



## 4D CLOUD SERVICES TERMS AND CONDITIONS

### v3.0 130418

*Note: These T&Cs relate both to the provision of Cloud Services on a remote basis only and also to where the Cloud Services are provided in conjunction with equipment belonging to the Client that is collocated within the Supplier's Premises. Some of the provisions in these T&Cs therefore will not be relevant where Cloud Services are provided on a remote basis only.*

#### DEFINITIONS

- i. "Agreement" means an agreement completed between the persons identified as the Supplier and the Client in that agreement and which is specifically subject to these terms and conditions as amended from time to time.
- ii. "Additional Charges" means any charges for services requested by the Client or arising under the terms of an Agreement other than the Charges.
- iii. "Charges" means the charges for the Services, as specified in a Services and Payment Schedule, as amended from time to time under Clause 4 below.
- iv. "Clause" means all the terms bearing the same initial number unless it is a term specifically referred to such as "Clause 1.4".
- v. "Collocated Server" means a server, owned by the Client and hosted in one of the Supplier's data centres on behalf of the Client.
- vi. "Contract" means the contract formed by the Client and the Supplier on the completion of an Agreement as amended from time to time by the inclusion of additional Services and Payment Schedules and subject to this document as amended from time to time in accordance with the terms herein.
- vii. "Client's Cloud Data" means all and any information, data, computer files or other material held on the Cloud Platform by the Client from time to time.
- viii. "Cloud Platform" means the infrastructure provided by the Supplier to provide Services through the two related subsystems of a control panel and a cloud platform as described in the Service Level Agreement contained in Schedule 2 below.
- ix. "Client Property" means all equipment (including any data and programs stored on the equipment) and other chattels kept on the Supplier's premises by the Client or persons using the Services under a hosting or reseller agreement that they have with the Client.
- x. "Deliverables" means any software, documentation or other materials provided to the Client by the Supplier under an Agreement in connection with or to enable the provision of the Services.
- xi. "Due Date" means the date that is specified for payment of invoices for Charges or Additional Charges in a Services and Payment Schedule.
- xii. "Energy Levies" means all charges, levies or taxes resulting from Energy Laws, including new or replacement Energy Laws, introduced by any government or authority or any regulatory bodies that are applicable to the consumption of energy by the Supplier's data centre(s), whether directly or indirectly.
- xiii. "Energy Laws" means any applicable laws or regulations (including but not limited to the Energy Act 2011, the Climate Change Act 2008, and the Finance Act 2000 (as amended) and various Climate Change Levy regulations), which makes provision for mandatory energy or environmental charges or levies or which imposes



or increases any taxes, charges or levies of any nature in respect of use of power or energy consumption (whether directly or indirectly).

- xiv. "Excess Power Breach" has the meaning in clause **Error! Reference source not found..**
- xv. "Initial Period" is the period starting from the date of the Request For Services ("RFS") specified in a Services and Payment Schedule to an Agreement and ending on the last day of the month in which the end date of the period stated in the RFS occurs.
- xvi. "Intellectual Property Rights" means any patent, trademark, service mark, registered design, copyright, design right, right to extract or exploit information from a database, database rights, know-how, confidential information or process, any application for any of the above, and any other intellectual property right recognised in any part of the world whether or not presently existing or applied for.
- xvii. "Group" means those companies that are subsidiaries (either directly or otherwise) of the same ultimate holding company and the ultimate holding company itself. "Company", "subsidiary" and "holding company" have the same meaning herein as in Section 1159, Companies Act 2006.
- xviii. "Normal Working Hours" means 8.00 am to 8.00 pm Monday to Friday excluding statutory public holidays.
- xix. "Renewal Period" means the period, specified as such in an SPS, beginning on the expiry of the Initial Period or the expiry of a Renewal Period.
- xx. "RFS Date" means the request for services date specified as such in an Services and Payment Schedule.
- xxi. "Set-up Charges" means the charges agreed between the Client and the Supplier for the configuration of Services on the Cloud Platform beyond that which is necessary to provide functionality of the Services as specified in the SPS.
- xxii. "Services" means the services described in one or more Services and Payment Schedules as amended from time to time in accordance with Clause 3 below.
- xxiii. "SPS" means a Services and Payment Schedule.
- xxiv. "T&Cs" means this document and any subsequent version that becomes applicable to an Agreement.
- xxv. "Termination Charge" means a single payment to be made in the circumstances set out in Clause 4.16 equal to the value of the Charges due from the date of termination to the end of the Initial or Renewal Period next following the date of termination.
- xxvi. "Third Party" means a party associated directly with the Client or a party that provides services, facilities, hardware or software via the Supplier for the provision of agreed services as ordered by the Client.



## INTERPRETATION, CONSTRUCTION AND VARIATION

- 2.1 An Agreement to which these T&Cs apply supersedes all prior agreements, arrangements, representations and undertakings between the Supplier and the Client in respect of its specific subject matter and constitutes the entire agreement between the parties. No change to an SPS will be binding on the parties unless recorded in writing and signed by their respective authorised representatives.
- 2.2 The headings to the conditions in this document are for ease of reference only and do not affect its interpretation or construction.
- 2.3 An Agreement subject to these T&Cs is governed by and is to be construed in accordance with English law, and the Supplier and the Client will submit to the exclusive jurisdiction of the English Courts.
- 2.4 If any term in this in an Agreement or in these T&Cs is held to be invalid or unenforceable in whole or in part, the invalid or unenforceable wording shall be deemed to be omitted.
- 2.5 These T&Cs may be varied by the Supplier from time to time by email notice to the Client which shall provide a link to the new version of the T&Cs on the Supplier's website. If the variation of the T&Cs is as the result of a statutory or regulatory requirement ("a Legal Requirement"), the new version of the T&Cs will take effect from the operative date of the Legal Requirement or the date of the notice by email if that is later than the operative date. All other variations will take effect at the start of the next renewal period.

## SERVICES

- 3.1 The Supplier will provide the Services to the Client in accordance with the SPS and on the terms of the related Agreement. The SPS to an Agreement may be supplemented by additional SPSs agreed in writing by the parties. The terms of that Agreement shall apply to all additional SPSs.
- 3.2 The Services and associated service levels are as specified in the SPS or SPSs and the Service Level Agreement Schedule hereto respectively.
- 3.3 An Agreement does not oblige the Supplier to provide any Internet connection, access or other Internet related services other than any bandwidth and related connectivity provided under an SPS. If the Client subsequently wishes to obtain these services from the Supplier, any agreement for these services made between the Supplier and the Client will be the subject of a separate SPS. Where a dedicated connection is provided via a specified carrier at the request of the Client and is identified as such in the relevant SPS, the provision of that connection shall be subject to the terms and conditions applicable to the contract for the connection entered into between the carrier and the Supplier, a copy of which terms and conditions will be provided to the Client by the Supplier at the Client's request. The Client acknowledges that the connection and go live dates provided by the carrier are not contractually binding on the carrier and that the Supplier shall not be liable for any loss to the Client arising from any delays or failure in completion of the connection or go live dates.
- 3.4 Neither the Supplier nor the Client will be obliged to agree to any proposed change to the Services and, until any change to the Services (together with any consequential changes to an SPS) has been mutually agreed and recorded in writing in accordance with condition 2.1 above, the Supplier and the Client will continue to perform the Contract without taking account of the proposed change.

## CHARGES AND PAYMENT

- 4.1 The Charges for the Services are as set out in the SPS to an Agreement and as may be set-out in any additional SPSs. Where the Services involve the provision of power and/or bandwidth, the amount of power or bandwidth stated in an SPS is the maximum power and/or bandwidth covered by the Charges and any usage in excess of the stated amount shall result in Additional Charges at the rates in force at the time of over usage, details of which are available from the Supplier on request. If the power draw by the Client exceeds the maximum stated in an SPS or the maximum power density per rack prescribed by Supplier from time to time, then the Supplier may (but is not obliged to) give notice to the Client of such breach (the "Excess Power Breach") and the Client shall within a period of 24 hours of receipt of such notice (or sooner in the case of emergency) desist from the Excess Power Breach. Without prejudice to any other right or remedy of the Supplier, if the Client fails to desist from the Excess Power Breach within such period of 24 hours (or sooner in the case of emergency) then the Supplier may suspend the provision of the Services by giving notice to the Client.
- 4.2 The Client will pay the Charges on or before the Due Date in accordance with the SPS and any additional SPSs. The first Charges shall be paid by BACS transfer to the Supplier's nominated account and these shall cover (i) the Installation and Set-up Charges (if any), (ii) a proportionate amount of the Charges per Billing Period from and including the RFS Date to the end of the month of the RFS Date and (iii) the Charges per Billing Period for the Billing Period following the end of the month of the RFS Date. The daily rate of the Charges will be calculated by dividing the Charges by the number of months in the Billing Period, multiplying the quotient by 12 and dividing the product by 365. Subsequent Charges shall be paid by Direct Debit to which end the Supplier shall provide the Client with a Direct Debit form and the Client shall complete and return the form to the Supplier within 14 days of receipt.
- 4.3 The Client will pay any Additional Charges on or before the Due Date specified in the invoice for them.
- 4.4 Charges paid by the Client may be varied on the first day of the month next following the expiry of the Initial Period or a Renewal Period. The Supplier shall give written notice to the Client of variation of the Charges at least 30 days before the end of the Initial Period or a Renewal Period and in the event of non-agreement, either party may terminate the Agreement in question by giving at least 60 days' written notice to the other party to expire at the end of the Initial Period or the then current Renewal Period. The Client shall be deemed to accept any variation of the Charges if no negative response to the variation notice is received by the Supplier from the Client within 10 days of the variation notice.
- 4.5 Where the Initial Period or a Renewal Period is longer than twelve months, unless Clause 4.4 above applies, on each anniversary of the first day of the month next following the date of the RFS, the Charges, shall be varied by either (a) the most recently published annual rate of change in the Retail Price Index plus 2 percent or (b) 5 percent, whichever is the higher.
- 4.6 Where an SPS includes the provision of power and/or bandwidth, the Supplier may increase Charges once in any twelve month period by the increase in the cost to the Supplier of power or bandwidth or both during that period. The cost of power shall be deemed to include the costs of any Carbon Reduction Commitment allowances or any Energy Levies incurred by the Supplier in the operation of the data centre from which the Services are provided. Increases in Charges in respect of power and bandwidth prices may take place during the Initial Period and during Renewal Periods. The date of the increases in Charges in respect of power and bandwidth costs for both Initial and Renewal Periods shall be the anniversary of the RFS Date. The Supplier warrants that any proportionate increase in Charges in respect of power and bandwidth costs shall be the same as the proportionate increase of costs that it pays to its suppliers for power and bandwidth. Variations of Charges in respect of power and bandwidth costs shall be notified by the Supplier to the Client in writing at least 30 days in advance of the variations taking effect. Variations of Charges in respect of power and bandwidth costs shall be in addition to any increases in Charges arising under Clauses 4.4 and 4.5.
- 4.7 The Client may request that the Supplier's technical staff carry out technical support work ("Remote Services"). The terms and conditions applicable to Remote Services, in addition to those contained elsewhere herein, are set-out in Schedule 3 below.

- 4.8 The Supplier may charge the Client at the Supplier's standard rates from time to time for any work carried out by the Supplier which has been requested by the Client and is not included in the Services and for any additional work and for any additional expenses caused by any delay on the part of, or the act or omission of, the Client or any third party acting on behalf of the Client where the delay, act or omission would otherwise prevent or put at risk the provision of the Services in whole or part.
- 4.9 The Client will reimburse the Supplier on demand for all expenses which the Supplier has undertaken to incur in connection with the provision of the Services or Remote Services to the Client with the prior written agreement of the Client.
- 4.10 If the Client or any third party acting for the Client does not perform any task essential for the provision of the Services where the Client is unable to do so within a reasonable timescale or requests the Supplier to undertake the task or in an emergency and the Supplier performs that task, the Client will pay the Supplier for doing so at the Supplier's standard rates in force from time to time.
- 4.11 The Supplier will be entitled from time to time to increase any Additional Charges by giving to the Client not less than thirty (30) days' advance written notice
- 4.12 The Supplier will be entitled at any time to amend the Charges to take into account any increase in the payments or payments additional to those specified in an SPS which the Supplier makes to any third party at the request of the Client.
- 4.13 The Charges and all other amounts payable to the Supplier are exclusive of Value Added Tax (or any similar tax) which will be paid by the Client at the rate and in the manner from time to time prescribed by law, and without deduction or set-off, by the Due Date.
- 4.14 If any amount payable to the Supplier by the Client is not paid by the Due Date then (without prejudice to the Supplier's other rights and remedies), the provisions of the Late Payment of Commercial Debts (Interest) Act 1998, as amended, shall apply. In addition to any amounts payable under the Late Payment of Commercial Debts (Interest) Act 1998, a charge of £75 shall be automatically added to the balance due from the Client on each and every occasion that a request for payment under a Direct Debit is returned as not collectable.
- 4.15 If there is no Direct Debit in place for the payment of Charges, if any amounts are outstanding for more than 5 days after the Due Date or if a Direct Debit is in place, 14 days after the Due Date: (i) the Supplier may suspend the provision of all Services provided under the relevant SPS until the outstanding amount is paid; charges will continue to accrue during any time when the Services are suspended and the relevant Agreement shall continue in force unless terminated by the Supplier in accordance with the relevant T&Cs, and (ii) the Supplier may at its absolute discretion require the provision of a guarantee in respect of future payment of Charges and/or payment by Direct Debit if this is not already in place.
- 4.16 On the termination or expiry of an Agreement, the Client shall pay the Supplier all unpaid Charges accrued up to the date of termination or expiry of the Agreement, and for all work done and expenses the Supplier has properly incurred or agreed to incur in connection with the Services, including but not limited to work and expenses relating to the transfer of equipment and/or data and/or intellectual property rights as a result of the termination or expiry of this Agreement. A Termination Charge will be payable if an Agreement is terminated other than by due notice at the end of the Initial Period or at the end of a Renewal Period. No Termination Charge will be payable if termination is by the Client in accordance with the terms of Clause 8.1.2.
- 4.17 No refund of any Charges or expenses paid in advance will be made on the termination or expiry of an Agreement except where termination is a result of a breach of the Agreement by the Supplier or where the payment by the Client is the result of an accounting error by the Supplier or Client.

## DURATION

- 5.1 An Agreement will take effect on the date it is completed and will remain in force until the expiry of the Initial Period and will then continue for Renewal Periods unless terminated by the Supplier or the Client giving at least 30 days' written notice to the other to expire at the end of the Initial Period or a Renewal Period or until terminated under any other contractual provision. Notice of termination by either party shall not affect the liability of the Client to pay Charges due to the end of the Initial or Renewal Period in which the notice is served.
- 5.2 In order to provide for the same Renewal Period for all SPSs to an Agreement, the Initial Period for Services provided under an additional SPS shall be the period between the Request for Service Date in the additional SPS and the end of the Initial Period or, if that date has been passed, the end of the next Renewal Period applicable to the initial SPS that is in place when the Agreement is signed.
- 5.3 Services provided under separate SPSs may be terminated individually or collectively under and subject to the terms of this Clause 5.

## THE PARTIES' OBLIGATIONS

- 6.1 The Client will provide the Supplier, free of charge, with all information, materials, documentation, reasonably requested by the Supplier to allow the Supplier to provide the Services and the Deliverables. The Client will ensure that its staff, contractors and other suppliers co-operate fully with the Supplier and meet pre-agreed timetables for deliveries, on-site activities and all services falling within the Client's remit and thereby cause no delay in the provision of Services and Deliverables by the Supplier. Where the Supplier needs the Client to provide information or to take a decision, the Client will do so promptly and so as not to delay the provision of Services and Deliverables by the Supplier. Any delay falling within the terms of this Clause 6.1 shall be notified to the Client by the Supplier in writing immediately the Supplier becomes aware of it along with a reasonable forecast of the effects of the delay on the scheduled provision of Services and the Deliverables. Where the forecast delay is longer than the elapsed time of the original delay, the reasons for this shall be given in the notification by the Supplier. The Supplier's obligations in respect of Services or the Deliverables shall be deemed to be modified in accordance with the notified forecast effects of the delay but only to that extent.
- 6.2 Subject to Clauses 8.4 and 8.5 below, equipment located within the Supplier's premises belonging to the Client or of which the Client has lawful possession granted by a third party (a "Third Party Owner") shall remain the sole property of the Client or Third Party Owner and the Supplier shall do nothing to prejudice any of their rights of ownership. Except in the case of negligence on the part of the Supplier, its employees or its sub-contractors, the Supplier shall have no liability for the loss, theft or damage of such equipment and it shall be the responsibility of the Client to ensure that the equipment is insured against loss, theft or damage by whatever cause. The limit of liability of the Supplier for negligence is set-out in Clause 12.5.
- 6.3 The Client will take all reasonable steps to ensure that the facilities provided by the Supplier, including but not limited to the Cloud Platform, and the Client's equipment installed on the Supplier's premises shall not be used for any illegal activity by the Client, its staff or any other person given access to the facilities by the Client and indemnifies the Supplier from any liability that may arise due to such use. Such activity will be deemed to include the knowingly publishing of any material that is obscene, illegal, threatening, promotes or condones acts of terrorism, defamatory or which in any way infringes the Intellectual Property Rights of another party.
- 6.4 The Client shall comply with the Supplier's Acceptable Use Policy (AUP) in force from time to time and available on request from the Supplier. The Supplier's current AUP is set-out in AUP Schedule to this Agreement and if the Client wishes to have a copy of any subsequent version, this shall be provided on demand free of charge by the Supplier. If the Client fails to comply with any of the terms of the AUP, the Supplier shall serve notice on the Client requiring it to remedy the breach and/or ensure future compliance. If breach results in actual loss to the Supplier, the Client shall make good



that loss. The Supplier may vary its AUP at any time on one months' written notice to the Client.

- 6.5 In the event that a third party makes direct representation to the Client with regard to a possible breach of this Clause 6, the Client will without delay notify the Supplier of the nature and background of such representations so that the Supplier may promptly carry out any actions required to mitigate any exposure or damages for which the Supplier might otherwise be liable to third parties.
- 6.6 The Client accepts responsibility for ensuring that its data and the Client's Cloud Data is effectively backed up and stored at a location other than the one at which or from which Services are provided. In the case of Client's Property, the provision of firewalls and other security arrangements for the protection of the Client's data and programs is the responsibility of the Client. Appropriate security arrangements relating to the Client's data and programs on Colocated Servers and the transmission of data to and from Colocated Servers are available as an additional service for which Additional Charges are payable. The Client shall take reasonable precautions in the set-up and configuration of its equipment and its servers on the Cloud Platform to ensure that in the event of a Denial of Service attack targeted at the Client, the effects of the attack do not compromise network performance or availability for other users of equipment located within the Supplier's premises.
- 6.7 The Client will indemnify the Supplier and keep the Supplier indemnified against all costs, claims, expenses, and liabilities incurred or suffered by the Supplier in the course of acting in good faith on behalf of or as agent for the Client having been authorised in writing to do so by the Client or its duly-authorised representative.
- 6.8 The Supplier will not access the content of data stored on Client Property or the Client's Cloud Data except when directed to do so by a Court order or an order from a regulatory authority enforceable under English law.
- 6.9 The Client shall maintain or ensure that its clients maintain insurance for the damage or loss of tangible goods forming Client Property.
- 6.10 Where the Supplier is a data processor in the course of the provision of the Services, it will only process the Client's personal data in accordance with Schedule 4 (Data Protection). The Client shall comply with Schedule 4 (Data Protection) at all times and indemnify the Supplier on demand for any breach of the Client's obligations therein. If the Client is a reseller of the Services, Clause 1,9 of Schedule 4 (Data Protection) shall apply.
- 6.11 It is mutually agreed between the parties:
- 6.11.1 that all matters, information or data not within the public domain (including but not limited to terms of business and details of Charges in both cases specific to the parties) relating to or stored by either of the parties ("Confidential Data") shall be confidential;
  - 6.11.2 the parties undertake to make no disclosure of Confidential Data to any third-party without the written authorisation of the party to which it belongs except where disclosure is required by any lawful enforcement agency or official public authority under applicable law;
  - 6.11.3 except where the party required to make disclosure under the preceding sub-Clause is prohibited under applicable law, that party shall notify the other party in writing of any such order, request or disclosure of its Confidential Data as soon as is reasonably possible and co-operate with the other party at the other party's expense with regard to the order, request or disclosure.

## INTELLECTUAL PROPERTY RIGHTS

- 7.1 The Intellectual Property Rights in all computer software, documentation, specifications and other materials which the Supplier produces or supplies, and in all ideas, methodologies, inventions, discoveries, designs, concepts and work arising from any services the Supplier provides to the Client will, as between the Client and the Supplier, belong to the Supplier. If requested by the Supplier, the Client will do what is necessary (including executing any documents) to enable the Supplier to enjoy, defend and enforce those rights.

- 7.2 The Client acknowledges that it will not have any rights in respect of any products, materials or methodologies used by the Supplier and owned by the Supplier or any third party provider to the Supplier, and the Client agrees to keep the same strictly confidential.
- 7.3 The terms of the preceding three sub-clauses of this Clause 7 shall apply mutatis mutandis to the intellectual property of the Client.

## TERMINATION

- 8.1 An Agreement may be terminated:
- 8.1.1 by the Supplier if the Client fails to pay any sum due to the Supplier under the terms of the Agreement and that sum remains unpaid for 14 days after written notice from the Supplier that the Contract will be terminated if the amount due is not paid; or
  - 8.1.2 by either party immediately on giving notice in writing to the other if the other has a receiver or administrative receiver appointed to it or over any part of its undertaking or assets, or passes a resolution for winding-up (other than for the purposes of a bona fide scheme of solvent amalgamation or reconstruction), or if a court of competent jurisdiction makes an order to that effect, or if the other party becomes subject to an administration order or enters into any voluntary arrangement with its creditors, or if any similar process to any of the above is begun, or if the other party ceases or threatens to cease to carry on its business. If the date of the Agreement is on or after 1 October 2015, to the extent that the circumstances of the insolvency of the Client are such that the provisions of the Insolvency (Protection of Essential Supplies) Order 2015 ("the Order") apply, the Supplier shall not terminate the Agreement in accordance with the terms of this Clause except where the Supplier may do so under the Order.
  - 8.1.3 In accordance with Clause 5.1.
- 8.2 Any termination or expiry of an Agreement (however it happens) will not affect any accrued rights or liabilities of either party.
- 8.3 The termination or expiry of Services covered by one SPS will not affect the continuing in force of any other Services covered by any other SPS within an Agreement.
- 8.4 On the termination of an Agreement or the Services covered by one or more SPSs falling within an Agreement, if there is Client Property within the Supplier's premises where the colocation facilities are provided under a Cloud Services Agreement, the Supplier shall have a contractual lien over Client Property at the date of termination until all amounts due from the Client to the Supplier have been paid. If a contractual lien arises, where Client Property includes equipment installed in racks, these may be removed from racks by the Supplier and stored securely on the Supplier's premises. A storage fee of £5 per item per day shall be payable by the Client from and including the termination date until payment of the amounts due and the storage fees. A reasonable daily storage fee may be charged for the storage of other equipment and chattels left on the Supplier's premises. If all amounts due have not been paid to the Supplier within 14 days after the termination date, the Supplier may, without notice, sell the Client Property and use the proceeds to satisfy in whole or part all debts due from the Client to the Supplier. If the sale proceeds after the costs of sale exceed the amounts due to the Supplier, the Supplier shall account to the Client for the balance. If the sale proceeds are less than the amounts due to the Supplier, the Client shall remain liable for the balance. The Supplier shall not be obliged to exercise its right of sale under the contractual lien arising from this Clause. If



the Client Property or any part thereof has no market value or no buyer can be found within 28 days of the right to sale being exercisable, the Supplier shall advise the Client accordingly and may dispose of or retain what is not saleable as it sees fit and without having to account to the Client. The Client shall remain liable for all amounts outstanding, including storage fees up to a maximum of 28 days from the termination date and the costs of disposal. In the event of the Supplier electing to retain what is not saleable, property shall pass to the Supplier on notification to the Client of this election.

- 8.5 Except where a contractual lien arises in accordance with the preceding Clause, all Client Property shall be removed from the Supplier's premises on or before the termination date. Items that form part of Client Property not removed by the Client on or before the termination date may be removed from racks by the Supplier and stored securely on the Supplier's premises. A daily storage fee of £5 per item shall be payable until the server is removed from the Supplier's premises. A reasonable daily storage fee may be charged for the storage of other equipment and chattels. If Client Property is not removed from the Supplier's premises within 28 days of the termination date it shall be deemed to be abandoned and the Supplier may dispose of or retain the Client Property as it sees fit and without having to account to the Client. The Client shall remain liable for all amounts outstanding, including storage fees up to a maximum of 28 days from the termination date and the costs of disposal. In the event of the Supplier electing to retain Client Property, property shall pass to the Supplier on notification to the Client of this election.
- 8.6 Before Client Property is disposed of by sale or otherwise or where property in Client Property passes to the Supplier, the Supplier shall so far as practicable ensure that any software or data stored on the Client Property is permanently deleted from all data storage devices forming part of the Client Property.
- 8.7 If the Client has notified the Supplier in writing that in the normal course of the Client's business the Client may from time to time have within the Supplier's Premises equipment belonging to third parties ("Third Party Equipment"), any Third Party Equipment identified as such before or when a contractual lien might otherwise arise will not be subject to any contractual lien imposed on the Client's equipment but shall be subject to any storage fees accruing in Clause 8.5. Upon request by the Client, whether or not in dispute with the Supplier, Third Party Equipment will be made available for collection by the named third party on production of reasonable evidence of ownership. The supplier may charge a reasonable fee for supervision of third party technical staff while on the Supplier's premises. If equipment is removed from the Supplier's premises under the terms of this Clause, the Client shall not make any subsequent claim against the Supplier in respect of the equipment in question.
- 8.8 Where in the circumstances of Clause 8.6 data is liable to be deleted but the data has been notified in writing to the Supplier as being the property of a third party, the Supplier, where practicable and subject to the payment of reasonable charges for the work and media involved, shall provide a copy of the data to the third party on reasonable proof of ownership.
- 8.9 On termination of the Agreement or an SPS covered by the Agreement, it shall be the Client's responsibility to back-up before the termination date its data on the Cloud Platform that it wishes to retain. The Supplier shall at the date of termination or as reasonably practicable thereafter delete all the Client's Cloud Data by means that render it irrecoverable.
- 8.10 This Clause and any other provision of an Agreement that creates a continuing obligation or liability will survive the termination of the Agreement.

## ASSIGNMENT

- 9.1 Neither the Supplier nor the Client may assign or transfer an Agreement either in whole or in part or sub-licence any of its rights under an Agreement otherwise than to a company that is part of the same Group as the assignor. Any assignment shall be with the consent of the party to the Agreement who is not the assignor. Consent shall not be unreasonably withheld.

## DELAYS

- 10.1 Notwithstanding anything else contained in these T&Cs, neither party will be liable for any delay or failure in performing its obligations under an Agreement (except an obligation to make payment) if that delay or failure is caused by circumstances beyond its control (including, without limitation, any delay caused by any act or omission of the other party or any third party), and the party so delaying will be entitled to a reasonable extension of time for the performance of its obligations. In the case of the Supplier, the provision of network connectivity within its premises and to the point where the network connects to a third party's fibre, power, cooling and a safe operating environment shall be deemed to be within its control except where the cause of failure falls within events specified in Condition 12.10 below.
- 10.2 In the installation and commissioning of the Client's equipment and/or its requirements on the Cloud Platform for the purposes of providing the Services, the RFS Date shall be as specified in the relevant SPS. In the event of the Cloud Platform or any related equipment not being capable of being put to productive use on the RFS Date as a result of a malfunction of the Cloud Platform or its associated equipment or its software or network configuration that could not have been reasonable foreseen by the parties in advance, the Supplier, if the resolution is within its control, shall be given a reasonable period in which to rectify the problem, including time, if required, for the procurement of additional equipment and software. In these circumstances, the actual go live date shall be substituted for the RFS Date for the purposes of calculating the Charges. Where the reason for the delay is the result of requirements or specifications being not communicated or inaccurately communicated to the Supplier by the Client or its agents, the RFS Date will continue to apply for the purposes of calculating the Charges and the reasonable costs of the Supplier taking any necessary reasonable remedial action shall be borne by the Client subject to the Client's prior written agreement.

## THE CLIENT'S WARRANTIES AND LIABILITY

- 11.1 The Client warrants to the Supplier that the Client has not been induced to enter into an Agreement by any warranties or representations, except those specifically contained in the T&Cs at the date of the Agreement as warranties. The Client waives any claim for breach of any other representation and for any misrepresentation, except in respect of any fraudulent misrepresentation.
- 11.2 The Client warrants to the Supplier that none of the Client's Cloud Data will infringe the Intellectual Property Rights of any third party, or contain anything which is obscene or defamatory, or which is a malicious falsehood, or will breach any applicable data protection legislation or any data protection principles.
- 11.3 Except to the extent that the Supplier is notified in writing to the contrary when an item forming part of the Client Property is first brought into the Supplier's premises or where Clause 8.7 applies, the Client warrants that all Client Property other than programs is its own unencumbered property or the property of a company in the same Group of which the Client is a member. The notification in writing shall include details of the items, the nature of a third party's interests and the name and address and contact details of the third party.
- 11.4 In the event that the Client requests the Supplier to access the Client's data or the Client's Cloud Data, the Client warrants to the Supplier that the Client has the right to disclose the data in question to the Supplier. Without prejudice to the above, the Client also warrants that it has obtained the consent of any individual whose personal data are disclosed to the Supplier under this sub-clause.
- 11.5 The Client will indemnify the Supplier and keep the Supplier indemnified against all claims, costs, damages, losses, expenses and liabilities incurred by the Supplier in connection with any breach of any of the Client's warranties in Clauses 11.2, 11.3 and 11.4 above and in connection with any breach by the Client of any provision contained in the Acceptable Use Policy applicable to the provision of the Services.

## THE SUPPLIER'S WARRANTIES AND LIABILITY

- 12.1 The Supplier will perform the Services with reasonable skill and care. If the Services are not provided in accordance with this warranty and the Client notifies the Supplier in writing of the non-compliance with this warranty within 3 months after performance, the Supplier will re-perform the Services so far as this is practicable.
- 12.2 In the circumstances of any of the events specified in Condition 12.10 below, no representation or warranty is given that the Services will be uninterrupted or error free.
- 12.3 All information supplied by the Supplier will be supplied in good faith but the accuracy and completeness of any information obtained from, or based on information obtained from any third party is not guaranteed by the Supplier. It is not within the scope of the Supplier's obligations to enquire as to or to verify the accuracy or completeness of any such information.
- 12.4 In the circumstances of any of the events specified in Condition 12.10 below, the Supplier will not be liable for its inability to supply the Services.
- 12.5 The Supplier limits its liability for any loss of or damage to Client Property to that which has been caused directly by the negligence of the Supplier or its employees acting in the course of their employment. In no event will the Supplier be liable for any loss or damage to any tangible property which exceeds the lesser of the Charges made by the Supplier to the Client in the preceding twelve months or £50,000.
- 12.6 Subject to condition 12.9 below, but otherwise despite anything else contained in an Agreement, the Supplier will not be liable to the Client for loss of profits, loss of business, loss of expected savings, loss of opportunity, loss of contracts, loss or spoiling of data damage or alteration to software including but not limited to operating systems, applications software and security software or any indirect or consequential loss, whether arising from negligence, breach of contract or in any other way, and whether or not of a kind foreseeable by the Supplier.
- 12.7 The Supplier will not be liable to the Client for: any loss arising out of the following: any failure by the Client to keep at premises other than those where the Services are provided full and up-to-date security copies of the computer programs and data that the Client uses; the Client's failure to comply with any technical requirements specified from time to time by the licensor of any software or the manufacturer of any equipment under the control of the Client; any error or incompleteness in the Client's data; any fault in any media; any delay or failure on the part of the Client to notify the Supplier of any actual or suspected failure of, or error or defect in the Cloud Platform, any equipment, software, network or telecommunications system; any failure of the Client to comply with the terms and conditions applicable to an Agreement; or any delay or failure on the part of any hardware or software supplier or any third party provider of maintenance to correct any fault or defect or to provide any other service.
- 12.8 With regard to the Supplier's liability under an Agreement, all terms, conditions, representations and warranties, express or implied, not forming part of an Agreement are, to the fullest extent permitted by law, excluded from applying to the Contract including (without limitation) any implied warranties, terms and conditions as to performance, fitness for purpose, merchantability and satisfactory quality.
- 12.9 The limitations and exclusions on the Supplier's liability under an Agreement do not apply in respect of death or personal injury caused by the negligence of the Supplier or its employees acting in the course of their employment, or in respect of any fraudulent misrepresentation.
- 12.10 The Supplier shall not be liable to the Client for any breach of an Agreement for failing to perform any obligation where such breach or failure was a result of any Act of God, insurrection or civil disorder, war or military operations, severely adverse weather that stops normal business activity in the area

where the Services are provided, flood, drought, lightning or fire where alarm and protection systems have performed as specified, national or local emergency, acts or omissions of government, highway authority or other government authority, restrictions of access to the premises or movement arising from pandemic, compliance with any statutory obligation, industrial disputes of any kind other than those to which the Supplier is a party, the acts or omissions of telecommunications operators or any cause beyond the Supplier's reasonable control.

- 12.11 The Client acknowledges that the exclusions and limitations on the Supplier's liability in these T&Cs have been drawn to the Client's attention and that the Supplier is willing to undertake greater liability than that mentioned above provided the Supplier is able to obtain insurance to cover fully its potential liabilities to the Client and the Client pays for that insurance.
- 12.12 Subject to Clause 12.9 above or the terms of any Service Level Agreement forming part of these T&Cs, the liability of the Supplier whether in contract or in tort or in any other way in connection with an Agreement or the Services, will be limited to damages which will not exceed, in aggregate, 100% of the fees paid by the Client to the Supplier in the previous 3 months under the Agreement except in the case of physical damage or loss of the Client's equipment covered by the exception in Clause 6.2 of this Agreement.
- 12.13 Any specific liability for crediting charges assumed by the Supplier in a Service Level Agreement forming part of these T&Cs shall apply notwithstanding anything in this Clause 12 with the exception of Clause 12.10.

#### **WAIVER OF REMEDIES**

- 13.1 No forbearance or delay by either the Supplier or the Client in enforcing any of its rights will prejudice or restrict those rights. No waiver of any right will operate as a waiver of any subsequent breach. No right, power or remedy conferred on or reserved to either the Supplier or the Client is exclusive of any other right, power or remedy available to it and each of those rights, powers and remedies is cumulative.

#### **NOTICES AND PRIME POINTS OF CONTACT**

- 14.1 All notices to be given under an Agreement (including but not limited to those notices given pursuant to these T&Cs) will be deemed to have been served only if delivered by hand or sent by pre-paid first class post or e-mail, to the intended recipient at its last known postal or e-mail address. The notice will be effective: if delivered by hand, on delivery; if sent by e-mail, at 9.00am on the working day next following the day on which it was sent and if sent by post, on the fourth day after posting. "In writing" includes but is not limited to communication by email and attachments to emails. The receiving party of a scanned document sent by email bearing a signature or signatures shall be entitled to treat that document and the signature or signatures as if it had been delivered in original form.
- 14.2 Each party shall notify the other with the names and contact details of the individuals within their respective organisations who will be the prime points for day to day contact on technical and operational matters and shall keep these details up to date. The name and contact details for both the Supplier and Client are included in the SPS or SPSs of an Agreement.
- 14.3 The Supplier's corporate details are as follows: 4D Data Centres Ltd; Company Reg No: 04592242; VAT Reg No: GB 805 7892 02; Registered In England & Wales; Registered Address 30 City Road, London, EC1 2AB; Principal place of business: Sirius 2, 122 Oyster Lane, Byfleet, Surrey KT14 7JU.



The following Schedules form part of this document:

1. **Acceptable Use Policy**
2. **Service Level Agreement**
3. **Provision of Remote Services**
4. **Data Protection**



## SCHEDULE 1

### Acceptable Use Policy Schedule for 4D Cloud Services Agreements - Effective Date: 4 April 2018

This document sets out what is acceptable use of the facilities and services provided within data centres owned by the Supplier ("the Premises"). In the context of this AUP, "Client" includes its staff, agents, representatives and Third Party owners of equipment located within the Premises.

1. The permitted use of the Supplier's premises ("the Premises") by the Client shall be the installation and operation of computer equipment and any ancillary use and for the remote use of the Cloud Platform for the delivery of Services.
2. The Client shall not make use of the Premises for anything other than the permitted use.
3. The use of the Services for the following is expressly prohibited:
  - a. bulk, unsolicited email or spamming, including but not limited to open or anonymous relay
  - b. knowingly hosting a site for the purpose of fraudulent or unlawful activity, including, but not limited to viruses, Trojans, worms and any other form of malware or storing or hosting software, including DNS services, for the purposes of fraud or deception
  - c. infringing third party rights, including but not limited to, Intellectual Property Rights
  - d. the use of pirated software or software not in accordance with the any licence or terms of use in force from time to time between the Client and the provider of the software.
4. The Client shall not do anything on the Premises or in the use of the Cloud Platform which in the reasonable opinion of the Supplier, may be a nuisance or disturbance to the Supplier, its other Clients or occupiers of adjacent properties or bring onto the Premises any hazardous or dangerous substance.
5. The Client shall comply with such reasonable regulations and conditions ("Site Rules") as the Supplier may stipulate from time to time to facilitate the orderly running and management of the Premises. Site Rules shall be made available on request to visitors to the Premises. The principal Site Rules will be notified by signs posted within the Premises.
6. Access to the Premises is permitted at any time but must be in accordance with the security procedures in force from time to time and notified in writing to the Client. Clients using shared colocation facilities within a rack may only access the racks containing their servers if accompanied by a member of 4D's technical staff. If access is required in these circumstances, prior notification will be required and Additional Charges may be payable. **Use of the Cloud Platform without related Client Property being located on the Premises gives no right of access to the Premises.**
7. Remote Services shall be provided at the request and under the direction of the Client in the form of explicit actions authorised by the Client for the Supplier to perform. The categories of Remote Services are specified in Schedule 3 of the T&Cs. The level of Remote Services required shall be informed to the Client by the Supplier before taking action on the instructions and direction of the Client. Any matter requiring intervention by the Supplier's technical staff in relation to the Cloud Platform (other than in the case of a fault or malfunction), the Client's hardware, programs or systems or the configuration thereof, shall fall outside the definition of Remote Services and will be chargeable at the relevant rate for Remote Services notified to Clients from time to time. Tape and data rotation work falls outside the scope of Remote Services but will be carried out if requested by the Client under terms to be agreed between the Client and the Supplier.
8. The Client shall only access the racks provided to them for their Services. The Client shall not at any time access, touch or interfere with any other equipment belonging to the Supplier without the express separate consent on each and every occasion and under no circumstances may the Client access, touch or interfere with any equipment belonging to any other Client of the Supplier. Any power provision, such as power bars and electrical distribution cables within the Client's rack shall not be modified, extended or altered by the Client and must remain securely mounted within a rack.
9. The Client shall install and maintain its equipment in accordance with manufacturers' instructions, keep it in safe and working order and free from defects that might be a hazard to persons or property.
10. The Client's equipment installed on the Premises shall not give rise to any additional fire risk nor be likely to damage or impair the operation of other computer equipment on the Premises. Client's equipment installed in racks located in cold aisles must be installed with air intakes facing into the enclosed cold aisle. In the event of equipment being installed other than in accordance with this requirement and the Client fails to reinstall the equipment facing in the required direction within 7 days of a written notice to do so from the Supplier, the Supplier reserves the right on 24 hours' notice in writing to power down the equipment in question.
11. Equipment cartons may only be brought into the data room for the purposes of installing or removing the Client's own equipment. The storage of cartons, whether or not containing equipment within racks is expressly prohibited because of the potential fire hazard and potential impairment of air conditioning functionality.
12. Subject to availability, the Client may store equipment in the purpose built storage room within the data room or elsewhere within the Premises at the direction of the Supplier for up to 30 days prior to installation within the data room. The Supplier may require all packaging to be removed before storage. Storage of equipment of any kind in excess of 30 days or where the equipment is being stored for purposes other than pending installation will result in Additional Charges to the Client at the rates applicable at that time.
13. The Client may not at any time alter or damage the Premises nor make any additions to it or erect any signage except with the prior written consent of the Supplier.
14. Under no circumstances shall the Client access the sub-floor (plenum) or interfere with any infrastructure of the Premises. All cabling external to the Client's rack must be undertaken by the Supplier and will be charged at standard rates notified to the Client in advance.
15. The Client must observe all reasonable health and safety requirements of the Supplier whilst on the Premises.
16. Any restrictions on what may not be done whilst on the Premises or within the data room notified to the Client by signs within the Premises must be observed.
17. The Client may make use of the common parts of the Premises, including the kitchen and rest area, provided that they are left in the same (or, preferably, better) condition as they were found.
18. A meeting room is available for the Client's use at a standard hourly charge.
19. In the event of a health or safety-critical situation, or state of pandemic, access to the Premises or particular parts of the Premises may be denied to the Client or be subject to those restrictions or conditions as may be reasonably necessary to attempt to limit or reduce the level of risk to the Client and Supplier. If access to the data room is denied in these circumstances, Remote Hands support will be provided free of charge to the Client.





## SCHEDULE 2

# 4D Cloud Hosting and Premium VMs Service SLA

4D Cloud comprises two related subsystems, the control panel and the cloud platform, each with its own service level agreement.

## 1. CONTROL PANEL

The “control panel” is the web based interface along with the API (Application Programmable Interface) used to create, manage, and delete virtual machines within the cloud platform.

4D-DC guarantees the control panel will be available 99.9% of the time in any given monthly calendar period.

### SLA Credit for Control Panel:

Monthly Availability	Credit Percentage*
100% - 99.9%	0%
< 99.9% - 99.5%	10%
< 99.5% - 99.0%	20%
< 99.0%	30%

“Monthly Availability” is calculated by availability of the control panel at <https://portal.4d-cloud.com>, on a per customer basis, for a given monthly billing period, as follows (represented as a percentage):  $1 - (\text{Total Failed HTTPS Request}) / (\text{Total Valid HTTPS Requests})$ .

\* Credits will be calculated as a percentage of all 4D Cloud monthly charges for the calendar month.



## **2. CLOUD PLATFORM**

The “cloud platform” includes a virtual machine created via the control panel plus supporting systems and services required for the proper functioning and availability of a virtual machine. Clients manage and have full control over their virtual machine. 4D-DC guarantees proper functioning of the following supporting systems and services:

### Network Availability

4D-DC guarantees that the data centre network will be available 99.999% of the time in any calendar month, excluding scheduled or emergency maintenance. Network downtime is measured when a virtual machine is not reachable as a result of a failure in the data centre network. 4D-DC cannot guarantee routing, latency or packet loss once data traffic has left its own network however 4D-DC, so far as is practicable, will configure its routers and switches to ensure outbound data traffic is routed via the available carriers with the best routes to the destination addresses.

4D-DC shall not be liable for network instability or unavailability arising from a denial of service attack directed at or originating from one or more servers located within a data centre through which network connectivity originates or is routed.

*SLA Credit for Network Downtime: 1% of the monthly virtual machine charges for every 1% of network downtime below the guaranteed availability, up to a maximum of 30% of the monthly charges in any given month the guarantee is not met. \*\**

### Network Packet Loss

4D-DC guarantees less than 0.2% packet loss at any of its outgoing backbone routers during any calendar month.

*SLA Credit for Network Packet Loss: 2.5% of the monthly virtual machine charges in any given month the guarantee is not met. \*\**

### Data Centre Infrastructure

4D-DC guarantees that data centre HVAC and power will be functioning 100% of the time in any given calendar month, excluding scheduled or emergency maintenance. Data centre infrastructure downtime exists when a virtual machine experiences a failure as a result of power or heat problems.

*SLA Credit for Data Centre Infrastructure Downtime: 1 day of the monthly virtual machine charges for every 1 hour of downtime up to a maximum of 30% of the monthly charges in any given month when the guarantee is not met. \*\**

### 4D Cloud Hosts

4D-DC guarantees the functioning of all 4D Cloud hosts including the hypervisor. If a 4D Cloud host fails, 4D-DC guarantees that restoration or repair will be complete within one hour of problem identification.

*SLA Credit for Cloud Server Host Downtime: 1% of the monthly virtual machine charges for every additional hour of downtime, after the first hour, up to 30% of the virtual machine charges. \*\**



### Migration

If a cloud server migration is required because of 4D Cloud host degradation, 4D-DC will notify the Client at least 24 hours in advance of beginning the migration, unless 4D-DC determines in its reasonable judgment that it must begin the migration sooner to protect a virtual machine or data. 4D-DC guarantees the migration will be complete within three hours of the time it begins the migration.

*SLA Credit for Migration Downtime: 1% of the monthly virtual machine charges for each additional hour of downtime, after the first three hours, up to 30% of the monthly virtual machine charges. \*\**

\*\* SLA Credits will be calculated as a percentage of the monthly charges for those virtual machines adversely affected by the failure for the calendar month during which the failure occurred.

## **3. DEFINITIONS AND LIMITATIONS**

### Definitions

For purposes of the Service Level Agreements outlined above:

"4D-DC" means 4D Data Centres Ltd, the supplier of the cloud platform and associated services;

"Failed HTTPS request" is defined as: (i) an HTTP 4xx or 5xx server error response to a valid request or (ii) no response to a valid request because the control panel is down. Network errors or downtime outside of the 4D-DC data centre network do not constitute an error;

"virtual machine" means a unique virtual machine instance;

"monthly virtual machine charges" means the charges for a Client's virtual machine or virtual machines for the monthly billing period in which the failure occurred and includes hourly virtual machine usage and bandwidth charges;

"4D Cloud host" means the physical server which hosts a cloud server;

"data centre network" means the portion of the 4D-DC network extending from the network egress point of a virtual machine to the outbound port of the data centre border router;

"power" excludes 4D Cloud host power supplies which is covered as part of the 4D Cloud hosts guarantee;

"scheduled maintenance" means maintenance (e.g. repairs, modifications, or upgrades) that is announced at least seven days in advance;

"emergency maintenance" means critical unforeseen maintenance (e.g. repairs, modifications, or upgrades) needed to ensure security or reliability;

"Services Agreement" means the 4D Services Agreement between the Client and 4D-DC which covers the Services to which this Service Level Agreement relates and capitalised words not defined in this Service Level Agreement shall have the meaning ascribed to them in the Services Agreement and its relevant T&Cs.

### Limitations

The Client is not entitled to a credit if it is in breach of its Services Agreement with 4D-DC (including its payment obligations to 4D-DC) until it has remedied the breach. The Client is not entitled to a credit if downtime would not have occurred but for its breach of its Services Agreement with 4D-DC or its misuse of the Services. The Client is not entitled to a credit for downtime or outages resulting from denial of service attacks, virus activity, hacking attempts, or any other circumstances that are not within 4D-DC's control.



To receive a credit, the Client must log a request via ticket in the 4D-DC helpdesk by emailing support@4d-dc.com within thirty (30) days following the end of the downtime and provide logs evidencing 4D-DC's failure to meet the SLA. The Client must show that its use of a virtual machine was adversely affected in some way as a result of the downtime to be eligible for the credit.

Notwithstanding anything in this Service Level Agreement to the contrary, the maximum total credit, including all guarantees, shall not exceed 30% of the Client's monthly virtual machine charges. Credits that would be available if it were not for this limitation will not be carried forward to future billing periods.

The credits provided for in this Service Level Agreement are the sole and exclusive remedy for control panel and cloud platform unavailability including but not limited to virtual machine unavailability.

This Service Level Agreement is part of the 4D Cloud T&Cs referred to in the 4D Cloud Services Agreement.

### SCHEDULE 3

#### Terms and Conditions relating to Remote Services

1. The Supplier provides three levels of Remote Services, the scope and pricing of which are set-out below:

Level of Service	Hourly Rate	Scope of Service
Remote Hands	£80	Resetting of an operating system Resetting of hardware Replacement of components Installation/removal of hard drive Provision and installation of patch cables Checking cable connections
Remote Support	£100	Any process or procedure at Client's direction or in accordance with a third party supplier's written instructions not falling within the scope of Remote Hands; examples include: <i>OS installations to published procedures, Changes to OS settings under direction of Client, Software installations to published procedures, Logging on to Client's servers, Web server admin tasks, Software updates</i> .
Remote Investigation	£120	Tasks that require investigatory work, such as network or system troubleshooting and resolving OS or database issues

2. The scope and pricing of Remote Services may be amended by the Supplier on 30 days' notice to the Client in accordance with Clause 14.1 of the T&Cs.
3. If a request for Remote Services is accepted, they will be provided as soon as practicable after the receipt of a request in writing and a technician qualified to deal with the request becomes available.
1. Except where the Supplier has previously agreed to the provision of Remote Services on specific terms, the Supplier may decline to respond to a Client's request for Remote Services.
2. The Supplier's technicians will carry out requests for Remote Services with due care but only under the direction of the Client or in accordance with manufacturers' or suppliers' written instructions. It is the Client's responsibility in requesting Remote Services to ensure that the request is not prejudicial to the continuing operational capability, functionality or integrity of Client Property (which in this context extends to data and systems outside the Supplier's premises) or the connectivity of Client Property. The Supplier shall not be liable for any direct or consequential loss arising from the provision of Remote Services.

## SCHEDULE 4

### Data Protection

#### Addendum

- 1.1 For the purposes of this Schedule 4 (Data Protection) the following defined terms shall have the following meanings:
- “Data Protection Law”** (a) Data Protection Act 1998; or (b) from 25th May 2018, the General Data Protection Regulation ((EU) 2016/679 (**“GDPR”**), read in conjunction with and subject to any applicable UK national legislation that provides for specifications or restrictions of the GDPR’s rules; or (c) from the date of implementation, any applicable legislation that supersedes or replaces the GDPR in the UK or which applies the operation of the GDPR as if the GDPR were part of UK national law, which may include the Data Protection Act 2017; and
- “personal data”, “controller”, “processor”, “data subject”, and “processing”** (and other parts of the verb ‘to process’) shall have the meaning set out in the Data Protection Law.
- 1.2 The Client shall comply at all times with Data Protection Law applicable to it.
- 1.3 In the context of the Agreement, the Supplier will act as “processor” to the Client who may act as either “processor” or “controller” with respect to the personal data.
- 1.4 The Client represents and warrants to the Supplier that with respect to any personal data processed pursuant to the Agreement:
- 1.4.1 all personal data is necessary for the purpose for which it is processed, accurate and up-to-date (and contains nothing that is defamatory or indecent or otherwise breaches the Agreement or the Supplier’s Acceptable Use Policy);
- 1.4.2 taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Client has implemented appropriate technical and organisational measures to ensure a level of security appropriate to the risk to the personal data;
- 1.4.3 the Client has obtained all the necessary consents from data subjects to process the personal data and to outsource the processing of any personal data to the Supplier and the Client covenants that it shall notify the Supplier in writing if there are any material changes to these consents or to the personal data that The Supplier processes under this Agreement; and
- 1.4.4 it is not aware of any circumstances likely to, nor will it instruct the Supplier to process the personal data in a manner that is likely to, give rise to a breach of Data Protection Law (or any other applicable data protection or privacy laws).
- 1.5 The Client acknowledges and agrees that pursuant to its obligation under Article 28(1) of the GDPR to only appoint processors providing sufficient guarantees to implement appropriate technical and organisational measures to meet the requirements of the GDPR, it has assessed the Supplier’s applicable technical and organisational measures and considers them to be sufficient, taking into account the nature, scope, context and purpose of the processing undertaken pursuant to the Agreement.
- 1.6 Where the Supplier processes personal data on behalf of Client, with respect to such processing, the Supplier shall:
- 1.6.1 process the personal data only in accordance with the Agreement and the documented instructions of the Client given from time to time. The Client acknowledges that the Supplier is under no duty to investigate the completeness, accuracy or sufficiency of such instructions;



- 1.6.2 only permit the personal data to be processed by persons who are bound by enforceable obligations of confidentiality and take steps to ensure such persons only act on the Supplier's instructions in relation to the processing;
- 1.6.3 protect the personal data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm and risk which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the personal data and having regard to the nature of the personal data which is to be protected (and the Client shall notify the Supplier immediately if the nature of such personal data changes in a material way);
- 1.6.4 remain entitled to appoint third party sub-processors. Where the Supplier appoints a third party sub-processor, it shall, with respect to data protection obligations:
  - (a) ensure that the third party is subject to, and contractually bound by, at least the same obligations as the Supplier; and
  - (b) remain fully liable to Client for all acts and omissions of the third party,
 and all sub-processors engaged by the Supplier as at the effective date of this Addendum shall be deemed authorized;
- 1.6.5 in addition to the sub-processors engaged pursuant to paragraph 1.6.4 (above), be entitled to engage additional or replacement sub-processors, subject to:
  - (a) the provisions of paragraph 1.6.4(a) and 1.6.4(b) being applied; and
  - (b) the Supplier notifying the Client of the additional or replacement sub-processor,
 and where Client objects to the additional or replacement sub-processor, the parties shall discuss the objection in good faith;
- 1.6.6 notify Client without undue delay after becoming aware that it has suffered a personal data breach;
- 1.6.7 at Client's cost and not more than once in any 12 month period permit Client (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Supplier's data processing activities to enable Client to verify and/or procure that the Supplier is complying with its obligations under clause 1.2;
- 1.6.8 on Client's reasonable request and at Client's cost, assist Client to respond to requests from data subjects who are exercising their rights under the Data Protection Law (insofar as it is reasonable for the Supplier to do so);
- 1.6.9 on Client's reasonable request and at Client's cost, assist (insofar as it is reasonable to do so, taking into account the nature of the information available to the Supplier and any restrictions on disclosing the information, such as confidentiality) Client to comply with the Client's obligations pursuant to Articles 32-36 of the GDPR (or such corresponding provisions of the Data Protection Law), comprising (if applicable): (a) notifying a supervisory authority that Client has suffered a personal data breach; (b) communicating a personal data breach to an affected individual; (c) carrying out an impact assessment; and (d) where required under an impact assessment, engaging in prior consultation with a supervisory authority; and
- 1.6.10 unless applicable law requires otherwise, upon termination of the Agreement delete or return all personal data provided by the Client to the Supplier under such Agreement (unless this is not technically possible, prohibited by law or would involve disproportionate effort).
- 1.7 The Supplier shall be entitled to disclose, share or transfer personal data or Client's Data that it processes on the Client's behalf to any lawful enforcement agency or official public authority where it is required to do so under applicable law or Data Protection Law. Except where the Supplier is prohibited under applicable law or Data Protection Law, the Supplier shall



notify the Client in writing of any such order request or disclosure of its personal data or Client Data as soon as is reasonably possible and co-operate with the Client at the Client's expense with regard to the order request or disclosure.

- 1.8 Client shall indemnify and hold harmless on demand the Supplier for any loss, damage, liabilities, penalties, expenses or fines incurred (whether foreseeable or unforeseeable or direct or indirect) as a result of any unsuccessful claim by a data subject when such claim holds both Client and Supplier as jointly and severally liable under the Data Protection Laws.
- 1.9 Where the Client is acting as a reseller of the Services and is not itself a controller or data processor in relation to the provision of the Services but the Client's end-user is either a controller or data processor or both in relation to the provision of the Services:
  - 1.9.1 the reseller shall require the terms of this Schedule 4 to be incorporated into its contract with the end-user and in so doing the reseller will be afforded the same rights under this Schedule 4 as the end-user would have if it were a direct client of the Supplier;
  - 1.9.2 the reseller shall assume the obligations of a Client under the terms of this Schedule 4.