fees for duration of the suspension. The Customer will be liable for any additional costs incurred by Jisc relating to the

- matter causing the suspension.
- 11.4. The Customer will have no access to the Content during any period of suspension.
- 11.5. Jisc shall not be liable for any of its obligations under any service level agreement applicable to the Services that are affected by suspension.

Terms applicable to all agreements

12. Term and termination

- 12.1. The Agreement shall come into force upon execution by both Parties. The Parties may agree that the Contract Period begins on the date as set out in the Call-Off Contract (**Start Date**) (provided that the Customer allows at least five (5) Business Days between the date of the Call-Off Contract and the start date of the Services). In such circumstances, the Services shall be deemed to have started upon the Start Date and the Customer shall pay for such Services from such date. Contract Periods shall also commence on the Start Date. The Agreement continues for successive Contract Periods until terminated in accordance with this Clause 12.
- 12.2. The Customer may terminate the Agreement at the end of the initial Contract Period by giving Jisc not less than thirty (30) days' prior written notice.
- 12.3. The Customer may terminate the Agreement at any time during subsequent Contract Periods by giving Jisc not less than thirty (30) days' prior written notice.
- 12.4. Jisc may terminate the Agreement at any time during subsequent Contract Periods by giving the Customer not less than sixty (60) days' prior written notice.
- 12.5. Without prejudice to any other rights or remedies, either Party may terminate this Agreement with immediate effect by notice in writing to the other Party if:
- 12.5.1. the other Party is in material breach of this Agreement which is incapable of remedy;
 - 12.5.2. the other Party commits a breach of this Agreement which is capable of remedy but is not remedied within 30 days of receipt of written notice from the first Party, specifying the breach and requesting remedy; or
 - 12.5.3. the other Party becomes insolvent, subject to a winding up petition, ceases trading or undergoes a similar event.
- 12.6. All rights and obligations of the Parties under the Agreement shall automatically cease upon termination except for such rights of action that have accrued prior to such termination and any rights or obligations under the Agreement or at law, which expressly or by implication are intended to come into or continue in force upon termination.
- 12.7. The Customer is responsible for removing all Content from Jisc's infrastructure prior to the date of termination of the Agreement.
- 12.8. Within thirty (30) days following the termination of the Agreement for any reason the Customer shall pay to Jisc any Fees in respect of Services provided to the Customer before the termination of the Agreement.
- 12.9. Upon termination of the Agreement, Jisc shall be entitled to re-assign all IP addresses and server names previously assigned to the Customer and the

Customer shall promptly update all corresponding DNS entries for the Customer's domain name(s).

- 12.10. Upon termination of the Agreement all of the provisions of the Agreement shall cease to have effect save that the following provisions shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely: Clause 1, 5, 9.7, 10, 12.6, 12.7, 12.8, 12.9, 12.10, 14, 16, 17, 20, 21, 22, and 26.

13. Intellectual Property Rights and Intellectual Property indemnity

- 13.1. Jisc warrants that it is the owner or licensee of all Intellectual Property Rights necessary for the performance of the Services. All Intellectual Property Rights relating to the Services and derivative works thereof arising under or during the Agreement shall be owned exclusively by Jisc or its licensors.
- 13.2. The Customer warrants that it is the owner or licensee of all Intellectual Property Rights in the Content. All Intellectual Property Rights relating to the Content and derivative works thereof arising under or during the Agreement shall be owned exclusively by the Customer or its licensors.
- 13.3. In consideration of the payment of the Fees by the Customer, Jisc grants to the Customer a non-exclusive, world-wide, non-sub-licensable, non-transferable, and royalty free licence to access and use the Services for the Contract Period, in accordance with this Agreement.
- 13.4. With effect from such time as the Customer provides Jisc with, or makes available to Jisc, the Content, the Customer hereby grants or shall procure the grant of a fully paid and royalty-free, worldwide, non-exclusive, transferable (in accordance with Clause 19) and sub-licensable licence to Jisc to access and use the Content (including any Intellectual Property Rights in the Content) in connection with the performance of the Services in accordance with, and subject to, the terms of this Agreement, and any instructions as notified by the Customer from time to time. Such licence shall subsist for the Contract Period and, to enable Jisc to comply with its obligations under Clause 14.5.10, for a period of sixty (60) days thereafter.
- 13.5. Jisc will indemnify the Customer from all Intellectual Property Rights infringement claims made by a third party in respect of its use of the Services in accordance with the licence granted under Clause 13.3 and the Customer will indemnify Jisc from all Intellectual Property Rights infringement claims made by a third party in respect of its use of the Customer Data in accordance with the licence granted under Clause 13.4; provided that:
- 13.5.1. such indemnity shall not apply to the extent that the infringement claim arises out of misuse of the Services by the Customer or the Content by Jisc;
- 13.5.2. the Party relying on the indemnity does not knowingly make or intimate any admission, settlement, opinion or undertaking that may be detrimental to other's defence;
- 13.5.3. the Party relying on the indemnity gives the indemnifying Party prompt written notice of any claim made against it allowing the indemnifying Party the right to defend and settle such claims at its own discretion;
- 13.5.4. the Party relying on the indemnity, at the indemnifying Party's cost, gives

such assistance as the indemnifying Party may reasonably require to settle or oppose any such claim;

13.5.5. the Party relying on the indemnity applies all reasonable endeavours to mitigate indemnifying Party's exposure under this indemnity; and

13.5.6. Where the claim relates to the Customer's use of the Services, Jisc shall be entitled to secure the right for the Customer to continue using the Services or to avoid the infringement by modifying the Services or replacing the infringing part of the Services with replacements of similar capability.

13.6. Except as expressly set out elsewhere in this Agreement, neither Party will acquire any right, title or interest in or to the Intellectual Property Rights of the other Party (or its sub-contractors) that has been made available to, or is accessed by, that Party pursuant to this Agreement.

14. Data protection

14.1. In this Clause 14 the following definitions shall apply:

Agreement	means the agreement between Jisc and the Customer for the provision of the Service;
Controller, Processor and Data Subject	Shall have the meaning given to those terms in the UK GDPR;
Data Protection Legislation	means (a) any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction which relates to the protection of individuals with regards to the Processing of Personal Data to which a Party is subject for the purposes of this Agreement, including the Data Protection Act 2018 and the General Data Protection Regulation 2016/679 (EU GDPR) as each is amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586) and incorporated into UK law under the UK European Union (Withdrawal) Act 2018, as amended to be referred to as DPA 2018 and the UK GDPR respectively; and (b) any code of practice or guidance published by the ICO or European Data Protection Board from time to time;
Data Protection Particulars	means, in relation to any Processing under this Agreement: • the subject matter and duration of the Processing; • the nature and purpose of the Processing; • the type of Personal Data being Processed; and • the categories of Data Subjects;
Data Subject Request	means an actual or purported subject access request or notice or complaint from (or on behalf of) a Data Subject exercising his rights under the Data Protection Legislation;
Data Transfer	means transferring the Personal Data to, and / or accessing the Personal Data from and / or Processing the Personal

	Data within, a jurisdiction or territory that is not a Permitted Country;
ICO	means the UK Information Commissioner (including any successor or replacement);
Permitted Country	means a country, territory or jurisdiction that is either: (a) within the UK or the European Economic Area; or (b) outside of the UK or European Economic Area but which is the subject of an adequacy determination by the UK Secretary of State or the European Commission (as applicable);
Permitted Purpose	means the purpose of the Processing as specified in the Data Processing Particulars;
Personal Data	has the meaning given to it in the UK GDPR and for the purposes of this Agreement includes Sensitive Personal Data;
Personal Data Breach	has the meaning given to it in the UK GDPR and, for the avoidance of doubt, includes a breach of Clause 14.4.3;
Personnel	means all persons engaged or employed from time to time by Jisc in connection with this Agreement, including employees, consultants, contractors and permitted agents;
Processing	has the meaning given to it in the UK GDPR (and Process and Processed shall be construed accordingly);
Regulator	means the ICO and any other independent public authority which has jurisdiction over a Party, including any regulator or supervisory authority which is responsible for the monitoring and application of the Data Protection Legislation;
Regulator Correspondence	means any correspondence from a Regulator in relation to the Processing of Personal Data under or in connection with this Agreement;
Security Requirements	means the requirements regarding the security of the Personal Data, as set out in the Data Protection Legislation (including, in particular, the measures set out in Article 32(1) of the UK GDPR (taking due account of the matters described in Article 32(2) of the UK GDPR));
Sensitive Personal Data	means Personal Data that reveals such categories of data as are listed in Article 9(1) of the UK GDPR and Personal Data relating to criminal convictions and offences; and
Third Party Request	means a written request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulation.

14.2. The Parties acknowledge that the factual arrangement between them dictates the classification of each Party in respect of the Data Protection Legislation.

14.3. Where a Party acts as a Controller in respect of any Personal Data Processed under or in connection with this Agreement, it shall comply with its respective obligations under the Data Protection Legislation and it shall only use such Personal Data for the purposes of performing its obligations under this Agreement.

- 14.4. Jisc will adhere to its privacy policy published at <https://www.jisc.ac.uk/website/privacy-notice>. The Customer will ensure that all Authorised Users are aware that the privacy policy applies to the Agreement.

Processor Obligations

- 14.5. If and to the extent that Jisc (for the purpose of this Clause 14.4 the **Processor**) Processes any Personal Data on behalf of Customer (for the purpose of this Clause 14.4, the **Controller**), the Processor undertakes to the Controller that the Processor shall:
- 14.5.1. Process the Personal Data for and on behalf of the Customer in connection with the performance of the Service only and for no other purpose in accordance with the terms of this Agreement and any instructions from the Customer;
 - 14.5.2. unless prohibited by law, promptly notify the Customer (and in any event within forty- eight (48) hours of becoming aware of the same) if it considers, in its opinion (acting reasonably) that it is required by Applicable Law to act other than in accordance with the instructions of the Customer, including where it believes that any of the Customer's instructions under Clause 14.4.1 infringes any of the Data Protection Legislation;
 - 14.5.3. implement and maintain appropriate technical and organisational security measures to comply with at least the obligations imposed on a Controller by the Security Requirements. If requested by the Customer, Jisc will provide a description of the technical and organisational security measures that Jisc will implement and maintain;
 - 14.5.4. take all reasonable steps to ensure the reliability and integrity of any of the Personnel who shall have access to the Personal Data, and ensure that each member of Personnel shall have entered into appropriate contractually-binding confidentiality undertakings;
 - 14.5.5. notify the Customer promptly, and in any event within forty-eight (48) hours, upon becoming aware of any actual or suspected, threatened or 'near miss' Personal Data Breach, and:
 - (a) implement any measures necessary to restore the security of compromised Personal Data;
 - (b) assist the Customer to make any notifications to the relevant Regulator and affected Data Subjects;
 - 14.5.6. notify the Customer promptly (and in any event within ninety-six (96) hours) following its receipt of any Data Subject Request or Regulator Correspondence and shall:
 - (a) not disclose any Personal Data in response to any Data Subject Request or Regulator Correspondence without the Customer's prior written consent; and
 - (b) provide the Customer with all reasonable co-operation and assistance required by the Customer in relation to any such Data Subject Request or Regulator Correspondence;
 - 14.5.7. not disclose Personal Data to a third party in any circumstances without the

Customer's prior written consent, other than:

- (a) in relation to Third Party Requests where Jisc is required by law to make such a disclosure, in which case it shall use reasonable endeavours to advise the Customer in advance of such disclosure and in any event as soon as practicable thereafter, unless prohibited by law or regulation from notifying the Customer;
- (b) to Jisc's employees, officers, representatives and advisers who need to know such information for the purposes of Jisc performing its obligations under this Agreement and in this respect Jisc shall ensure that its employees, officers, representatives and advisers to whom it discloses the Personal Data are made aware of their obligations with regard to the use and security of Personal Data under this Agreement; and
- (c) to a sub-contractor appointed in accordance with Clause 14.7.

14.5.8. not make (nor instruct or permit a third party to make) a Data Transfer without putting in place measures to ensure the Customer's compliance with Data Protection Legislation;

14.5.9. on the written request of the Customer, and with reasonable notice, allow representatives of the Customer to audit Jisc in order to ascertain compliance with the terms of this Clause 14 and/ or to provide the Customer with reasonable information to demonstrate compliance with the requirements of this Clause 14, provided that:

- (a) the Customer shall only be permitted to exercise its rights under this Clause 14.4.9 no more frequently than once per year (other than where an audit is being undertaken by a Customer in connection with an actual or 'near miss' Personal Data Breach, in which case, an additional audit may be undertaken each year by the Customer within thirty (30) days of the Customer having been notified of actual or 'near miss' Personal Data Breach);
- (b) each such audit shall be performed at the sole expense of the Customer;
- (c) the Customer shall not, in its performance of each such audit, unreasonably disrupt the business operations of Jisc;
- (d) the Customer shall comply with Jisc's health and safety, security, conduct and other rules, procedures and requirements in relation to Jisc's property and systems which have been notified by Jisc to the Customer in advance; and
- (e) in no case shall the Customer be permitted to access any data, information or records relating to any other customer of Jisc.

14.5.10. except to the extent required by Applicable Law, on the earlier of:

- (a) the date of termination or expiry of the Agreement (as applicable); and/or
- (b) the date on which the Personal Data is no longer relevant to, or necessary for, the performance of the Service,

cease Processing any of the Personal Data and, within sixty (60) days of

the date being applicable under this Clause 14.4.10, return or destroy (as directed, in writing, by the Customer) the Personal Data belonging to, or under the control of, the Customer and ensure that all such data is securely and permanently deleted from its systems, provided that Jisc shall be entitled to retain copies of the Personal Data for evidential purposes and to comply with legal and/or regulatory requirements;

- 14.5.11. comply with the obligations imposed upon a Processor under the Data Protection Legislation; and
 - 14.5.12. assist the Customer in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the UK GDPR taking into account the nature of Processing and the information available to Jisc, provided that Jisc shall be entitled to charge a fee to the Customer (on a time and materials basis and at such rate notified by Jisc to the Customer from time to time) in respect of providing any such assistance to the Customer.
- 14.6. Each of the Parties acknowledges and agrees that the following table sets out an accurate description of the Data Protection Particulars.

The subject matter and duration of the Processing	The hosting of the Customers Content via third party public cloud providers for the term of the Agreement. Such Content may include Personal Data.
The nature and purpose of the Processing	The nature of the Processing will be the hosting of the Customer's Content by Jisc via third party public cloud providers. Jisc employees may have access to the Content for the purposes of performing the Services to be provided under the Agreement. More information on this can be found in our information sheet which sets out the circumstances in which we access Customer Data: https://repository.jisc.ac.uk/8378/1/jisc-cloud-solutions-access-to-your-data-on-aws.pdf.
The type of Customer Data being Processed	The type of Customer Data will depend on the Content being hosted via third party public cloud providers under the Agreement.
The categories of Data Subjects	The categories of Data Subjects will depend on the Content being hosted via third party public cloud providers under the Agreement.

- 14.7. Notwithstanding anything in this Agreement to the contrary, this Clause 14 shall continue in full force and effect for so long as Jisc Processes any Personal Data on behalf of the Customer.

Sub-contractors

- 14.8. Jisc may from time to time use sub-contractors to perform all or any part of its obligations under this Agreement. The Customer agrees that Jisc is generally

authorised to engage sub- contractors to Process Personal Data. Information regarding the sub-contractors Jisc uses from time to time in connection with the performance of the Service can be found in the Service Definition(s) and may be updated from time to time. Jisc shall notify the Customer prior to any intended changes concerning the addition or replacement of a sub-contractor. The Customer may object to the appointment of any sub-contractor and Jisc shall reasonably take into account the views of the Customer in appointing any such sub-contractor, but for the avoidance of doubt the appointment of any sub-contractor shall be at Jisc's absolute discretion and Jisc shall have no obligation to act in accordance with any objection raised by the Customer.

- 14.9. Jisc may from time to time disclose Personal Data to its sub-contractors (or allow its sub-contractors to access Personal Data) for Processing solely in connection with the fulfilment of the Permitted Purpose.
- 14.10. Where Jisc uses a sub-contractor to Process Personal Data for or on its behalf, it will ensure that the sub-contractor contract (as it relates to the Processing of Personal Data) is on terms which are substantially the same as, and in any case no less onerous than, the terms set out in Clause 14.
- 14.11. Jisc shall remain liable to the Customer for the acts, errors and omissions of any of its sub- contractors to whom it discloses Personal Data and shall be responsible to the Customer for the acts, errors and omissions of such sub-contractor as if they were Jisc's own acts, errors and omissions to the extent that Jisc would be liable to the Customer under this Agreement for those acts and omissions.

15. Additional Warranties

- 15.1. Each Party warrants, represents and undertakes that:
 - 15.1.1. it has full capacity and authority to enter into and perform this Agreement; and there are no actions, or regulatory investigations pending or, to that Party's knowledge, threatened that might affect the ability of that Party to meet its obligations under this Agreement;
 - 15.1.2. in relation to this Agreement and its subject matter, neither it nor any of its employees, sub-contractors or agents or others performing services on its behalf has done (or agreed to do) or will do (or agree to do) anything which constitutes a breach by that Party of the Bribery Legislation and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning such legislation;
 - 15.1.3. it will and require that each of its sub-contractors will, at all times during the term of this Agreement comply with Modern Day Slavery Legislation; and
 - 15.1.4. it will not engage in any activity, practice or conduct which would constitute either:
 - (a) a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017; or
 - (b) a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017.

16. Confidential information

- 16.1. Each Party agrees to keep confidential and, subject to Clause 16.4, not to disclose to any third party any Confidential Information (excluding information

which is or becomes public knowledge other than as a result of the default of the recipient) and to use any such Confidential Information only for the purposes of and in accordance with this Agreement or as required by law.

- 16.2. Nothing in this Agreement will prohibit or limit either Party's use of Confidential Information (i) previously known to it without obligation of confidence, (ii) independently developed by or for it, (iii) acquired by it from a third party which is not, to its knowledge, under an obligation of confidence with respect to such information, (iv) which is or becomes publicly available through no breach of this Agreement, (v) where such use/disclosure is required by Applicable Law or by a court with the relevant jurisdiction if, to the extent not prohibited by Applicable Law, the recipient Party notifies the disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure, (vi) on a confidential basis, to its auditors, or (vii) on a confidential basis, to its professional advisers or others within its Group, on a need-to-know basis.
- 16.3. Each Party agrees to immediately notify the disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.
- 16.4. Notwithstanding Clause 16.1, the Customer agrees that Jisc may disclose data derived from the performance of the Services on an aggregated or un-aggregated basis, provided such disclosure does not identify the Customer.
- 16.5. The Customer agrees that Jisc may include the Customer in its list of customers. Each Party will obtain the other's prior written approval for any other publicity concerning the Agreement or which mentions the other Party.
- 16.6. The obligations in this Clause 16 survive termination of the Agreement.

17. Liability

- 17.1. Subject to Clause 17.4 and without prejudice to Clause 17.3, the Parties agree that the amount of charges payable by the Customer directly to AWS, Microsoft or Google, as applicable, under Clause 10.7 will not be taken into account in calculating Jisc's liability under Clause 17.2. Furthermore, the Parties agree that the Customer may not bring a claim for amounts recoverable under Clause 17.2 in respect of any services provided by AWS, Microsoft or Google.
- 17.2. Jisc's aggregate liability to the Customer in any Contract Period in connection with the Agreement howsoever arising shall not exceed the greater of ten thousand pounds sterling (£10,000) or the aggregate of the Fees paid by the Customer to Jisc in the twelve months prior to the event giving rise to the liability.
- 17.3. Jisc or any of its licensors shall not be liable to the Customer for any loss of profit, business, revenue, goodwill or anticipated savings or for any consequential or indirect loss or damage howsoever arising.
- 17.4. Jisc does not exclude or limit liability arising from any willful misconduct or fraud on its part nor for any liability for any death or personal injury arising from its negligence.

18. TUPE

- 18.1. The Customer shall indemnify Jisc from all arising costs and liabilities and these terms and conditions and the Fees shall be reasonably adjusted if it is deemed that the Transfer of Undertakings (Protection of Employment) Regulations 2006 or

similar apply to the Agreement.

19. Assignment and Sub-Contracting

- 19.1. Subject to Clause 19.2, neither Party will at any time assign or transfer all or any of its rights or obligations under this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).
- 19.2. Jisc may at any time by written notice assign or transfer all or any of its rights or obligations under this Agreement to another member of its Group. Jisc will be entitled to sub-contract any of its obligations, and sub-licence any of its rights under this Agreement without the Customer's consent.

20. Waiver

- 20.1. Failure by either Party to enforce any of the provisions of the Agreement will not be a waiver of such rights and will not affect the validity of the Agreement or that Party's rights to take subsequent action.

21. Variations and Revisions

- 21.1. Subject to 21.2 no variation to this Agreement will be effective unless it is agreed in writing and signed by authorised signatories for both Parties.
- 21.2. In order to continuously improve its operations, Jisc may from time to time revise these terms and conditions or the Service Definitions.
- 21.3. Jisc acknowledges that revisions implemented pursuant to 21.2 (**Revisions**) are intended to clarify or improve the Customer's rights or benefits.
- 21.4. Revisions will be automatically effective 90 days after being published on the relevant Service website.
- 21.5. If any Revision would reduce the Customer's rights or benefits, then Jisc will notify the Customer as well as publishing the Revision on the relevant Service website.
- 21.6. If the Customer, acting reasonably, cannot accept any Revision, it may terminate the Agreement by giving Jisc written notice not less than 60 days prior to the date when the Revision would become effective. In such case, the Customer will be entitled to a pro-rata rebate of Fees already paid for Service that would have been supplied subsequent to the date of termination.

22. Severability

- 22.1. If any competent authority finds any part of the Agreement to be invalid, unlawful or unenforceable, the Agreement will be deemed to be amended to the extent necessary to remove the competent authority's findings but so as to allow the rest of the Agreement to remain valid and unaffected to the fullest possible extent.

23. Force majeure

- 23.1. Neither Party will be liable to the other as a result of any delay or failure to perform its obligations under the Agreement if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that Party. If such event or circumstances prevent a Party from performing any of its obligations under this Agreement for more than 30 days continuously, the other Party will have the right, without limiting its other rights or remedies, to terminate this Agreement with immediate effect by giving written notice to the first Party.

24. Notices

- 24.1. Any notices given in relation to this Agreement will be given for the attention of the relevant person set out in the Call-Off Contract or as agreed or notified between Parties from time to time which may include email address or another address or email address which the recipient may designate by notice given in accordance with the provisions of this Clause 24, and in the case of Jisc, a copy by email to legal@jisc.ac.uk.
- 24.2. A notice will be deemed to have been received: if delivered personally, at the time of delivery; in the case of pre-paid first-class post, 3 Business Days from the date of posting; and in the case of email, upon the email reaching the recipient's server.
- 24.3. Where notices are to be served by email, the email must contain the following wording in the subject matter field: "Notice served in accordance with Terms and Conditions for Jisc Cloud Solutions".

25. Dispute Resolution

- 25.1. The Parties agree that in the event of a dispute they will first attempt to resolve the matter through good faith discussions and the production of an agreed improvement plan. If the matter is not resolved it will be escalated to higher levels of management via the management contacts as set out in the Call-Off Contract or agreed between the Parties in writing. If the dispute is not resolved through discussion the Parties will use a mutually agreed alternative dispute resolution process prior to resorting to litigation as a last resort. Each Party agrees to keep the other Party informed of any changes to the contact details in the Call-Off Contract throughout the Contract Period.

26. Legal construction

- 26.1. Nothing in the Agreement will be construed as constituting or evidencing any partnership, contract of employment or joint venture of any kind between either of the Parties or as authorising either Party to act as agent for the other. Neither Party will have authority to make representations for, act in the name of or on behalf of, or otherwise to bind the other Party in any way.
- 26.2. No third party is entitled to the benefit of this Agreement under the Contracts (Rights of Third Parties) Act 1999. The right of either Party to vary or terminate this Agreement will not be subject to the consent of any third party.
- 26.3. The Parties agree to use the English language for all matters relating to the Agreement.
- 26.4. Before seeking redress to the English Courts under this Agreement, the Parties shall seek to resolve the matter in accordance with the process set out at Clause 25. If the matter remains unresolved following the Dispute Resolution process either Party shall be entitled to pursue its rights at law.
- 26.5. The Agreement may be entered into by the Parties on separate counterparts, which taken together will constitute one single agreement between the Parties.
- 26.6. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter of this Agreement. Each of the Parties acknowledges and agrees that it does not enter into this Agreement on the basis of and does not rely, and has not relied upon, and will have no remedy in respect of, any statement or representation or warranty or other provision made, given or

agreed to by the other Party (whether negligently or innocently made) except those expressly repeated or referred to in this Agreement and the only remedy available in respect of any misrepresentation or untrue statement made to it will be a claim for breach of contract under this Agreement. Nothing in this Clause 26.6 will operate to limit or exclude liability for fraud.

- 26.7. This Agreement will be governed by English law, and the English Courts will have exclusive jurisdiction to deal with disputes arising out of or in connection with this Agreement.
- 26.8. By submitting its purchase order for the Services, the Customer is deemed to have accepted these terms and conditions.