



Cloud**booking**

SOFTWARE AS A SERVICE SUBSCRIPTION
AGREEMENT

Between

CLOUD BOOKING LTD

And

[CUSTOMER]

This agreement is dated [DATE]

PARTIES

- (1) Cloud Booking Limited incorporated and registered in England and Wales with company number 04155619 whose registered office is at 4th Floor, 49 St James's Street, London, England, SW1A 1AH (**Supplier**)
- (2) [FULL COMPANY NAME] incorporated and registered in [NAME OF COUNTRY OF REGISTRATION] with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Customer**)

BACKGROUND

- (A) The Supplier has developed certain software applications and platforms which it makes available to subscribers via the internet.
- (B) The Customer wishes to use the Supplier's services in its operations.
- (C) The Supplier has agreed to provide, and the Customer has agreed to take and pay for the Supplier's services subject to the terms and conditions of this agreement.

AGREED TERMS

1. Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

API: Application Programming Interface

Authorised Users: the employees, agents, independent contractors and visitors of the Customer who require use of an Instance.

Bespoke Changes: any amendments, additions or changes to or configuration of the Software agreed between the parties which, on their creation, shall become part of the Software.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.5 or clause 11.6.

Customer Data: the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Customer Materials: all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to the Supplier in connection with the Professional Services.

Customer Personal Data: personal data provided by Authorised Users in their use of the Services.

Data Protection Legislation:

To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.

To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.

Deliverables: any output of the Professional Services as specified in a Statement of Work but excluding any Bespoke Changes.

Delivery: delivery of Hardware to the Customer which is completed in accordance with clause 6.1 or 6.3.2 (as the case may be).

Documentation: the document made available to the Customer by the Supplier online which sets out a description of the Services and the user instructions for the Services.

Domestic Law: the law of the United Kingdom or a part of the United Kingdom.

Effective Date: the date of the Initial Order.

EU GDPR: the General Data Protection Regulation ((EU) 2016/679).

EU Law the law of the European Union or any member state of the European Union.

Hardware: means the hardware detailed in an Order (if any) to be sold by the Supplier to the Customer (including without limitation, any part of parts of it).

Initial Order: The Customer's first Order for the Services.

Initial Subscription Term: the initial term of subscription to the Services as set out in the Initial Order.

Insolvency Event: means an event where a party is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the other (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the assets of the other or the other enters into or proposes any composition or arrangement with its creditors generally or any analogous event occurs in any applicable jurisdiction.

Instance: a desk, room, visitor management system or other asset for which the Customer is taking a licence to use the Services as detailed in an Order.

Intellectual Property Rights: all patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: each order for Services and/or Hardware which shall be made on the Supplier's order form.

Order Form: The Supplier's standard order form for the ordering of Services and Hardware.

Professional Services: the works to be provided by the Supplier to the Customer under a Statement of Work including, but not limited to, the production of any Bespoke Changes.

Renewal Period: the period described in clause 14.1.

Sanctioned Country: any country or territory that is the target of comprehensive, country or territory wide Sanctions (including, but not limited to, as at the date this agreement, Cuba, Iran, North Korea, Sudan, South Sudan, Syria, the Ukrainian territory of Crimea).

Sanctioned Person: any person that is (i) listed on, or owned or controlled by a person listed on, or acting on behalf of a person listed on, a Sanctions List; (ii) the government of a Sanctioned Country or a member of the government of a Sanctioned Country; (iii) resident in or incorporated under the laws of any Sanctioned Country; or (iv) to the best of the knowledge and belief (having made due and careful enquiries) of the Customer, otherwise a target of Sanctions.

Sanctions: economic or financial sanctions, trade embargoes or restrictive measures imposed, administered or enforced from time to time by any Sanctions Authority.

Sanctions Authority: means (i) the United Nations Security Council; (ii) the European Union; (iii) the United States government; (iv) the United Kingdom government; and (v) any other government, authority or organisation whose decisions are binding on the Supplier.

Sanctions List: any of the lists of specifically designated nationals or designated persons or entities (or equivalent) held by any Sanctions Authority, including, but not limited to, (i) the Consolidated United Nations Security Council Sanctions List; (ii) the 'Specially Designated Nationals and Blocked Persons' list maintained by OFAC; and (iii) the consolidated list of persons, groups or entities subject to European Union sanctions administered by the European External Action Service.

Services: the subscription services provided by the Supplier to the Customer under this agreement via the internet as more particularly described in the Documentation.

Software: the online software applications provided by the Supplier as part of the Services.

SoW Charges: the sums payable for the Professional Services as set out in a Statement of Work.

Statement of Work: a plan, agreed in accordance with clause 2.6, describing the professional services to be provided/work done by the Supplier, the timetable for their performance and related matters.

Subscription Fees: the subscription fees payable by the Customer to the Supplier for the User Subscriptions as set out in an Order.

Subscription Term: has the meaning given in clause 14.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

Support Services Policy: the Supplier's policy for providing support and maintenance in relation to the Services and Hardware.

UK GDPR: has the meaning given to it section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

User Subscriptions: the user subscriptions for Instances purchased by the Customer pursuant to clause 9 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this agreement.

Virus: Any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Vulnerability: a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be construed accordingly.

1.2 Clause and paragraph headings shall not affect the interpretation of this agreement.

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

- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 1.5 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.6 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.7 A reference to writing or written includes e-mail.

2. User Subscriptions and Statements of Work

- 2.1 Subject to the Customer purchasing the User Subscriptions in accordance with clause 3.3 and clause 9.1, the restrictions set out in this clause 2 and the other terms and conditions of this agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.
- 2.2 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
 - (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - (b) facilitates illegal activity;
 - (c) depicts sexually explicit images;
 - (d) promotes unlawful violence;
 - (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - (f) is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

- 2.3 The Customer shall not:
 - (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute

all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or

- (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- (c) use the Services and/or Documentation to provide services to third parties; or
- (d) subject to clause 22.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; or
- (f) introduce, or permit the introduction of, any Virus or Vulnerability into the Supplier's network and information systems or
- (g) use or allow the Services the Services to be used in any Sanctioned Country; or
- (h) allow the Services to be used by any Sanctioned Person.

2.4 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

2.5 The rights provided under this clause 2 are granted to the Customer and to any company in the same group of companies as the Customer.

2.6 Each Statement of Work shall be agreed in the following manner:

- (a) the Customer shall ask the Supplier to provide any or all of the Professional Services and provide the Supplier with as much information as the Supplier reasonably requests in order to prepare a draft Statement of Work for the Professional Services requested;
- (b) following receipt of the information requested from the Customer the Supplier shall, as soon as reasonably practicable either:
 - (i) inform the Customer that it declines to provide the requested Professional Services; or
 - (ii) provide the Customer with a draft Statement of Work.

- (c) if the Supplier provides the Customer with a draft Statement of Work pursuant to clause 2.6(b)(ii), the Supplier and the Customer shall discuss and agree that draft Statement of Work; and
- (d) both parties shall sign the draft Statement of Work when it is agreed.

2.7 Once a Statement of Work has been agreed and signed in accordance with clause 2.6(d), no amendment shall be made to it except in accordance with clause 17 (Variation).

2.8 Each Statement of Work shall be part of this agreement and shall not form a separate contract to it provided always that a right to terminate a Statement of Work shall not be a right to terminate this agreement.

3. Additional User Subscriptions

3.1 Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in the Initial Order.

3.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for additional User Subscriptions and respond to the Customer with rejection of the request or, if such request is approved, by issuing an Order for such additional User Subscriptions.

3.3 The Order issued under clause 3.2 shall remain open for acceptance for 30 days from the date it is issued and shall be accepted by signature (hard copy or electronic) or email acceptance of the Customer. On issuing of the Supplier's invoice, the Customer shall (unless stated otherwise in the Order) pay to the Supplier the relevant fees for such additional User Subscriptions as set out in the Order within 30 days of the invoice date. The Supplier shall be under no obligation to make the additional User Subscriptions live until it has been paid in full. If such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

4. Services and Professional Services

4.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.

4.2 In order to improve the Services, the Supplier will be free to amend, alter, modify and update them during the term of this Agreement, provided that any such amendments will not require any additional payment, or substantially reduce or diminish their performance, functionality, operation or scope.

- 4.3 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard customer support services in accordance with the Support Services Policy in effect at the time that the Services are provided. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time.
- 4.4 The Supplier shall use reasonable endeavours to provide the Professional Services, and deliver the Deliverables to the Customer, in accordance with a Statement of Work in all material respects.
- 4.5 The Supplier shall use reasonable endeavours to meet any performance dates specified in a Statement of Work, but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this agreement.
- 4.6 If the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, the Supplier shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer and to recover from the Customer any additional costs incurred as a result of such delay.

5. Data protection

- 5.1 For the purposes of this clause 5, the terms **controller**, **processor**, **data subject**, **personal data**, **personal data breach** and **processing** shall have the meaning given to them in the UK GDPR.
- 5.2 Both parties will comply with all applicable requirements of Data Protection Legislation. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Data Protection Legislation.
- 5.3 To the extent that the Supplier acts as a processor for the Customer the provisions of clauses 5.4 – 5.8 (inclusive) shall apply.
- 5.4 The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to the Supplier or lawful collection of the same by the Supplier for the duration and purposes of this agreement.
- 5.5 In relation to the Customer Personal Data, the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject shall be agreed between the parties in writing.
- 5.6 The Supplier shall, in relation to Customer Personal Data:
 - (a) process that Customer Personal Data only on the documented instructions of the Customer unless the Supplier is required by Domestic Law or EU Law to otherwise process that Customer

Personal Data. Where the Supplier is relying on Domestic Law or EU Law as the basis for processing Customer Processor Data, the Supplier shall notify the Customer of this before performing the processing required by the Domestic Law or EU Law unless the Domestic Law or EU Law prohibit the Supplier from so notifying the Customer;

- (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- (c) ensure that all personnel engaged and authorised by the Supplier to process Customer Personal Data are obliged to keep the Customer Personal Data confidential;
- (d) assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to the Supplier), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
- (f) at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the agreement unless the Supplier is required by Domestic Law or EU Law to continue to process that Customer Personal Data. For the purposes of this clause 5.6(f) Customer Personal Data shall be considered deleted where it is put beyond further use by the Supplier; and
- (g) maintain records to demonstrate its compliance with this clause 5.

5.7 The Customer hereby provides its prior, general authorisation for the Supplier to:

- (a) appoint processors to process the Customer Personal Data, provided that the Supplier:
 - (i) shall ensure that the terms on which it appoints such processors comply with Data Protection Legislation;
 - (ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Supplier; and

- (iii) shall inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to the Supplier's reasonable satisfaction, that the objection is due to an actual or likely breach of Data Protection Legislation, the Customer shall indemnify the Supplier for any losses, damages, costs (including legal fees) and expenses suffered by the Supplier in accommodating the objection.
 - (b) transfer Customer Personal Data outside of the United Kingdom as required for the provision of the Services, provided that the Supplier shall ensure that all such transfers are effected in accordance with Data Protection Legislation. For these purposes, the Customer shall promptly comply with any reasonable request of the Supplier, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Information Commissioner from time to time (where the UK GDPR applies to the transfer).

5.8 Either party may, at any time on not less than 30 days' notice, revise clauses 5.4 - 5.7 by replacing them with any applicable controller to processor standard clauses or similar terms adopted under the Data Protection Legislation or forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

6. Hardware and third party software

6.1 Where the Supplier has agreed to deliver the Hardware to a delivery location in the United Kingdom delivery is, subject to clause 6.3, completed when the Supplier completes delivery of the Hardware to the carrier responsible for transporting the Hardware to the Customer.

6.2 Risk in the Hardware shall pass to the Customer on Delivery.

6.3 Where the Supplier has agreed to deliver the Hardware to a delivery location outside the United Kingdom:

6.3.1 The Supplier shall arrange (at the Customer's cost) the carriage of the Hardware to the place or port identified in the Order or otherwise agreed between the parties in writing; and

6.3.2 Delivery shall be completed on the unloading of the Hardware at the port or other place of destination specified in the Order or otherwise agreed between the parties in writing; and

6.3.3 The Supplier shall have the option to arrange, at the cost of the Customer (which shall be payable on demand), for the Hardware to be insured with a

reputable insurer, against loss or damage for such time until delivery takes place at the Customer's place of delivery as specified in the Order, and shall provide to the Customer on request, a copy of the insurance policy certificates and details of cover.

- 6.4 The Supplier may deliver the Hardware by instalments regardless of when the Hardware is due to be paid for.
- 6.5 Where the Hardware is supplied to any location outside of the United Kingdom, the Customer shall comply with all relevant laws and shall be responsible for:
 - 6.5.1 the importation of the Hardware into the country of destination (including, but not limited to, completion of all paperwork in relation to such importation);
 - 6.5.2 transport of the Hardware from the place of delivery to the Customer's premises (or any other location);
 - 6.5.3 the export and re-export of the Hardware; and
 - 6.5.4 the payment of any duties in relation to clauses 6.5.1 and 6.5.2 and the Supplier shall have no liability in relation to the importation of the Hardware (including but not limited to any charges, fines, costs, delays or failure to import) unless it has failed to perform any act in relation to such importation that it has agreed, in writing, to perform.
- 6.6 The Supplier shall use all reasonable endeavours pass on to the Customer the manufacturer's warranty for the Hardware. If such warranty is passed on to the Customer, the Supplier shall have no further liability in relation to such Hardware other than under the Support Services Policy. If such warranty is not passed on to the Customer, the Supplier shall have liability to the Customer for the Hardware to the extent that the manufacturer has liability to the Supplier for such Hardware under the manufacturer's warranty.
- 6.7 Title to the Hardware shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Hardware from the Customer.
- 6.8 Until title to the Hardware has passed to the Customer, the Customer shall:
 - (a) not remove, deface or obscure any identifying mark or packaging on or relating to the Hardware; and
 - (b) ensure that the Hardware is maintained in satisfactory condition and keep it insured on the Supplier's behalf for their full price against all risks with an insurer that is reasonably acceptable to the Supplier. The Customer shall obtain an endorsement of the Supplier's interest in the Hardware on its insurance policy, subject to the insurer being willing to make the endorsement. On request the Customer shall allow the Supplier to inspect the Hardware and the insurance policy.

- 6.9 If before title to the Hardware passes to the Customer the Customer becomes the subject of an Insolvency Event or if the Customer does not pay for the Hardware on the due date for payment, then without limiting any other right or remedy the Supplier may have:
- (a) the Customer's right to use the Hardware shall cease immediately, and
 - (b) the Supplier may at any time:
 - (i) require the Customer to deliver up all Hardware in its possession; and
 - (ii) if the Customer fails to do so promptly, enter or have its agents enter, any premises of the Customer to recover them and the Customer shall provide all reasonable assistance in relation to such recovery.
- 6.10 To the extent that the Supplier provides access to any third-party software the Customer shall be bound by and shall comply in full with any end user licence agreement of such third party and the Supplier shall have no liability to the Customer in relation to the performance of such software.
- 6.11 To the extent that the Software integrates (whether via an API or otherwise), is embedded or otherwise communicates with any third party software ("Integrated Software") the Supplier shall have no liability to the Customer in relation to any loss of integration or communication with the Integrated Software or any degradation in the scope or quality of the Services which results (in whole or in part) from any change to the Integrated Software or any third party API made by any third party nor for the discontinuation of the Software's integration with any Integrated Software.
- 6.12 The Customer accepts that no third party software (including, but not limited to, any Integrated Software) or any part of its functionality is a material part of the Services and that the Supplier is free, without liability, to add or remove access to or integration with any third party software as it sees fit.

7. Supplier's obligations

- 7.1 The Supplier undertakes that the Software will perform substantially in accordance with the Documentation. For the avoidance of doubt the Supplier gives no warranty or undertaking that the Software has any functionality or capability other than that stated in the Documentation.
- 7.2 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide

the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1.

7.3 The Supplier warrants that the Professional Services will be performed, and any Bespoke Changes created and implement with reasonable skill and care provided always that, unless agreed otherwise in writing, the methodology used and specification for the Professional Services and/or any Bespoke Changes, shall be determined by the Supplier acting reasonably.

7.4 The Supplier:

- (a) does not warrant that:
 - (i) the Customer's use of the Services will be uninterrupted or error-free;
 - (ii) that the Services, Documentation and/or the information obtained by the Customer through the Services will, save as agreed in writing between the parties, meet the Customer's requirements;
 - (iii) the Software or the Services will be free from Vulnerabilities or Viruses;
 - (iv) the Software has any feature or capability or is compatible with any software or hardware otherwise than as stated in the Documentation.
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- (c) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the failure of the Customer or any third party to provide any information, access or other assistance required by the Supplier and the Supplier shall be entitled to extend any timetable or deadline agreed with the Customer to take into account the consequences of and recover from the Customer any costs or losses incurred as a result of such delay.

7.5 Whilst the Supplier shall make all reasonable efforts to include those elements of customisation of the Services as the Supplier has agreed with the Customer, the Supplier reserves the right to remove and/or replace any graphic, photograph or other element of customisation preferred or provided by the Customer in the event that the Supplier has reasonable grounds to believe that inclusion would be a breach of the Intellectual Property Rights of any third party or would not meet the technical, commercial or aesthetic requirements of the Supplier in relation to the "look and feel" of the Services.

- 7.6 This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.
- 7.7 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.
- 7.8 The Supplier shall follow its archiving procedures for Customer Data as set out in its back-up policy as may be amended by the Supplier in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable).

8. Customer's obligations

- 8.1 The Customer shall:
- (a) provide the Supplier with:
 - (i) all necessary co-operation in relation to this agreement and any Statement of Work; and
 - (ii) all necessary access to such information as may be required by the Supplier;in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
 - (b) without affecting its other obligations under this agreement, comply with all applicable laws and regulations with respect to its activities under this agreement;
 - (c) provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, staff, office accommodation, data, networks and other facilities as reasonably required by the Supplier including, but not limited to, any such access as is specified in a Statement of Work;
 - (d) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the

parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;

- (e) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;
- (f) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
- (g) ensure that its network and systems are suitable for the use of and compatible with the Software and any Hardware and that they (without limitation) comply with any relevant specifications provided by the Supplier from time to time; and
- (h) be, to the extent permitted by law and except as otherwise expressly provided in this agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

- 8.2 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data provided always that the Supplier may retain Customer Data for use in analysis of the use of the Services publishing and otherwise using such data in any aggregated and/or anonymised format as it sees fit.

9. Charges and payment

- 9.1 The Customer shall pay the Subscription Fees and SoW Charges to the Supplier in accordance with this clause 9.
- 9.2 The Customer shall on agreement of each Order and Statement of Work provide to the Supplier an approved purchase order. On receipt of a purchase order for the Services the Supplier shall invoice the Customer for the Subscription Fees payable in respect of the Initial Subscription Term. The Supplier shall not be under any obligation to commence the Services or Professional Services until an approved purchase order is received and any timetable for such commencement shall be amended accordingly.

- 9.3 The Supplier shall invoice the Customer subject to clause 14.1, at least 30 days prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period.
- 9.4 The SoW Charges shall be as set out in a Statement of Work.
- 9.5 The SoW Charges exclude the following, which shall be payable by the Customer monthly in arrears, following submission of an appropriate invoice:
- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Professional Services; and
 - (b) the cost to the Supplier of any materials or services procured by the Supplier from third parties for the provision of the Professional Services as such items and their cost are approved by the Customer in advance from time to time.
- 9.6 The Supplier shall invoice the Customer for the SoW Charges at the intervals specified in the Statement of Work. If no intervals are so specified, the Supplier shall invoice the Customer at the end of each month for Professional Services performed during that month.
- 9.7 Unless stated otherwise in a Statement of Work or Order the Customer shall pay each invoice submitted to it by the Supplier within 30 days of receipt to a bank account nominated in writing by the Supplier from time to time.
- 9.8 If the Supplier has not received payment of any amount within 14 days after the due date, and without prejudice to any other rights and remedies of the Supplier:
- (a) the Supplier may, without liability to the Customer, disable the Customer's access to all or part of the Services and/or suspend provision of the Professional Services and the Supplier shall be under no obligation to provide any of the Services or Professional Services while the invoice(s) concerned remain unpaid;
 - (b) all fees under each then current Statement of Work and Order Form shall become payable immediately; and
 - (c) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 8% over the then current base lending rate of the Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment provided always that, if the interest rate of the Bank of England is below 0% the rate for the purposes of this clause shall be 8%.
- 9.9 All amounts and fees stated or referred to in this agreement:
- (a) shall be payable in pounds sterling;
 - (b) are, subject to clause 13.3(b), non-cancellable and non-refundable;

- (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

9.10 The Supplier shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 3.3, at the start of each Renewal Period upon no less than 90 days' prior notice to the Customer.

10. Proprietary rights

10.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights in the Services and the Documentation and any amendment to addition thereto (including, but not limited to, any Bespoke Changes). Except as expressly stated herein, this agreement does not grant the Customer any rights to, under or in, any Intellectual Property Rights, or any other rights or licences in respect of the Services or the Documentation.

10.2 The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

10.3 In relation to the Deliverables:

- (a) the Supplier and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Customer Materials;
- (b) the Supplier grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding the Customer Materials) for the purpose of receiving and using the Services and the Deliverables in its business; and
- (c) the Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 10.3(b)

10.4 In relation to the Customer Materials, the Customer:

- (a) and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and
- (b) grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this agreement for the purpose of providing the Professional Services to the Customer.

11. Confidentiality

- 11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 11.2 Subject to clause 11.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 11.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 11.5 The Customer acknowledges that details of the Services, the contents of the Documentation, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 11.6 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 11.7 The Supplier shall be entitled to publicise that the Customer has become a user of the Services without the prior written consent of the Customer.
- 11.8 The above provisions of this clause 11 shall survive termination of this agreement, however arising.

12. Indemnity and Insurance

- 12.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:
- (a) the Customer is given prompt notice of any such claim;
 - (b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - (c) the Customer is given sole authority to defend or settle the claim.
- 12.2 The Supplier shall defend, indemnify and hold harmless the Customer, its officers, directors and employees against any claim that the Customer's use of the Services or Documentation in accordance with this agreement infringes any United Kingdom patent effective as of the Effective Date, or any copyright, trademark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- (a) the Supplier is given prompt notice of any such claim;
 - (b) the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
 - (c) the Supplier is given sole authority to defend or settle the claim.
- 12.3 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 12.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than the Supplier; or
 - (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
 - (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

12.5 The foregoing and clause 13.3(b) state the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

12.6 During the term of this agreement and for a period of six years thereafter the Supplier shall maintain the following insurances with a reputable insurance company:

- (a) Public Liability Insurance with a limit of no less than £2,000,000 in the aggregate
- (b) Employer's Liability Insurance with a limit of no less than £10,000,000 in the aggregate
- (c) Professional Indemnity Insurance with a limit of no less than £5,000,000 in the aggregate
- (d) Cyber Insurance with a limit of no less than £2,000,000 in the aggregate

13. Limitation of liability

13.1 Except as expressly and specifically provided in this agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- (c) the Services and the Documentation are provided to the Customer on an "as is" basis.

13.2 Nothing in this agreement excludes or limits the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence;
- (b) for fraud or fraudulent misrepresentation; or
- (c) any other liability which cannot be limited as a matter of law.

13.3 Subject to clause 13.1 and clause 13.2:

- (a) Neither party shall be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution

or otherwise to the other for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and

- (b) the Supplier's total aggregate liability in contract (excluding only in respect of the indemnity at clause 12.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to an amount equal to the total Subscription Fees paid during the 12 months immediately preceding the date on which the claim arose.

13.4 Nothing in this agreement excludes the liability of the Customer for any breach, infringement or misappropriation of the Supplier's Intellectual Property Rights.

14. Term and termination

14.1 This agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:

- (a) either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or relevant Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of this agreement;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

14.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the other party is subject to an Insolvency Event; or

- (d) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

14.3 Without prejudice to clause 14.2 (b) The Supplier may terminate this agreement immediately on notice to the Customer if the Customer is in breach of clause 2.3 (g) or 2.3(h) and/or the Customer becomes a Sanctioned Person.

14.4 On termination of this agreement for any reason:

- (a) all licences granted under this agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
- (b) all open Statements of Work shall end, and the Customer shall immediately pay to the Supplier all outstanding invoices for SoW Charges;
- (c) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

15. Force majeure

The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

16. Conflict

If there is an inconsistency between any of the provisions in the main body of this agreement and any Order Form or Statement of Work, the provisions in the Order Form or Statement of Work (as the case may be) shall prevail.

17. Variation

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18. Waiver

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19. Rights and remedies

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

20. Severance

20.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

20.2 If any provision or part-provision of this agreement is deemed deleted under clause 20.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

21. Entire agreement

21.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

21.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

21.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

21.4 Nothing in this clause shall limit or exclude any liability for fraud.

22. Assignment

22.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

22.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

23. No partnership or agency

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

24. Third party rights

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

25. Counterparts

25.1 This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

26. Notices

26.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes.

26.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

27. Governing law

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

28. Jurisdiction

Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this

agreement or its subject matter or formation (including non-contractual disputes or claims).

This has been entered into on the date stated at the beginning of it.

Signed by [NAME OF
DIRECTOR] for and on
behalf of Cloud Booking
Limited

.....
Director

Signed by [NAME OF
DIRECTOR] for and on
behalf of [NAME OF
CUSTOMER]

.....
Director