

Cloudset

G-Cloud 15 – Terms and Conditions

Terms & conditions

Our Cloudset Software Terms & Conditions

Defining the basis for the provision of Cloudset software capabilities

Please read these terms and conditions carefully before completing and submitting an order, as they set out our and your legal rights and obligations, including GDPR provisions, in relation to the use of the Cloudset platform and related services. You will be asked to agree to these terms and conditions before becoming a customer.

These terms and conditions are available in the English language only. You should print a copy of these terms and conditions for future reference. We will not file a copy specifically in relation to you, and they may not be accessible on our website in future.

AGREEMENT:

(1) Definitions and interpretation

1.1 In the Agreement:

"Agreement" means the agreement between the Provider and the Customer for the provision of access to the Cloudset Platform and use of the Cloudset Services, incorporating these terms and conditions and the Signup Documents, and any amendments to the Agreement from time to time;

"Business Day" means any week day, other than a bank or public holiday in England;

"Charges" means the amounts payable by the Customer to the Provider under or in relation to the Agreement;

"Cloudset Platform" means the software platform known as Cloudset that is owned and operated by the Provider, and that will be made available to the Client as a service via the internet;

"Cloudset Web Services" means the web services provided or to be provided by the Provider to the Customer by means of the Cloudset Platform, being either the Cloudset SLA Management services or the Cloudset Apps services, as specified in the Signup Documents;

"Customer" means the customer for the Cloudset Web Services identified in the Signup Documents;

"Customer Confidential Information" means

(a) any information disclosed (whether disclosed in writing, orally or otherwise) by the Customer to the Provider during the Term that is marked as "confidential", described as "confidential" or should have been understood by the Provider at the time of disclosure to be confidential; and

(b) the Customer Materials.

"Customer Data" means the identity, contact and payment details of the Customer supplied in the Signup Documents (as updated from time to time) and all information about the Customer's use of, and rights to use, the Cloudset Platform and Cloudset Web Services;

"Customer Materials" all works and materials (excluding the Customer Data) uploaded to the Cloudset Platform, or processed or transmitted using the Cloudset Services, by or on behalf of the Customer;

"Customer Personal Data" means any Personal Data that is processed by the Provider on behalf of the Customer in relation to the Agreement;

"Data Protection Laws" means all applicable laws relating to the processing of Personal Data including, while it is in force and applicable to Customer Personal Data, the General Data Protection Regulation (Regulation (EU) 2016/679);

"Defect" means a defect, error or bug having a material adverse effect on the operation or functionality of the Cloudset Platform, but excluding any defect, error or bug caused by or arising as a result of an incompatibility between the Cloudset Platform and any other system, application, program or software other than the Interface Software;

"Documentation" means the data sheets produced by the Provider and made available on the Cloudset Platform to the Customer;

"Effective Date" means the date that the Agreement comes into force as specified in Clause 2.3;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, hacker attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the "intellectual property rights" referred to above include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Interface Software" means the software supplied by the Provider to the Customer for the purpose of enabling the Customer to access the Cloudset Services;

"Personal Data" has the meaning given to it in the Data Protection Laws applicable in the United Kingdom from time to time;

"Provider" means Cloudset Limited, a company incorporated in England and Wales (registration number 04399183) having its registered office at 3rd Floor 86-90 Paul Street, London, EC2A 4NE, United Kingdom;

"Signup Documents" means:

(a) if the Agreement relates to Cloudset SLA Management, then the documents agreed by parties setting out the licensing arrangements for the Cloudset Services and the Charges initially payable under the Agreement; and

(b) if the Agreement relates to Cloudset Apps, the signup form on the Zendesk App Marketplace, as completed and submitted by the Customer;

"Subscription Period" means:

(a) if the Agreement relates to Cloudset SLA Management, a 12 month period, unless the parties have agreed otherwise in writing; and

(b) if the Agreement relates to Cloudset Apps, a 1 month period, unless the Customer has specified in the Signup Documents that the period shall be 12 months (in which case it will be 12 months);

"Support Services" means support and maintenance services provided or to be provided by the Provider to the Customer in accordance with Clause 4;

"Term" means the term of the Agreement; and

"Upgrades" means new versions of, and updates to, the Cloudset Platform, whether for the purpose of fixing an error, bug or other issue in the Cloudset Platform or enhancing the functionality of the Cloudset Platform.

1.2 In the Agreement, a reference to a statute or statutory provision includes a reference to:

(a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and

(b) any subordinate legislation made under that statute or statutory provision.

1.3 The Clause headings do not affect the interpretation of the Agreement.

1.4 The ejusdem generis rule is not intended to be used in the interpretation of the Agreement.

1.5 References in the Agreement to time are references to the time in London, UK.

(2) Agreement and Term

2.1 The advertising of the Cloudset Services on the Provider's website constitutes an "invitation to treat"; and the Customer's order for the Cloudset Web Services constitutes a contractual offer. No contract will come into force between the Provider and the Customer unless and until the Provider accepts the Customer's order in accordance with the procedure detailed in this Clause 2.

2.2 In order to enter into the Agreement, the Customer must take the following steps:

(a) if the Agreement relates to Cloudset SLA Management, then each party must agree to these terms and conditions and the Signup Documents in writing; and

(b) the Agreement relates to Cloudset Apps, the signup Customer must complete the signup process on the Zendesk App Marketplace, and the Provider must activate the Customer's account enabling the Customer to log in and configure the Cloudset Services.

2.3 The Agreement will come into force when the Customer one of the processes described in Clause 2.2 is completed.

2.4 The parties, being businesses, agree that Regulations 9(1)(c) and 11(1)(b) of the Electronic Commerce (EC Directive) Regulations shall not apply. The Customer will have the opportunity after completing the process described in Clause 2.2 of identifying whether any input errors have been made, and correcting any such errors, using the Customer's account control panel.

2.5 Once in force, the Agreement will continue in force indefinitely, unless and until the Agreement is terminated in accordance with Clause 6.2 or Clause 13.

(3) Cloudset Platform and Cloudset Web Services

3.1 Subject to the prohibitions set out in Clause 3.2, the Provider hereby grants to the Customer a non-exclusive licence to access the Cloudset Platform and to use the Cloudset Web Services, by means of the Interface Software only, for the sole purpose of processing the data of the Customer, during the Term.

3.2 The licence granted by the Provider to the Customer under this Clause 3 is subject to the following prohibitions:

(a) the Customer must not sub-license its right to access and use the Cloudset Web Services or allow any unauthorised person to access or use the Cloudset Web Services; and

(b) the Customer must not alter or adapt or edit the Cloudset Platform.

3.3 For the avoidance of doubt, the Customer has no right to access the object code or source code of the Cloudset Platform, either during or after the Term.

3.4 All Intellectual Property Rights in the Cloudset Platform will remain, as between the parties, the property of the Provider.

3.5 The Customer shall use all reasonable endeavours to ensure that no unauthorised person will or could access the Cloudset Platform or use the Cloudset Web Services using the Customer's access credentials.

(4) Support Services and Upgrades

4.1 During the Term, the Provider will provide the Support Services to the Customer, and may apply Upgrades to the Cloudset Platform, in accordance with the provisions of this Clause 4.

4.2 The Provider will make available between 09.00 and 17.00 London time on Business Days a helpdesk facility for the purposes of:

(a) assisting the Customer with the proper use of the Cloudset Platform; and/or

(b) determining the causes of errors and fixing errors in the Cloudset Platform.

4.3 The Provider will use reasonable endeavours to ensure that a member of its support staff can be reached by mobile phone outside the support hours referred to in Clause 4.2 in the case of an emergency.

4.4 The Customer will make reasonable use of the helpdesk facility, and the Provider reserves the right to suspend the helpdesk facility in the event that, after being provided with written warning of misuse by Provider, the Customer continues to make unreasonable use of that facility.

4.5 The Customer acknowledges that from time to time during the Term the Provider may apply Upgrades to the CloudsetPlatform, and that such Upgrades may result in changes the functionality of the Cloudset Platform.

4.6 In the event of the interruption of the Cloudset Web Services, the Provider shall use reasonable endeavours to arrange for the resumption of the Cloudset Web Services in such manner that the Customer does not suffer any data loss.

4.7 The Provider may suspend access to the Cloudset Platform in order to carry out scheduled maintenance, such maintenance to be carried out on any day which is not a Business Day.

4.8 The Provider may sub-contract the provision of any of the Support Services without obtaining the consent of the Customer.

(5) Customer Materials

5.1 The Customer grants to the Provider a non-exclusive licence to store, copy and otherwise use the Customer Materials on the Cloudset Platform for the purposes of operating the Cloudset Platform, providing the Cloudset Web Services, fulfilling its other obligations under the Agreement, and exercising its rights under the Agreement.

5.2 Subject to Clause 5.1, all Intellectual Property Rights in the Customer Materials will remain, as between the parties, the property of the Customer.

5.3 The Customer warrants and represents to the Provider that the Customer Materials, and their use by the Provider in accordance with the terms of the Agreement, will not:

- (a) breach any laws, statutes, regulations or legally-binding codes;
- (b) infringe any person's Intellectual Property Rights or other legal rights; or
- (c) give rise to any cause of action against the Provider or the Customer or any third party, in each case in any jurisdiction and under any applicable law.

5.4 Where the Provider reasonably suspects that there has been a breach of the provisions of this Clause 5, the Provider may:

- (a) delete or amend the relevant Customer Materials; and/or
- (b) suspend any or all of the Cloudset Web Services and/or the Customer's access to the Cloudset Platform while it investigates the matter.

5.5 Any breach by the Customer of this Clause 5 will be deemed to be a material breach of the Agreement for the purposes of Clause 13.

(6) Charges

6.1 The Charges applicable from the Effective Date will be as specified in the Signup Documents, and will consist of:

- (a) if the Agreement relates to Cloudset SLA Management, then agreed set-up Charges (to be invoiced on or after the Effective Date) and subscription Charges (to be invoiced at or around the start of each Subscription Period); and
- (b) if the Agreement relates to Cloudset Apps, then subscription Charges (to be either paid in advance via the Zendesk App Marketplace or, if specified in the Signup Documents, to be invoiced at or around the start of each Subscription

Period), providing that if the Customer pays upon invoice and the Customer's use of the Cloudset Web Services exceeds the agreed licensing restrictions, then the Customer must pay the Provider Charges for the excess usage, such Charges to be calculated by the Provider using any reasonable methodology and to be invoiced to the Customer at or around the end of the relevant Subscription Period.

6.2 Where the Provider agrees in writing with the Customer that there will be an initial trial period for the Cloudset Web Services, then during that trial period all of the provisions of the Agreement shall apply, save as follows:

(a) the Customer shall have no obligation to pay the Charges in respect of the trial period;

(b) either party may terminate the Agreement immediately by giving written notice to the other party at any time before the end of the trial period (in which case no liability to pay any Charges will arise); and

(c) the first Subscription Period shall begin at the end of the trial period.

6.3 All Charges stated in or in relation to the Agreement are stated exclusive of VAT, unless the context requires otherwise. Where applicable, VAT will be payable by the Customer to the Provider in addition to the principal amounts.

6.4 The Provider may vary the Charges by giving to the Customer not less than 30 days' written notice of the variation expiring after the end of the then-current Subscription Period.

6.5 The Customer will pay the Charges to the Provider within 30 days of the date of issue of the relevant invoice.

6.6 Charges must be paid by the method specified in the Signup Documents or such other method as the Provider may agree in writing from time to time.

6.7 If the Customer does not pay any amount properly due to the Provider under or in connection with the Agreement, the Provider may:

(a) charge the Customer interest on the overdue amount at the rate of 8% per year above the base rate of HSBC Bank Plc from time to time (which interest will accrue daily and be compounded quarterly); or

(b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

6.8 The Provider may suspend access to the Cloudset Platform and the provision of the Cloudset Web Services if any amounts due to be paid by the Customer to the Provider under the Agreement are overdue.

6.9 The Customer acknowledges that, where the Customer does not fully utilise any Cloudset Web Services usage allowances included in the fixed Charges, such allowances will not be carried over to the following period.

(7) Refund policy

7.1 If either party terminates the Agreement in accordance with Clause 13.3, then the Customer shall be released from any obligation to pay the Charges in respect of any subsequent Subscription Period, and where such Charges have already been paid to the Provider, the Customer shall be entitled to a refund of such Charges.

7.2 If the Provider terminates the Agreement in accordance with Clause 13.4, or Customer terminates the Agreement in accordance with Clause 13.6, then the Customer shall be released from any obligation to pay the Charges in respect of any period after the date of effective termination of the Agreement (such amount to be pro-rated by Provider on a straight-line basis over the then-current Subscription Period).

7.3 In no event will the Customer be entitled to any refund of, or release from liability to pay, variable Charges that the Customer has incurred.

7.4 Save as expressly provided in this Clause 7 or Clause 6.2, the Customer will not be entitled to any refund of the Charges or released from any liability to pay the Charges on the termination of this Agreement.

(8) Warranties

8.1 The Customer warrants and represents to the Provider that it has the legal right and authority to enter into and perform its obligations under the Agreement.

8.2 The Provider warrants and represents to the Customer:

(a) that it has the legal right and authority to enter into and perform its obligations under the Agreement;

(b) that it will perform its obligations under the Agreement with reasonable care and skill; and

(c) that the Cloudset Platform will operate without Defects and will perform substantially in accordance with the Documentation (subject to any Upgrades).

8.3 The Customer acknowledges that:

(a) complex software is never wholly free from defects, errors and bugs, and the Provider gives no warranty or representation that the Cloudset Platform will be wholly free from such defects, errors and bugs;

(b) the Provider does not warrant or represent that the Cloudset Platform will be compatible with any application, program or software other than (i) the Interface Software, and (ii) the customer service software and services provided by Zendesk, Inc. as at the date of the Agreement; and

(c) the Provider will not and does not purport to provide any legal, taxation or accountancy advice under the Agreement or in relation to the Cloudset Platform and (except to the extent expressly provided otherwise) the Provider does not warrant or represent that the Cloudset Platform will not give rise to any civil or criminal legal liability on the part of the Customer or any other person.

8.4 All of the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in the terms of the Agreement. To the maximum extent permitted by applicable law, no other warranties or

representations concerning the subject matter of the Agreement will be implied into the Agreement.

(9) Customer indemnity

9.1 The Customer will indemnify and will keep indemnified the Provider against all liabilities, damages, losses, costs and expenses (including legal expenses and amounts paid in settlement of any disputes) suffered or incurred by the Provider and arising as a result of any breach by the Customer of Clause 5.3.

9.2 Provider will indemnify and hold Customer harmless, from and against any claim against any infringement by the Cloudset Platform and/or the Cloudset Web Services of a third party's patent, copyright, trademark or trade secret (an "IP Claim"). Provider shall, at its expense, defend any alleged IP Claim and pay damages finally awarded against Customer in connection therewith, providing that the Customer shall:

- (a) upon becoming aware of an actual or potential IP Claim, notify the Provider;
- (b) provide to the Provider all reasonable assistance in relation to the IP Claim, at the Provider's expense;
- (c) allow the Provider the exclusive conduct of all disputes, proceedings, negotiations and settlements relating to the IP Claim, provided that (i) Customer shall be entitled to participate in same at Customer's expense, and (ii) Provider will not compromise or settle any IP Claim unless Customer obtains a complete release of all liability under such compromise or settlement; and
- (d) not admit liability in connection with the IP Claim or settle the IP Claim without the prior written consent of the Provider.

(10) Limitations and exclusions of liability

10.1 Nothing in the Agreement will:

- (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;

(b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;

(c) limit any liability of a party in any way that is not permitted under applicable law; or

(d) exclude any liability of a party that may not be excluded under applicable law.

10.2 The limitations and exclusions of liability set out in this Clause 10 and elsewhere in the Agreement:

(a) are subject to Clause 10.1; and

(b) govern all liabilities arising under the Agreement or in relation to the subject matter of the Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty.

10.3 Neither party will be liable to the other party in respect of any loss of profits, income, revenue, use, production or anticipated savings.

10.4 Neither party will be liable to the other party for any loss of business, contracts or commercial opportunities.

10.5 Neither party will be liable to the other party for any loss of or damage to goodwill or reputation.

10.6 Neither party will be liable to the other party in respect of any loss or corruption of any data, database or software.

10.7 Neither party will be liable to the other party in respect of any special, indirect or consequential loss or damage.

10.8 EXCEPT FOR (I) A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 9 HEREOF, AND/OR (II) A PARTY'S BREACH OF SECTION 12, EACH PARTY'S AGGREGATE LIABILITY TO ANY PARTY ARISING OUT OF THESE TERMS OR OTHERWISE IN CONNECTION WITH ANY SUBSCRIPTION TO, OR USE OR EMPLOYMENT OF THE SERVICE, SHALL IN NO

EVENT EXCEED THE GREATER OF (I) THE CHARGES PAID BY CUSTOMER DURING THE TWELVE (12) MONTHS PRIOR TO THE FIRST EVENT OR OCCURRENCE GIVING RISE TO SUCH LIABILITY, OR (II) TEN THOUSAND U.S. DOLLARS (US\$10,000).

(11) Data protection

11.1 Each party shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data.

11.2 The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with the Agreement.

11.3 The Customer shall only supply to the Provider, and the Provider shall only process, in each case under or in relation to the Agreement, the Personal Data of users of the Cloudset Web Services, and of the personnel of the Customer's customers, of the following types: names, job titles, organisation or employer identities, and any personal data contained in any free text field submitted as part of a support query. The Provider shall only process the Customer Personal Data for the purpose of providing, and monitoring the provision of, the Cloudset Web Services and the Support Services.

11.4 The Provider shall only process the Customer Personal Data during the Term and for not more than ten (10) days following the end of the Term, subject to the other provisions of this Clause 11.

11.5 The Provider shall only process the Customer Personal Data on the documented instructions of the Customer (including with regard to transfers of the Customer Personal Data to any place outside the European Economic Area (EEA)), as set out in the Agreement or any other document agreed by the parties in writing. The Customer hereby authorises the transfers of Customer Personal Data from within the EEA to the USA specified in Clause 11.11 below.

11.6 The Provider shall promptly inform the Customer if, in the opinion of the Provider, an instruction of the Customer relating to the processing of the Customer Personal Data infringes the Data Protection Laws.

11.7 Notwithstanding any other provision of the Agreement, the Provider may process the Customer Personal Data if and to the extent that the Provider is required to do so by applicable law. In such a case, the Provider shall inform the Customer of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest.

11.8 The Provider shall ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

11.9 The Provider and the Customer shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data.

11.10 The Provider must not engage any third party to process the Customer Personal Data without the prior specific or general written authorisation of the Customer. In the case of a general written authorisation, the Provider shall inform the Customer at least 14 days in advance of any intended changes concerning the addition or replacement of any third party processor, and if the Customer objects to any such changes before their implementation, then the Customer may terminate the Agreement on 7 days' written notice to the Provider, providing that such notice must be given within the period of 7 days following the date that the Provider informed the Customer of the intended changes. The Provider shall ensure that each third party processor is subject to equivalent legal obligations as those imposed on the Provider by this Clause 11.

11.11 As at the Effective Date, the Provider is hereby authorised by the Customer to engage, as sub-processors with respect to Customer Personal Data, third parties within the following categories:

(a) support services infrastructure providers (as at the Effective Date, the appointed services provider is Zendesk, Inc); and

(b) hosting services providers (as at the Effective Date, the appointed services provider is Amazon Web Services, Inc),

and the Customer acknowledges that the servers of these services providers are or may be situated in the USA and agrees that the Customer Personal Data may be transferred to those servers providing that the transfers are protected by the following appropriate safeguards: (i) the applicable standard contractual clauses approved by the European Commission, (ii) the Privacy Shield scheme, or (iii) binding corporate rules.

11.12 The Provider shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Customer with the fulfilment of the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.

11.13 The Provider shall assist the Customer in ensuring compliance with the obligations relating to the security of processing of personal data, the notification of personal data breaches to the supervisory authority, the communication of personal data breaches to the data subject, data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Laws. The Provider shall report any Personal Data breach relating to the Customer Personal Data to the Customer within 48 hours following the Provider becoming aware of the breach.

11.14 The Provider shall make available to the Customer all information necessary to demonstrate the compliance of the Provider with its obligations under this Clause 11 and the Data Protection Laws.

11.15 The Provider shall, at the choice of the Customer, delete or return all of the Customer Personal Data to the Customer after the provision of services relating to the processing, and shall delete existing copies save to the extent that applicable law requires storage of the relevant Personal Data.

11.16 The Provider shall allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer in respect of the compliance of the Provider's processing of Customer Personal Data with the Data Protection Laws and this Clause 11.

11.17 If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under the Agreement, then the parties shall use their best endeavours promptly to agree such variations to the Agreement as may be necessary to remedy such non-compliance.

11.18 The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 11.13 or 11.16, providing that the Provider shall have no right to charge under this Clause if the request arises out of any breach by the Provider of the Agreement or any security incident affecting the software or systems of the Provider.

(12) Confidentiality

12.1 The Provider will:

(a) keep confidential and not disclose the Customer Confidential Information to any person save as expressly permitted by this Clause 12;

(b) protect the Customer Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care; and

(c) without prejudice to the generality of Clause 12.1(b), ensure that all Customer account information stored on the Platform is stored in encrypted form, and that communications between the Platform and the Interface Software are protected by SSL technology.

12.2 Customer Confidential Information may be disclosed by the Provider to its officers, employees, agents, insurers and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Customer Confidential Information disclosed.

12.3 The obligations set out in this Clause 12 shall not apply to:

(a) Customer Confidential Information that is publicly known (other than through a breach of an obligation of confidence);

(b) Customer Confidential Information that is in possession of the Provider prior to disclosure by the Customer;

(c) Customer Confidential Information that is received by the Provider from an independent third party who has a right to disclose the relevant Confidential Information; or

(d) Customer Confidential Information that is required to be disclosed by law, or by a governmental authority, stock exchange or regulatory body.

(13) Termination

13.1 Either party may terminate the Agreement immediately by giving written notice to the other party if the other party commits any material breach of any term of the Agreement.

13.2 Either party may terminate the Agreement immediately by giving written notice to the other party if:

(a) the other party:

(i) is dissolved;

(ii) ceases to conduct all (or substantially all) of its business;

(iii) is or becomes unable to pay its debts as they fall due;

(iv) is or becomes insolvent or is declared insolvent; or

(v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;

(b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;

(c) an order is made for the winding up of the other party, or a petition in bankruptcy for the other party is filed, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement); provided, however, that in the event of a filing against the other party of an involuntary petition in bankruptcy, such petition must not have been dismissed within 60 days of such filing; or

(d) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

13.3 Either party may terminate the Agreement by giving at least 30 Business Day's written notice of termination to the other party, expiring at the end of the then-current Subscription Period.

13.4 The Provider may terminate the Agreement by giving at least 90 Business Days' written notice of termination to the Customer (expiring at any time).

13.5 The Provider may terminate the Agreement immediately by giving 30 days' written notice of termination to the Customer where the Customer fails to pay to the Provider any amount due to be paid under the Agreement by the due date, unless the Customer cures such failure within such 30-day notice period.

(14) Effects of termination

14.1 Upon termination of the Agreement, all the provisions of the Agreement will cease to have effect, save that the following provisions of the Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 7, 9, 10, 12, 14 and 17.

14.2 Termination of the Agreement will not affect either party's accrued liabilities and rights as at the date of termination.

14.3 Upon termination of the Agreement, Customer shall be granted limited access to the Cloudset Platform and the Cloudset Web Services for up to ten (10)

days for the sole purpose of permitting Customer to retrieve Customer Data. For a period of up to twelve (12) months thereafter, upon Customer's request and at Customer's expense, Provider will retrieve Customer Data on back-up tapes from archives at Provider's then applicable rate for such services.

(15) Notices

15.1 Any notice given under the Agreement must be in writing (whether or not described as "written notice" in the Agreement) and must be delivered personally or sent by recorded signed-for post, or sent by email, for the attention of the relevant person, and to the relevant address given below (or as notified by one party to the other in accordance with this Clause).

The Provider

Addressee: Legal Department

Email address: legal@cloudset.net

Postal address: Cloudset Limited, 3rd Floor 86-90 Paul Street, London, EC2A 4NE, United Kingdom.

The Customer

The addressee and address or email address set out in the Signup Documents or subsequently notified by the Customer to the Provider.

15.2 A notice will be deemed to have been received at the relevant time set out below (or where such time is not on a Business Day, at the start of the next Business Day after the relevant time set out below):

(a) where the notice is delivered personally, at the time of delivery;

(b) where the notice is sent by recorded signed-for post, 48 hours after posting;
and

(c) where the notice is sent by email, at the time of the transmission (providing the sending party retains written evidence of the transmission).

15.3 A party receiving a notice under this Agreement must send to the other party an acknowledgement of receipt within 2 Business Days of the date of receipt of the notice.

(16) Force Majeure Event

Where a Force Majeure Event gives rise to a failure or delay in either party performing its obligations under the Agreement (other than obligations to make payment), those obligations will be suspended for the duration of the Force Majeure Event.

(17) General

17.1 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.

17.2 If a Clause of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of the Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).

17.3 The Agreement may not be varied except by a written document signed by or on behalf of each of the parties.

17.4 The Customer hereby agrees that the Provider may freely assign any or all of its contractual rights and/or obligations under the Agreement to any successor to all or a substantial part of the business of the assigning party from time to time. The Customer must not without the prior written consent of the Provider assign, transfer, charge, license or otherwise dispose of or deal in the Agreement or any contractual rights or obligations under the Agreement. Notwithstanding the foregoing, Customer's assignment of the Agreement or its rights and/or

obligations thereunder to an entity that Customer controls, is controlled by or is under common control with shall not require Provider's consent.

17.5 The Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Agreement are not subject to the consent of any third party.

17.6 Subject to Clause 10.1:

(a) the Agreement constitutes the entire agreement between the parties in relation to the subject matter of the Agreement, and supersedes all previous agreements, arrangements and understandings between the parties in respect of that subject matter; and

(b) neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement unless expressly set forth in the Agreement.

17.7 The Agreement will be governed by and construed in accordance with the laws of England and Wales; and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Agreement.