

MANAGED BACKUP SERVICE TERMS AND CONDITIONS

This Agreement is made as of the [INSERT DOCUSIGN SIGNED DATE]

Parties

DATABARRACKS LIMITED is incorporated and registered in Guernsey with company number 40662 whose registered office is Avenue House, St Julian's Avenue, St Peter Port, Guernsey, Channel Island, GY1 1WA ("Databarracks" and "we" and "us").

***** is incorporated and registered in England and Wales with company number ***** whose registered office is at ***** ("Customer" and "you").

Recitals

- (A) The Customer wishes to procure a data backup and recovery service for use by the Group.
- (B) Databarracks has recommended that the Customer should contract for the supply of the Services (as defined in this Agreement, and as summarised in the Service Overview set out in the Customer Service Order.
- (C) In reliance on Databarracks' recommendation, skill, experience, expertise and knowledge, the Customer wishes to appoint Databarracks to supply the Services on the terms and conditions of this Agreement.

1. Definitions and Interpretation

- 1.1 In this Agreement, except where the context otherwise requires, the following defined terms shall have the following meanings:

Affiliates: means, in relation to the Customer, a company which is a subsidiary or holding company of it, or any company which is a subsidiary of any such holding company, "holding company" and "subsidiary" having the meanings ascribed to them in section 1159 of the Companies Act 2006;

Additional Fees: means any additional fees as referred to in the Customer Service Order which the Customer has agreed to pay for any increase in the Services;

Amazon Web Services: the various cloud services provided by Amazon, as more particularly described at <https://aws.amazon.com>;

Backup Services: means the backup services to be provided by Databarracks to the Customer on the terms of this Agreement, as more particularly set out in the Service Overview, but excluding the Transition and On-Boarding Services;

Charges: means the Non-Recurring Charges, the Recurring Charges and any Additional Fees as set out in the Customer Service Order;

Commvault: means Commvault Inc, 1 Commvault Way, Tinton Falls, NJ 07724, USA;

Confidential Information: means all secret or confidential information including the terms and conditions of this Agreement, the Data, Personal Data, costs, and all other information whether of a commercial, financial, marketing, technical or business nature or otherwise relating in any manner to the business or affairs of the other party, which either party may receive or has received before or after the date of this Agreement in connection with this Agreement, together with any reproductions of all or any part of such information, and regardless of the form or medium by which such information is supplied;

Customer Authorised Contact: has the meaning given in Clause 2.7;

Customer Portal: means any web portal that may be made available by Databarracks to the Customer for managing and/or configuring the Customer Recovery Environment (as appropriate);

Customer Recovery Environment: means the Recovery Landing Zone environment hosted on the Public Cloud Platform which is configured by Databarracks and/or through the Customer Portal to manage by the Customer (i) the Customer Data and (ii) those parts of the Customer's systems which the Customer has selected to be recovered from the Backup Services;

Consultancy Services: means the delivery of professional services should the Customer require any additional services outside the scope of the Service Overview;

Customer Data: means all data, files, information, reports and materials sent or made available to Databarracks by the Customer, Affiliates of Customer or by Databarracks on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services, including any data and/or information derived from such information;

Customer Environment: means the server infrastructure owned and managed by the Customer;

Customer Service Order: means the counter-signed order detailing the Charges and Service Overview;

Data: means all data, files, information, reports and materials relating to the Customer's business or otherwise and which is owned or controlled by the Customer and sent to Databarracks by the relevant member of the Customer using the Software for storage on the Public Cloud Platform;

Data Protection Laws: all privacy laws applicable to any Personal Data processed under or in connection with this Agreement, including, without limitation, the UK Data Protection Act 2018 (known as "GDPR"), the Data Protection Directive 95/46/EC, the Privacy and Electronic Communication Directive 2002/58/EC and all national legislation implementing or supplementing the foregoing and all associated codes of practice and other guidance issued by any applicable supervisory authority, all as amended, re-enacted and/or replaced and in force from time to time;

Data Processor: has the meaning given in the Data Protection Act 2018;

Data Storage Services: means the Data storage services to be provided by Databarracks via the Public Cloud Platform and as further described in Customer Service Order;

Design Document: means the technical low level design document provided to the Customer as part of the Transition and On-Boarding Services;

Disaster: an unplanned event or circumstance resulting in an interruption of, corruption of, or inaccessibility to, any or all of the Customer servers and/or data;

Disclosing Party: means, in respect of any item of Confidential Information, the party disclosing that item of Confidential Information;

DocuSign: an electronic signature technology used to facilitate and execute legally binding contracts and documents;

Equipment: means equipment that Databarracks provides to the Customer as part of the Services;

Effective Date: means the date of this Agreement;

Google Cloud Services: the various cloud services provided by Google, as more particularly described at <https://cloud.google.com/>;

Good Industry Practice: means, when carrying out the relevant party's obligations pursuant to and in accordance with this Agreement, using standards, practices, methods and procedures which could reasonably be expected of a leading provider of secure online backup services, including any applicable standards, practices, methods and procedures set up by professional associations and/or non-governmental standards;

Group: means the Customer and its Affiliates from time to time;

Initial Period: means the minimum term of the provision of Backup Services as set out in the Customer Service Order, from and including the Effective Date and starting immediately after the On-boarding Period;

Intellectual Property Rights: means any patent, trade secret, trade mark, service mark, trade name, copyright and other rights in works of authorship (including rights in computer software), moral and artists' right, design right, trade or business name, domain name, know-how, database right and semi-conductor topography right and whether any of the foregoing are registered or unregistered or, where relevant, any application for any such right, or any other industrial or intellectual property right subsisting anywhere in the world;

Invocation: is defined in Clause 9.2 and 'Invoke' etc. shall be interpreted accordingly;

ISO 27001: means the family of standards which help organisations keep information assets secure, as developed and published by the International Organisation for Standardisation;

ISO9001: means the family of standards for quality management systems, as developed and published by the International Organization for Standardisation;

Jump-Start DR Service: means the backup services to be provided by Databarracks to the Customer on the terms of this Agreement, as more particularly set out in the Service Overview;

Liability: has the meaning in clause 14.1;

Microsoft Azure Services: means one or more of the Microsoft services and features identified at <https://azure.microsoft.com/en-us/services> and which Databarracks agrees to provide to the Customer as part of the Services;

Monthly Measurement Period: the first Monthly Measurement Period starts at the beginning of the first day of the Initial Period and ends at the end of that calendar month. Subsequent Monthly Measurement Periods cover a calendar month, unless the Agreement or the relevant period ends during a calendar month. Where a Monthly Measurement Period covers less than a calendar month, payments calculated with reference to the Monthly Measurement Period are reduced pro-rata;

Non-Recurring Charges: means the one-off charges payable by the Customer under Charges and Term;

Normal Business Hours: means 8 a.m. to 6: p.m. UK time on a Working Day;

Office 365 User: means the relevant number of users requiring Backup Services as detailed in the Customer Service Order;

On-boarding Period: means the period between the Effective Date and the commencement of the Initial Period during which the Backup Services are configured and tested;

Public Cloud Platform: means the platform and services provided and hosted by Amazon Web Service, Microsoft Azure Services or Google Cloud Service containing the Customer Environment, and associated management and operating systems software;

Public Cloud Services: the various cloud services provided by Amazon, Google and/or Microsoft, as more particularly described at <https://aws.amazon.com>, <https://cloud.google.com> and <https://azure.microsoft.com>;

Recipient: means, in respect of an item of Confidential Information, the party receiving that item of Confidential Information;

Recovery Landing Zone: means the environment hosted on the Public Cloud Platform which is configured by Databarracks to support the Jump-Start DR Service;

Recurring Charges: means ongoing Charges payable by the Customer under Charges and Term for the duration of the Initial Period, any extension of the Initial Period, a PAYG Period or any Renewal Period;

Services: means (i) the Transition and On-boarding Services, (ii) the Backup Services and (iii) Service Desk and Incident Resolution (iv) Storage Services (v) Software License, and 'Service' shall mean any element of such services; means all of the services to be provided by Databarracks to the Customer as set out in this Agreement and as more particularly described in the Customer Service Order, including the Backup Services and the Data Storage Services;

Service Levels: means the standards of performance to be met or exceeded by Databarracks in providing the Services, as more particularly set out in the Customer Service Order;

Service Overview: means the Service Overview set out in the Customer Service Order (Services);

Software: means any third party software used to deliver the Services, including but not limited to including but not limited to the Commvault software as updated by Commvault;

Software Licence: means the relevant licence for the Software, all applicable restrictions including the number of user subscriptions bought; and

Transition and On-Boarding Services: means the services to be provided by Databarracks as set out in Charges and Term (Transition and On-Boarding Services).

Working Day: means any day which is not a Saturday, Sunday or public holiday in England;

1.2 References to:

- (a) Recitals, clauses, sub-clauses and Appendices are to recitals, clauses and sub-clauses of and appendices to this Agreement;
 - (b) this Agreement includes the Appendices;
 - (c) the singular include the plural and vice versa and use of any one gender includes all genders;
 - (d) a person includes a natural person, company, corporation, firm, partnership, co-operative company, unincorporated or incorporated association, government, state, statutory authority, foundation and trust;
 - (e) "data controller", "data processor", "data subject", "personal data" and "supervisory authority" shall have the meaning under the Data Protection Laws; and
 - (f) the words "include", "includes", "including", "in particular" or any similar words or any general words introduced by the word "other" do not limit the words preceding or following.
- 1.3 Any reference to any Laws shall be interpreted as referring to such Laws as amended and in force from time to time and/or which re-enacts or consolidates such Laws.
- 1.4 Headings, indexes and contents pages are for convenience only and shall not affect interpretation.
- 2. Provision of Services**
- 2.1 In consideration of the Customer's payment of the Charges, Databarracks agrees to provide the Customer with the Services in accordance with and subject to the terms and conditions set out in this Agreement and, in particular, Databarracks shall, in providing the Services to the Customer, meet or exceed the Service Levels.
- 2.2 The Customer acknowledges that in order to receive and access the Services it shall procure, and shall procure that its Affiliates procure, its and their own internet access facilities through a third-party ISP or telecommunications provider which will be payable by the Customer and its Affiliates.
- 2.3 Databarracks cannot be liable for any failure of the service which has been caused by a member of the Customers staff or Customers contractor accessing and changing systems or software configurations. Anti-Virus, Firewalling and equipment security for any Databarracks hardware used within the customers' business address as part of this contract are the responsibility of the customer.
- 2.4 Databarracks is not liable for any failure of the service due to the failure of the customer's internet connection, virtual private network or other communication equipment.
- 2.5 Databarracks is not liable for any failure of the Software, Public Cloud Platform or Public Cloud Services.
- 2.6 The Customer agrees to the terms of use for the Public Cloud Platform, as amended from time to time with such relevant terms included in the Customer Service Order.
- 2.7 Databarracks shall deploy and configure the Backup and Jump-Start Services in accordance with the Design Document.
- 2.8 The Customer will nominate two named senior employees with authority to handle all of the matters within the subject-matter of this Agreement (the "Customer Authorised Contacts"), and provide Databarracks with all necessary contact details, including private mobile telephone number, or email and give Databarracks authority to contact such employee at any time.
- 3. Charges and Payment**
- 3.1 In consideration of the provision of the Services, the Customer shall pay the Charges set out in the Charges and Term.
- 3.2 Non-Recurring Charges are payable 30 days after the receipt of the invoice. Invoices for Non-Recurring Charges shall be issued as set out in the Charges and Term.
- 3.3 In the event that the Customer reasonably considers that any invoice submitted by Databarracks is defective or if the Customer has any queries, disputes or complaints regarding any invoice, then the Customer shall, within 30 Working Days of the date of receipt of the relevant invoice, notify Databarracks accordingly, and Customer shall be entitled to withhold payment of such disputed amount without prejudice to any rights and remedies the Customer may have. Both parties agree to work together in good faith to resolve any disputed invoice.
- 3.4 In the event of late payment by the Customer of any sums properly due and payable under this Agreement (and provided that the Customer has been given at least 30 days' written notice to cure such late payment (the "Late Payment Notice") and subject to Clause 3.3, Databarracks reserves the right to charge interest on the amount of the late payment from the due date to the date of receipt by Databarracks at the annual rate of the lower of 1.5% above the base rate of Barclays Bank Plc from time to time. Such interest shall accrue on a daily basis both before and after any judgment. The parties agree that the right to claim interest under this Clause 3.4 is a substantial remedy for late payment and is in substitution for any statutory right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 3.5 Invoices payable in respect of the Recurring Charges will be generated on a monthly basis. Invoices will be sent to the Customer via email unless requested otherwise and are payable 30 days from the date of receipt of the relevant invoice by the Customer.
- 3.6 All amounts and Charges stated or referred to in this Agreement are exclusive of value added tax, which shall be added to invoice(s) at the appropriate rate.
- 3.7 Databarracks reserves the right to increase the Recurring Charges once per annum on 1 January. Such Recurring Charges shall be increased by no more than the Consumer Prices Index (CPIH) for the preceding 12 months (as published by the UK Office for National Statistics) and Databarracks shall notify the Customer of such increase within 5 Business Days.
- 3.8 Databarracks shall provide half a day per year for supplier assessment and audits, required by the Customer at no additional cost. Any time required above half a day for supplier assessment and audits shall be chargeable as per the Additional Fees in the Customer Service Order. Standard service and organisation information will be provided at no cost to the customer in writing or via Databarracks' supplier management software tool. Any Customer supplier management software costs paid by Databarracks shall be recharged to The Customer.
- 4. Databarracks Warranties**
- 4.1 Databarracks warrants, represents and undertakes that:
- 4.1.1 Databarracks has full power and authority to enter into and perform its obligations under this Agreement;
 - 4.1.2 Databarracks is, and shall during the term of this Agreement take all reasonable commercial steps to remain, compliant in-line with ISO 27001 and ISO9001;

- 4.1.3 it shall provide the Services with the highest level of skill, care and diligence and in a good and workmanlike manner in accordance with the provisions of this Agreement;
 - 4.1.4 it shall inform the Customer promptly, giving details of the circumstances, reasons and likely duration, in the event that it becomes aware of anything of whatsoever nature and whether or not the result of any act or omission on the part of Databarracks or its personnel or sub-contractors which may prevent Databarracks from fulfilling its obligations in accordance with this Agreement;
 - 4.1.5 it has obtained all consents, permissions and licences necessary to enable the Customer to exercise the rights granted or purported to be granted to it by Databarracks pursuant to and on the terms of this Agreement and shall not, at any time during the Term breach the provisions of such consents, permissions and licences or cause the same to be breached;
 - 4.1.6 in providing the Services, it shall not cause the Customer to be in breach of the Software Licence;
 - 4.1.7 it shall comply with all Laws in providing the Services to the Customer;
 - 4.1.8 the Services shall be provided by adequate numbers of properly skilled and competent persons experienced and skilled in the provision of services of a similar nature to the Services in a good and workmanlike manner and in accordance with the provisions of this Agreement including the performance standards specified in the Service Levels; and
 - 4.1.9 promptly and in any event within 5 Working Days remedy any failure to meet the Service Levels and re-perform any non-conforming Service (if applicable);
 - a) use all reasonable endeavours to arrange all such additional resources as are necessary to perform the Services in accordance with the Service Levels as early as practicable thereafter; and
 - 4.1.10 it shall protect the security, availability and integrity of the Data and information submitted by the Customer to Databarracks.
- 5. Availability and Service Levels**
- 5.1 Databarracks shall endeavour to provide the Services to a 99.99% level of availability during each 365 day period, save that due to the nature and complexity of computer systems and networks, it cannot warrant that such Services will not be free from error or failure from time to time. Further details on service and support availability is detailed in the Customer Service Order hereto.
- 6. Ownership of Data**
- 6.1 The Customer confirms that the Customer owns the Data or has the necessary rights and consents to transmit the Data to the Public Cloud Platform. Databarracks acknowledges that the Data is the property of the Customer and the Customer hereby reserves all Intellectual Property Rights which may subsist in the Data. This Agreement does not assign, nor does it constitute an agreement to assign, any Intellectual Property Rights in or to the Data to Databarracks.
 - 6.2 Databarracks shall take all necessary precautions in accordance with Good Industry Practice and having regard to the nature of its obligations under this Agreement to preserve the security and integrity of the Data and to prevent any corruption to or loss of the Data.
- 7. Data Protection & Customer Data**
- 7.1 Both parties will comply with all applicable requirements of the Data Protection Laws.
 - 7.2 Databarracks and the Customer acknowledge that for the purposes of the Data Protection Laws, the Customer is the data controller of certain personal data in respect of which Databarracks will be the processor.
 - 7.3 Without prejudice to the generality of clause 7.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Databarracks for the duration and purposes of this Agreement. Databarracks shall, in relation to any personal data processed in connection with the performance by Databarracks of its obligations under this Agreement:
 - (a) process the personal data only to the extent, and in such a manner, as is necessary for the purpose for which the personal data is collected and processed as notified to Databarracks by the Customer and in accordance with the Customer's instructions from time to time and shall not process the personal data for any other purpose;
 - (b) ensure it has in place appropriate technical and organisational measures against the unauthorised or unlawful processing of personal data and against the accidental loss or destruction of, or damage to, personal data;
 - (c) ensure that access to the personal data is limited to those personnel who need access to the personal data to meet Databarracks' obligations under this Agreement;
 - (d) not transfer the personal data outside the United Kingdom or the European Economic Area without the prior written consent of the Customer;
 - (e) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (f) notify the Customer without undue delay if, in its opinion, the Customer's instructions infringe the Data Protection Laws or upon Databarracks becoming aware of a personal data breach;
 - (g) at the written direction of the Customer and upon the payment of Databarracks' reasonable costs where applicable, delete or return Personal Data and copies thereof to the Customer on termination of this agreement unless required or permitted by applicable law to store the personal data;
 - (h) at the written direction of the Customer and upon the payment of Databarracks' reasonable costs where applicable (including any required software or tools, and time taken by suitably qualified personnel), conduct audits and inspections; and
 - (i) maintain records of any types of processing of personal data it carries out on behalf of the Customer.
 - 7.4 The Customer consents to Databarracks appointing a sub-contractor (or third-party processor) of personal data under this agreement. Databarracks will confirm if requested by the Customer in writing of the identities of such third parties and that it has entered or (as the case may be) will enter a written agreement with such third parties incorporating terms which are

- substantially similar to those set out in this clause.
- 7.5 Databarracks shall inform the Customer without undue delay if any of Customer's personal data is lost or destroyed or becomes damaged, corrupted, or unusable. Databarracks shall use reasonable endeavours to restore the lost or damaged Customer Data. Without prejudice to any other term of this Agreement, in the event of any loss or damage to Customer Data caused by (i) a breach by Databarracks of this Agreement or (ii) any act or omission of any Databarracks Personnel, then Databarracks will restore such Customer personal data at its own expense. Databarracks shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by the Customer, or the Customer's employees or agents.
- 7.6 Where, as part of the Services, Databarracks provides professional services relating to the configuration and operation of the Customer's IT environment, the Customer acknowledges that Databarracks is advising the Customer as to the means and purpose for which Customer's personal data are processed as opposed to making any determination on the Customer's behalf, and that any decisions are made by Customer alone and that accordingly, Databarracks is neither sole or co-data controller in respect of such personal data.
- 7.7 To the extent that any Customer's Personal Data is being processed by in the Customer's IT environment, it is the Customer, and not Databarracks, which determines the purposes for which, and the means by which, it is so processed and the Customer, and not Databarracks, which configures the Customer's IT environment, and thereby acts as data controller.
- 7.8 The Customer acknowledges and confirms that it is permitted to transmit to Databarracks pursuant to this Agreement all Customer Data without breach of any law, agreement, arrangement or duty or the rights of any third party.
- 7.9 The parties undertake to each other that, if required by ICO guidance or best practice, they shall enter into a separate data processing agreement that will supplement the provisions of this clause in order to cover the data processing obligations that will arise under the GDPR and that they shall negotiate the provisions of that agreement in good faith.
- 8. Confidential Information**
- 8.1 Each party shall keep any Confidential Information received from or belonging to the other party secret and not disclose such Confidential Information to anyone (except on a need to know basis for internal use only where necessary to perform its obligations under this Agreement, to its employees or full time contractors bound by express written secrecy obligations) or use such Confidential Information other than to perform its obligations under this Agreement without the prior written consent of the relevant Disclosing Party.
- 8.2 Clause 8.1 shall not apply to any Confidential Information to the extent that:
- (a) disclosure is required to or by any court, tribunal or governmental authority with competent jurisdiction;
 - (b) it is or becomes generally and freely publicly available through no fault of the Recipient or its servants or agents; or
 - (c) it can be shown to have been independently originated by the relevant Recipient or communicated to it in circumstances otherwise than where its disclosure to that recipient imparted a duty of confidence.
- 8.3 Neither party shall issue any press release or other public document containing or make any public statement containing information which relates to or is connected with this Agreement without the prior written approval of the other party, such approval not to be unreasonably withheld or delayed). This clause 8.3 shall not prevent any disclosure required by Law.
- 9. Use of Services and Invocation of Jump-Start DR Service**
- 9.1 The Customer acknowledges that the Services are personal to the Customer and for no other third party (other than its Affiliates who may utilise the Services) and the Customer shall not resell or attempt to resell any of them.
- 9.2 The Customer will use, and procure that the Customer uses, the Services, and access, and procure that the Customer accesses, the Public Cloud Platform account solely through use of the Software as supplied to the Customer and unmodified by the Customer (except to the extent otherwise authorised or required by Databarracks).
- 9.3 In the event of a Disaster event affecting the Customer, the Customer may, via the Customer Authorised Contact, notify Databarracks and Databarracks will assist the Customer in making the Customer's computer systems available, the process for achieving such availability is as set out in Clause 9.3 and referred to as **'Invocation'**.
- 9.4 Notification of a Disaster event affecting the Customer may be given by the Customer Authorised Contact to the Databarracks service desk via telephone call or email and, notwithstanding Clause 23 , shall be deemed to have been received by Databarracks when the call is answered or the email is received.
- 9.5 The Customer acknowledges and agrees that:
- (a) Invocation is only capable of re-instating systems or data to the point when they were last protected by the Backup Services;
 - (b) Invocation may require the purchase of additional software or licences to make use of the systems which have been backed up (for example, remote access software);
 - (c) performance of the re-instated systems may not be equivalent to the performance of live systems running on their original equipment; and
 - (d) correct functioning of the re-instated systems may require that certain external systems update their domain name system records or references to static IP addresses to function correctly.
- 9.6 Upon Invocation, If either party identifies any Intellectual Property used by the Customer which is needed by Databarracks in order to provide the Jump-Start DR Services, then the Customer will:
- (a) arrange for the novation, sub-license or transfer of the relevant licences to Databarracks (and, where such licences bear any cost reimburse Databarracks for all relevant costs); or
 - (b) terminate the Customer's own licences to such Intellectual Property and assist Databarracks in obtaining licences directly from the licensor on similar terms; or
 - (c) grant Databarracks a royalty-free licence to use such Intellectual Property for the purpose of providing the Jump-Start DR Services for the duration of this Agreement.
 - (d) The Services provided pursuant to Invocation are as set out in the Customer Service Order. Additional services are

to be dealt with during the Invocation.

10. Use of and Updating the Software

10.1 The Customer acknowledges that the Software's feature set may vary from release to release.

10.2 Databarracks accepts no liability for any failure in the Services where:

10.2.1 the Software fails owing to:

- (a) an error or bug in or failure to perform by the Software;
- (b) a malfunction of the Customer's hardware (excluding the Equipment and the Public Cloud Platform) except to the extent that such malfunction was caused or contributed to by Databarracks, or its or their employees, officers, directors, contractors, suppliers or agents;
- (c) the loss or corruption of any password or other identification token unless such corruption or loss was caused or contributed to by Databarracks or its employees, officers, directors, contractors, suppliers or agents;

11. Equipment

11.1 Any Equipment provided by Databarracks to the Customer in connection with the provision of the Services, shall be and shall remain the property of Databarracks.

11.2 Anti-virus, firewalling and equipment security for any Databarracks hardware used within the customers' business address as part of this contract are the responsibility of the customer.

11.3 The Customer shall use the Public Cloud Platform and the Equipment in accordance with any reasonable instructions for use provided in writing by Databarracks.

11.4 Databarracks shall be responsible for ensuring that the Equipment installed by Databarracks on the Customer's premises is adequately insured.

11.5 Databarracks shall regularly carry out routine maintenance of the Equipment and shall pay for the costs of any repair, maintenance or replacement of such Equipment. In the event that any of the Equipment is faulty (and such fault is not caused by the Customer), the Customer shall notify Databarracks and Databarracks shall promptly arrange for the repair of the Equipment. If it is not possible for the Equipment to be repaired within 24 hours of the Customer notifying Databarracks, Databarracks shall promptly arrange for such Equipment to be replaced as soon as reasonable possible. Databarracks will at Databarracks' expense and risk send to the relevant member of the Customer's staff by courier new Equipment to replace the relevant faulty Equipment.

11.6 Databarracks shall be allowed reasonable access to the relevant member of the Customer's premises to deliver, install and maintain the Equipment. The parties shall work together to agree a roll-out timetable in respect of the delivery and installation of the Equipment following execution of this Agreement and within 30 days of Customer's request to do so. Maintenance of the Equipment shall be carried out upon reasonable notice at a date and time agreed between the parties. Databarracks shall ensure that such access to the relevant member of the Customer's premises does not unreasonably disrupt or interfere with the Customer's business or the provision of the Services by Databarracks to the Customer.

11.7 Databarracks shall, upon termination of this Agreement for any reason and at Databarracks' cost, remove the Equipment from the premises of the Customer at a date and time agreed by the relevant member of the Customer and the Customer shall provide all access reasonably necessary to do so. Databarracks shall ensure that such access to the Customer's premises does not unreasonably disrupt or interfere with the Customer's business.

12. Suspension of the Backup Services

12.1 Without prejudice to any other remedy it may pursue Databarracks is permitted to suspend the Backup Services:

- (a) for such time as the Customer is in material breach of any term of this Agreement and such breach (being capable of remedy) has not been remedied within 14 days of the Customer being given notice specifying such breach;
- (b) if the Customer fails to pay any Charge over £500 due under this Agreement; and
- (c) only for the period necessary where Databarracks reasonably suspects that the security of its systems is or is about to be compromised by the Customer or any third party having access to the Customer's equipment or credentials.

12.2 Should Databarracks invoke such suspension, it shall give the Customer prior notice of the intended suspension (including the reasons for such suspension).

12.3 Databarracks shall retain any Customer Data stored pursuant to the Backup Services while any such suspension is in place.

12.4 The Customer's licence to use the Software is suspended for such time as the Backup Services are suspended per Clause 12.1

13. Liability

13.1 The following provisions set out Databarracks' entire liability ("**Liability**") including without limitation any liability for the acts or omissions of its or employees, officers, directors, contractors, suppliers or agents arising under or out of this Agreement in respect of:

- 13.1.1 any breach of the Contract howsoever arising;
- 13.1.2 any use made by the Customer of the Services, the Equipment or any part of them; and
- 13.1.3 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with this Agreement.

13.2 Subject to clauses 13.3 and 13.4, Databarracks and the Customer's total aggregate Liability in respect of loss or damage suffered under this Agreement in any one calendar year shall not exceed 125% of the Charges paid and/or payable by the Customer in the 12 month period immediately preceding the event giving rise to the Liability.

13.3 Subject to clause 13.4, neither party shall, in any event, be liable or responsible to the other party for any indirect, special or consequential loss, damage, cost or expense of any kind whatsoever and howsoever caused whether arising under contract, tort (including negligence), breach of statutory duty or otherwise: (i) loss of profits; (ii) loss of contracts; (iii) remedial costs; (iv) loss of operation or staff time; (v) costs of obtaining substitute goods or services; (vi) loss of goodwill; and (vii) loss of anticipated savings, even if it has been advised of the possibility of such event occurring; (viii) any indirect, special or

- consequential or pure economic loss, costs, damages, charges or expenses.
- 13.4 Neither party excludes or limits its liability for:
- 13.4.1 death or personal injury caused that party's negligence,
 - 13.4.2 fraud or fraudulent misrepresentation;
 - 13.4.3 any other liability that cannot be limited by Law;
 - 13.4.4 any breach of clauses 7 and 8; and
 - 13.4.5 in relation to clause 14.
- 13.5 The express warranties given in this Agreement are in lieu of all warranties, conditions, terms, representations, undertakings and obligations (express or implied) imposed by statute, common law or otherwise all of which are hereby excluded to the maximum extent permitted by law.
- 14. Indemnity**
- 14.1 Databarracks hereby undertakes to fully and effectively indemnify and hold harmless the Customer and keep the Customer so indemnified from and against all liability, losses, damages, costs and expenses they suffer or incur arising from:
- 14.1.1 any breach of its obligations pursuant to clause 7; and
 - 14.1.2 any allegation or claim by a third party that the Customer's possession and/or use of the Documentation, the Software, the Equipment and/or the Public Cloud Platform or the Customer's use and/or receipt of the Services infringes or allegedly infringes any Intellectual Property Rights of a third party ("IPR Claim") provided that:
 - (a) the Customer gives Databarracks prompt notice of any IPR Claim; and
 - (b) the Customer allows Databarracks to have conduct of the IPR Claim and all settlements thereof at the cost and expense of Databarracks provided that Databarracks shall not agree to any such settlement which imposes a continuing or monetary obligation upon the Customer without the Customer's prior written consent, such consent not to be unreasonably withheld or delayed.
- 15. Term and Termination**
- 15.1 This Agreement shall commence on the Effective Date and shall, unless terminated in accordance with Clauses 15.2 and 15.3, subsist for the On-boarding Period and then the Initial Period.
- 15.2 Following the expiry of the Initial Period, this Agreement shall, subject to the termination provisions, continue for a further 12 months and thereafter shall automatically be extended for like periods, unless either party gives the other written notice to terminate 3 months prior to the anniversary of the Effective Date. The Customer and Databarracks acknowledge and agree that this notice requirement is a reasonable notice requirement, and that the automatic renewal provision is also reasonable given the nature of the Service(s).
- 15.3 Either party shall be entitled forthwith to terminate this Agreement by 30 Working Days written notice to the other if:
- (a) the other party commits a material breach this Agreement, and, where such breach is capable of remedy, fails to remedy such breach in all material respects within 30 days of receiving a written notice from the other party specifying the breach and requiring it to be remedied provided that in relation to payment of Charges, this clause shall not apply until 30 days after Customer's receipt of a Suspension Notice; or
 - (b) an encumbrancer takes possession, or a receiver, administrator or similar officer is appointed over any of the property or assets of that other party; or
 - (c) that other party makes any voluntary arrangement with its creditors pursuant to the Insolvency Act 1986, or suspends payment to creditors; or
 - (d) that other party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other party under this Agreement); or
 - (e) that other party ceases, or threatens to cease, to carry on business; or
 - (f) any step is taken with a view to any of the matters set out in Clause 15.3 (b) and (d); or
 - (g) anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to that other party.
- 16. Effect of Termination**
- 16.1 The termination of this Agreement, for whatever reason, shall not affect the rights or remedy of either of the parties that may have accrued before the termination of this Agreement; or
- (a) which expressly or by their nature are intended to survive the termination of this Agreement
- 16.2 Upon termination of this Agreement for reasons other than a material breach by the Customer, a pro-rated amount equivalent to the Charges paid by the Customer in advance for any Services which have not been performed by Databarracks shall be reimbursed by Databarracks to the Customer within thirty (30) days of the date of termination.
- 16.3 In the event of termination or expiry of this Agreement for any reason:
- (a) save as set out in this Clause, on termination of this Agreement howsoever caused Databarracks' obligation to retain any Customer Data or provide the Services shall cease. The Customer Data shall be retained in a form which enables it to be retrieved by the Customer-Side Software, and the Customer's licence to use the Customer-Side Software shall be extended for such 30 day period solely for the purpose of retrieving the Customer Data, subject to the Customer paying Databarracks reasonable costs incurred for providing such assistance. Databarracks shall promptly (i) return to the Customer, subject to the Customer paying Databarracks' reasonable costs necessarily incurred in providing such assistance; or (ii) dispose of in accordance with Customer's instructions from time to time (as determined by the Customer in its sole and absolute discretion) Customer Data and/or all information (including any Confidential Information) and all other records, documentation or data and copies thereof disclosed or supplied to Databarracks pursuant to or in relation to this Agreement; and
 - (b) Databarracks shall co-operate with the Customer and/or any new provider of the Services (or services similar to the Services) appointed by the Customer in ensuring the smooth handover and continued handover of the Services and, in particular, Databarracks shall render such assistance to the Customer and/or the new provider as the Customer may reasonably request, subject to the Customer paying Databarracks' reasonable costs necessarily

incurred in providing such assistance.

17. Force Majeure

17.1 Databarracks shall have no liability under this Agreement to the extent that 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, 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 Databarracks' subcontractors, provided that Databarracks notifies the Customer of such an event and its expected duration.

17.2 If a default due to an event of Force Majeure shall continue for more than 90 days then the party not in default shall be entitled to terminate this Agreement. Neither party shall have any liability to the other in respect of termination as a result of an event of Force Majeure, but such termination shall not affect any pre-existing rights or obligations of either party.

18. Variation

18.1 This Agreement may be modified or amended from time to time by the mutual agreement of the parties provided however that no such modification or amendment shall be effective unless and until reduced to writing and signed by duly authorised representatives of the parties.

19. Successors and Assigns

19.1 References in this Agreement to the parties shall include their respective heirs successors in title permitted assigns and personal representatives.

20. Waiver and Forbearance

20.1 If any party fails to rely on its rights under this Agreement or otherwise, that shall not prevent it from relying on those (or similar) rights in the future.

21. Cumulative Remedies

21.1 The provisions of this Agreement, and the rights and remedies of the parties under it are cumulative and are without prejudice and in addition to any rights or remedies a party may have at law or in equity.

21.2 No exercise by a party of any one right or remedy under this Agreement, or at law or in equity, shall (save to the extent, if any, provided expressly in this Agreement, or at law or in equity) operate so as to hinder or prevent the exercise by it of any other such right or remedy.

22. Severability

22.1 If any provision of this Agreement is found by a court or other competent authority to be void or unenforceable:

22.1.1 that provision shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall continue in full force and effect; and

22.1.2 the parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for that provision.

23. Whole Agreement

23.1 This Agreement supersedes all prior representations, arrangements, understandings and agreements between the parties relating to its subject matter and is the entire agreement and understanding between the parties relating to its subject matter.

23.2 Each party acknowledges that it has not relied on any representation, arrangement, understanding or agreement (whether written or oral) not expressly set out or referred to in this Agreement.

23.3 Clauses 23.1 and 23.2 shall not apply to the extent that they relate to any warranty, representation or undertaking made fraudulently in which case the other party shall be entitled to all the remedies available under Law.

24. Assignment

24.1 Neither party may assign, transfer, sub-contract, novate or otherwise dispose of any rights or obligations under this Agreement in whole or in part without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed) except that Customer may by written notice assign all or some of the benefit of this Agreement to any of its Affiliates. In the event that the Customer consents to Databarracks sub-contracting all or any part of the Services to any third party, Databarracks shall, at all times, remain liable to the Customer for the acts and omissions of that third party and Databarracks shall procure that that third party provides the Services (or the relevant part thereof) in accordance with the terms and conditions of this Agreement.

25. Notices

25.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this Clause, and shall be delivered personally, sent by pre-paid first class post or other next Working Day delivery service, commercial courier or fax.

25.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 25.1; if sent by pre-paid first class post or other next Working Day delivery service, at 9.00 am on the second Working Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, eight hours after transmission during Normal Business Hours or, if transmission is not during Normal Business Hours, at the start of Normal Business Hours on the following Working Day but subject to production by the sender of confirmation from the transmitting facsimile machine that a satisfactory transmission has been completed.

26. Insurance

26.1 Databarracks agrees throughout the term of this Agreement to maintain professional indemnity, public and product liability, and employers liability with a reputable insurer with a limit of £10,000,000 in respect of each claim. Databarracks will provide the Customer with a copy of the relevant policy and evidence that it remains in force on reasonable request from time to time. Databarracks may change insurers and the terms of the relevant policy from time to time provided that the coverage is not materially less than that provided under this Clause.

27. Rights of Third Parties

27.1 This Agreement is not intended to convey a benefit on any person not a party to it and accordingly the provisions of the

Contracts (Rights of Third Parties) Act 1999 are excluded.

28. Counterparts

28.1 This Agreement may be entered into in any number of counterparts, all of which taken together shall constitute one and the same instrument. Either party may enter into this Agreement by signing any such counterpart.

29. Anti- Bribery And Anti- Slavery

29.1 Customer and its Group are committed to running a business free from discreditable behaviour of any kind and Databarracks confirms that it shares Customer's commitment in respect of its own business dealings. In particular, Databarracks warrants that it is not associated with bribery or the commissioning of any acts of bribery, nor does it associate with any party in relation to such matters. Databarracks undertakes that it will not commit nor commission any act of bribery and will take all reasonable steps to ensure that the individuals it utilises to perform the Services act accordingly.

29.2 With regard to its activities carried out in relation to this Agreement, Databarracks shall comply with applicable laws by which it is bound that concern slavery. In the case of the United Kingdom, these laws include the Modern Slavery Act 2015.

29.3 Databarracks shall notify Customer promptly in writing if it becomes aware that it is in breach of this Clause 29 and shall (i) promptly provide to Customer such relevant information relating to such breach as Customer reasonably requests and (ii) co-operate with Customer and any relevant public authorities in relation thereto.

30. Governing Law and Jurisdiction

30.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the English Courts.

31. Signatures

By signing by hand or through DocuSign, I confirm I am duly authorised on behalf of the Customer to be bound by this Agreement and the attached Customer Service Order detailing the Charges and Services delivered under these terms and conditions.

Signed for and on behalf of the Customer:

Signed for and on behalf of Databarracks Ltd:

SIGNATURE:_____

SIGNATURE:_____

NAME:_____

NAME: James Watts

TITLE:_____

TITLE: Managing Director, Databarracks Ltd

DATE: _____

DATE: _____