

GENERAL TERMS AND CONDITIONS FOR CLOUDSUITE (“GENERAL CONDITIONS”)

These General Terms and Conditions for CloudSuite apply to your use of the CloudSuite Services in addition to the Service Specific Conditions which apply to those Services which are identified on your Order and which together form your CloudSuite Solution.

DEFINITIONS:

The terms defined in this Agreement have the meaning set out below:

“**ADSL Line**” the asymmetric digital subscriber line (or other appropriate communication line agreed with us in writing) provided and maintained by you for the daily transmission of Data to the Data Centre.

“**Agreement**” the agreement between you and us for the provision of the Services incorporating these General Conditions, the applicable Service Specific Conditions (as identified on the Order) and the Order, together with any document referenced in them.

“**Allocated Resource**” the data storage resource allocated to you as part of your Services.

“**Authorised Users**” your employees, agents and independent contractors who are authorised by you to use the Services.

“**Backup Equipment**” the equipment located at your Premises for the backup of Data to the Data Centre.

“**CloudSuite Solution**” the combination of Services specific to you comprising any of the Manage.IT, Use.IT, Recover.IT and/or Store.IT Services, or combination thereof as set out on your Order.

“**Confidential Information**” information of, or concerning, a party to this Agreement whether technical or commercial (including specifications, documents, drawings and designs), disclosed in writing, electronically or orally, where the information is identified as confidential at the time of disclosure or ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.

“**Consultancy Services**” may include pre-sales recommendations, site surveys, infrastructure solutions planning, project management, specialist technology and communications advice, strategic advice and any other IT or security consultancy services as detailed in the proposal and/or Order.

“**Critical Applications**” any operating systems and application software in respect of your mission critical operations that are specified on the Order or otherwise agreed in writing.

“**Customer Software**” any software applications which are owned by or licensed to you and which we host for you on the Servers as part of the Services.

“**Data**” any of your data held on our Servers in connection with your use of the Services.

“**Data Centre**” any data centre operated by us (through our third-party data centre providers or otherwise) at which we locate our Servers for the management of your CloudSuite Solution.

“**Disaster**” an event outside your reasonable control including an Act of God, flood, earthquake, windstorm or other natural disaster; terrorist attack, civil war, civil commotion or riots; nuclear, chemical or biological contamination or sonic boom; fire, explosion or accidental damage; extreme adverse weather conditions; interruption or failure of electric power; or collapse of building structures, which prevents your access to your Premises, Hardware or Data for a period in excess of 12 hours; or any material corruption or destruction of your Data.

“**Fees**” the total Fees payable by you in connection with this Agreement, comprising any Set Up Fees, Subscription Fees, and Usage Fees, as applicable to your particular CloudSuite Solution, and as set out in the Order.

“**Hardware**” your hardware specified in the Order on which Data is stored.

“**Initial Term**” the initial term of the Agreement described in clause 10.1.

“**Intellectual Property Rights**” all intellectual property rights arising anywhere in the world whether registered or unregistered (including any application for registration), including copyright, know-how, confidential information, trade secrets, domain names, trademarks, trade names, patents, design rights, database rights and all rights in the nature of unfair competition rights and rights to sue for passing off.

“**Malware**” viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware.

“**Nominated Employees**” up to 10 of your employees (or such other number as may be agreed with us in writing) nominated by you on the Order (or otherwise notified to us from time to time) who may be granted remote access to Data following a Disaster as part of the Recover.IT services.

“**Normal Support Hours**” 9.00am to 5.00pm Monday to Friday excluding English public holidays.

“**One-off Costs**” any single charges or one-off costs, including (without limitation) charges for any Servers provided by us as part of a cPrivateCloud, such one-off costs being set out in the Order.

“**Order**” the order for the provision of your CloudSuite Solution which forms part of this Agreement.

“**Premises**” your premises where any Backup Equipment is located.

“**Renewal Period**” any renewal period described in clause 10.2.

“**Requirements**” your requirements in respect of the Manage.IT Services including (without limitation) all relevant information regarding the size and nature of your Data, the Customer Software, number of Authorised Users, and the nature of the services which you require us to provide as part of the Manage.IT Services.

“**Servers**” any of our servers and associated equipment which are located at the Data Centre and used in the provision of the Services.

“**Server Specification**” the specification of the services provided in accordance with clause 2.2 of the Service Specific Conditions – Manage.IT.

“**Services**” the services provided by us to you under this Agreement as part of the CloudSuite Solution, as more particularly described in the Specification.

“**Service Specific Conditions**” the specific conditions relevant to Recover.IT, Manage.IT, Store.IT and/or Use.IT available at www.ogl.co.uk/oglterms

“**Set Up Fees**” the fees for set up of the Services as set out in the Order.

“**Premises**” your premises at which the Backup Equipment will be installed for the purpose of the Recover.IT Services.

“**Software**” any online software applications provided by us as part of the Services, as set out on the Order (excluding the Customer Software).

“**Specification**” the detailed description of your CloudSuite Solution and the particular Services which are relevant thereto, as attached or referred to in the Order.

“**Start Date**” the start date of this Agreement as set out in the Order.

“**Subscription Fees**” the subscription fees payable by you for the Units, as set out in the Order.

“**Support Services Policy**” our policy for providing support in relation to the Services as made available at www.ogl.co.uk/oglterms or such other website address as may be notified to you from time to time.

“**Term**” the term of the Agreement comprising the Initial Term and any Renewal Periods.

“**Third Party Services**” any software or services (including, without limitation our data centre services) provided to you by us on behalf of a third-party provider.

“**Usage Fees**” the fees in respect of your Allocated Resource as set out in your Order.

“**Units**” the user subscriptions, licenses, or amount of Allocated Resource purchased by you which entitle Authorised Users to access and use the Software and Services in accordance with this Agreement.

“**we**” or “**us**” or “**our**” (as the context requires) OGL Computer Support Limited of Worcester Road, Stourport on Severn, Worcestershire, DY13 9AT.

“**you**” or “**your**” (as the context requires) the customer of the Services specified in the Order.

1 APPLICATION OF THESE CONDITIONS

These General Conditions shall apply to the provision of Services to you during the Term in addition to, and as further described in the Service Specific Conditions which are applicable to those particular Services which form part of your CloudSuite Solution.

2 USE OF THE SERVICES

2.1 Subject to your payment of the Fees and the terms of this Agreement we grant to you a non-exclusive, non-transferable right during the Term of this Agreement to use, and/or allow the Authorised Users to use, the Services, the Software and any Servers owned by us, to the extent required for your CloudSuite Solution solely for your internal business operations.

2.2 You warrant that you have all relevant permissions consents and licences in respect of the Data including the right for us to store the Data on the Servers.

GENERAL TERMS AND CONDITIONS FOR CLOUDSUITE (“GENERAL CONDITIONS”)

These General Terms and Conditions for CloudSuite apply to your use of the CloudSuite Services in addition to the Service Specific Conditions which apply to those Services which are identified on your Order and which together form your CloudSuite Solution.

- 2.3 You shall procure all necessary licences for each Authorised User to use any Customer Software, and you warrant that you have and will maintain all necessary licences and consents necessary for us to host any Customer Software on our Servers as part of the Services.
- any software used on the Servers; or
 - any equipment or network or software owned or used by any third party provided as part of the Services.
- 2.4 You hereby indemnify us against any claim that our storage or use of the Data or our hosting of any Customer Software on our Servers breaches the terms of any consent permission or licence, or otherwise infringes the rights of any third party.
- 2.5 Where Services include Consultancy Services you agree that:
- 2.5.1 You shall provide us with all facilities that may reasonably be required to provide the Consultancy Services, such as access to your Location, Equipment and System, passwords, appropriate resources and your staff, and additional charges may be payable, where we are delayed or prevented from performance due to events beyond our control.
- 2.5.2 All Intellectual Property Rights within deliverables such as reports, consultancy guidance and documentation will remain our property or that of our licensors. You accept that all such reports, consultancy guidance and documentation provided for the Consultancy Services are accurate at the time of delivery, based upon the information provided by you.
- 2.5.3 Where Consultancy Services have been provided by a third party, and we are requested to provide remediation work under the Agreement, we cannot be held responsible for any issues or faults occurring on the System as a result of following any third-party advice, which we will deem to be accurate at the time of provision, or where there is any resulting downtime.
- 2.6 You shall not, except as may be permitted by law or otherwise in accordance with this Agreement:
- 2.6.1 copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or
- 2.6.2 reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software.
- 2.6.3 you shall not access, store, distribute or transmit any Malware, or any Data or materials during your use of the Services that are:
- 2.6.4 misleading, or misrepresentative of your identity or affiliation with any person; or
- 2.6.5 obscene, indecent, pornographic, offensive, defamatory, facilitates illegal activity; or promotes unlawful violence.
- 2.6.6 discriminatory (based on current legislation); or
- 2.6.7 in breach of any legal duty owed to a third party, such as a contractual duty or a duty of confidence or promoting any illegal activity;
- 2.6.8 and we reserve the right, without liability to you, to disable your access to any Data or materials that breach the provisions of this clause.
- 2.7 You shall not:
- 2.7.1 access all or any part of the Services in order to build a product or service which competes with the Services; or
- 2.7.2 use the Services to provide services to third parties; or attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 2; or
- 2.7.3 sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or make the Services available to any third party except the Authorised Users.
- 2.8 You also agree:
- 2.8.1 not to access without authority, interfere with, damage or disrupt:
- any information technology, network or communications equipment provided as part of the Servers;
- 2.9 You agree that in using the Services you shall comply with the terms of this clause 2. If you fail to comply with this clause 2 we shall have the right to:
- 2.9.1 suspend the Services until such time as we are satisfied that you are able to comply with this clause 2; and/or
- 2.9.2 terminate the Services forthwith upon written notice to you; and/or
- 2.9.3 claim any costs expenses losses and damages which we may incur as a result of your failure to comply with this clause 2.
- ### 3 OUR OBLIGATIONS
- 3.1 We will perform the Services using reasonable endeavours in accordance with the Specification and with reasonable skill and care, except to the extent that you have failed to comply with your obligations in this Agreement and/or the Specification, or where your use of the Services is contrary to our instructions, or where the Services have been modified or altered by anyone other than us or our agents or authorised contractors.
- 3.2 Subject to clauses 3.3 and 3.4 if the Services do not conform to the undertaking in clause 3.1, we will use all reasonable endeavours to correct the defect in accordance with our standard support procedures described in the Specification. Our standard support service shall be available during our Normal Support Hours except in the case of a total Service failure, following which (subject to clause 3.4) we shall use our reasonable endeavours to resume the Services as soon as reasonably practicable.
- 3.3 The remedy set out in clause 3.2 constitutes your sole and exclusive remedy for any breach of the undertaking set out in clause 3.1.
- 3.4 Notwithstanding the foregoing, we:
- 3.4.1 do not warrant that your use of the Services will be uninterrupted or error-free; nor that the Services will meet Your requirements; and
- 3.4.2 are not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and you acknowledge that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities, including Malware attack; and
- 3.4.3 shall not be liable to you for any defect in the Services to the extent caused by any defect or failure in your Data or any Customer Software.
- 3.4.4 subject to your obligations as set out in this Agreement, we warrant that we have and will maintain all necessary licences, consents, and permissions necessary for the performance of our obligations under this Agreement.
- ### 4 SERVICE LEVELS
- 4.1 We shall use reasonable endeavours to provide at least a 99.9% uptime service availability level, except for:
- 4.1.1 planned maintenance, which we may carry out to ensure the continuing quality of the Services where:
- we have given you at least three days' notice of our intention to undertake such maintenance, or
 - where the maintenance work is required in connection with the requirement of a third party, such period of notice as may be reasonable taking into account the notice which we may have received from that third party.
- 4.1.2 emergency maintenance which we may require to be undertaken to prevent the failure or serious degradation of the Service. Where we are unable to give you 48 hours' notice of our intention to undertake emergency maintenance we will endeavour to undertake emergency maintenance outside our normal business hours.
- 4.2 Subject to clause 4.1.1 and 4.1.2, in the event you experience more than 1 hour downtime in any calendar day, we will refund to you the equivalent of that day's Subscription Fees. We shall not be liable to make any refund under this clause 4.2 to the extent any downtime

These General Terms and Conditions for CloudSuite apply to your use of the CloudSuite Services in addition to the Service Specific Conditions which apply to those Services which are identified on your Order and which together form your CloudSuite Solution.

arises as a result of any defect in the Customer Software or Third-Party Services.

5 YOUR OBLIGATIONS

- 5.1 In order for us to provide the Services you shall provide us with all necessary co-operation in relation to this Agreement and access to such information as we may require, including but not limited to Data, Customer Software, Hardware, Backup Equipment or any other equipment owned by you which is necessary for the Services and any security access information and configuration services.
- 5.2 You shall (and shall ensure that the Authorised Users shall):
 - 5.2.1 use the Services in accordance with this Agreement and you shall be responsible for any Authorised User's breach of any term of this Agreement;
 - 5.2.2 comply with any obligations set out in the Specification;
 - 5.2.3 comply with all applicable laws and regulations with respect to your activities under this Agreement;
 - 5.2.4 maintain all necessary licences, consents, and permissions necessary for us to be able to perform our obligations under this Agreement;
 - 5.2.5 carry out all other responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in your provision of such assistance as agreed by the parties, we may adjust any agreed timetable or delivery schedule as reasonably necessary;
 - 5.2.6 use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services, and promptly notify us if you discover any such unauthorised access or use;
 - 5.2.7 ensure that your network and systems comply with the Specification or any other relevant specifications provided by us from time to time;
 - 5.2.8 be solely responsible for the correction of any defect or failure in any Customer Software; and
 - 5.2.9 be solely responsible for procuring and maintaining internet connectivity.
 - 5.2.10 provide us with at least two full working days' notice to cancel a booked site visit and you accept that failure to provide us with the required notice will result in you being charged for the cancelled visit.

6 CHARGES AND PAYMENT

- 6.1 In consideration of receipt of the Services, you shall pay the Fees in accordance with this clause 6.
- 6.2 We shall invoice you on the Start Date in respect of:
 - 6.2.1 any Set Up Fees; and/or
 - 6.2.2 any One-off Charges,
 - 6.2.3 and you shall pay our invoices for the same within 30 days of receipt.
- 6.3 Any Subscription Fees and/or Usage Fees shall be invoiced monthly in advance during the Initial Period and any Renewal Period and you shall pay our invoices for the same within 30 days of receipt.
- 6.4 Where services such as the resolution of pre-existing problems are provided that are not covered under the Agreement, these will be invoiced at our current hourly rates.
- 6.5 All amounts payable under this Agreement are exclusive of value added tax (if any) which shall be paid at the rate and in the manner for the time being prescribed by law.
- 6.6 If you fail to pay any amount payable under this Agreement, we reserve the right to
 - 6.6.1 suspend the Services until all outstanding payments are received in full; and
 - 6.6.2 claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.7 We shall be entitled to increase any Subscription Fees and/or any Usage Fees, with effect from the end of the Initial Term and each Renewal Period. Any such increase shall be notified to you at least 45 days prior to the date on which the increase will take effect.
- 6.8 Notwithstanding clause 6.7 we reserve the right to increase any Subscription Fees and/or Usage Fees during the Initial Term or any

Renewal Period as a result of any increase in our costs for providing you with the Third Party Services. Any such increase will be subject to 45 days written notice to you. If, as a result of this clause 6.7, the then current Subscription or Usage Fees rise by more than 10% in any 12-month period, you may cancel this Agreement by providing written notice to us at any time before the increase is due to take effect. Should you opt to cancel, all outstanding invoices relating to this Agreement must be paid within 7 days but no further monies will be due (other than Third-Party Services and/or those listed under Arrangements on Termination in the relevant Service Specific Conditions).

7 PROPRIETARY RIGHTS

- 7.1 You acknowledge and agree that we and/or our licensors own all intellectual property rights in the Software, and the Services. Except as expressly stated herein, this Agreement does not grant you any rights to, or in, patents, copyrights, database rights, trade secrets, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Software, or the Services.
- 7.2 We shall, subject to clause 7.5, defend you, your officers, directors and employees against any judgment by a competent UK court of law that any Software or Services infringe any United Kingdom patent effective as of the Start Date, copyright, trademark, database right or right of confidentiality, and shall indemnify you for any amounts awarded against you in judgment or settlement of such claims, provided that:
 - 7.2.1 we are given prompt notice of any such claim;
 - 7.2.2 you provide reasonable co-operation to us in the defence and settlement of such claim, at our expense; and
 - 7.2.3 we are given sole authority to defend or settle the claim.
- 7.3 In the defence or settlement of any claim, we may procure the right for you to continue using the Software or Services, replace or modify the Software or Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement without any additional liability or obligation to pay damages or other additional costs to you.
- 7.4 In no event shall we, our employees, agents and authorised contractors be liable to you to the extent that the alleged infringement is based on:
 - 7.4.1 a modification of the Software or Services by anyone other than us; or
 - 7.4.2 your use of the Software or Services in a manner contrary to the instructions given to you by us; or
 - 7.4.3 your use of the Software or Services after notice of the alleged or actual infringement from us or any appropriate authority.
- 7.5 This clause 7 sets out our sole and exclusive rights and remedies, and our entire obligations and liability, for infringement of any patent, copyright, trademark, database right or right of confidentiality.

8 LIABILITY AND INDEMNITY

- 8.1 Nothing in this Agreement shall operate to exclude or limit our liability for death or personal injury caused by our negligence; any breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982; fraud; or any other liability which cannot be excluded or limited under applicable law.
- 8.2 This clause 8 applies in addition to any limitation of liability specific to a particular service as set out in the applicable Service Specific Conditions.
- 8.3 Except as expressly and specifically provided in this Agreement:
 - 8.3.1 you assume sole responsibility for results obtained from the use of the Services and any Software, and for conclusions drawn from such use. We shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to us by you in connection with the Services and/or any Software, or any actions taken by us at your direction;
 - 8.3.2 the Services and Software are provided to you on an "as is" basis and except as set out herein all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement.
- 8.4 Subject to clause 8.1, we shall have no liability to you for:

These General Terms and Conditions for CloudSuite apply to your use of the CloudSuite Services in addition to the Service Specific Conditions which apply to those Services which are identified on your Order and which together form your CloudSuite Solution.

- 8.4.1 any loss of profits; loss of anticipated savings; loss of business opportunity or loss of goodwill or wasted management time which you may suffer, whether they arise directly or indirectly or are immediate or consequential and whether they arise in contract, tort (including negligence) or otherwise; or
- 8.4.2 any indirect or consequential loss or special damage (even though we were aware of the circumstances in which such special damage could arise); or
- 8.4.3 any and all problems, delays, delivery failures and all other loss or damage or costs or expenses incurred by you arising from or caused by any Customer Software or your equipment or your failure to maintain internet connectivity or any breach of your obligations under this Agreement; or
- 8.4.4 any loss of, or damage to, Data caused by any third party (except those third parties subcontracted by Us to perform any of the Services).
- 8.5 In the event that you suffer loss of or damage to your Data as a result of our breach of this Agreement or the negligence of our Personnel, our total liability to you for loss of or damage to Data shall be limited to the lesser of:
- the cost of restoring the Data to the last available backup or
 - the sum of £50,000.

You acknowledge that the provisions of this clause 8.5 represent a reasonable apportionment of risk having regard to the Fees for the Services.

- 8.6 Subject to clauses 8.1, 8.4 and 8.5, our total liability to you, whether in contract, tort (including negligence) or otherwise in connection with this Agreement, shall not exceed a sum equal to the total value of the Fees paid or payable by you in respect of the 12 months during which the liability arises.
- 8.7 Where your CloudSuite Solution includes Recover.IT Services, we shall have no liability to you for any losses or damage suffered by you, or costs or expenses incurred by you, as a result of your failure to maintain the ADSL Line and/or an appropriate bandwidth allocation for the volume of Data to be transmitted to the Data Centre.

9 DATA AND DATA PROTECTION

- 9.1 You shall own all rights, title and interest in and to all of your Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of your Data.
- 9.2 Each Authorised User is responsible for controlling permission access rights to files stored in the Services. You are responsible for any user ID and passwords associated with such access controls, and we shall not be responsible for any unauthorised access to your Data as a result of the security of such access controls being violated by any person other than us or our third party contractors.
- 9.3 Files are stored and transmitted using high level encryption over SSL, and you acknowledge that such technical security measures are adequate having regard to the nature of the Data.
- 9.4 In this clause 9, “Personal Data” and “Data Subject” have the meanings given to them in the Data Protection Act 2018 incorporating UK GDPR.
- 9.5 We warrant that, to the extent we process any Personal Data on your behalf:
- 9.5.1 we shall act only on your lawful instructions; and
- 9.5.2 we have in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.
- 9.6 You acknowledge that we are reliant on you for direction in respect of our use and processing of Personal Data, and that we shall not be liable for any claim brought by a Data Subject arising from any action or omission by us that resulted directly from your instructions.

10 TERM AND TERMINATION

- 10.1 This Agreement shall begin on the Start Date and shall continue for an Initial Term as set out in the Order.
- 10.2 Subject to clause 10.3, unless you give us not less than 30 days prior written notice to terminate the Agreement at the end of the

Initial Term, this Agreement shall automatically continue thereafter for one or more Renewal Periods of twelve (12) months.

- 10.3 Either we or you may terminate this Agreement immediately on notice to the other, and without liability to the other:
- 10.3.1 if the other Party breaches any of the terms of this Agreement and the breach (where the breach is capable of being remedied) has not been remedied within 30 days of a written request to remedy it;
- 10.3.2 if the other Party convenes a meeting of its creditors or if a proposal is made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if it is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee receiver, administrative receiver or similar officer is appointed in respect of all or any part of its business or assets or if a petition is presented or a meeting is convened for the purposes of considering a resolution or other steps are taken for its winding up or for making of an administration order;
- 10.3.3 if the other Party ceases or threatens to cease business.
- 10.4 On expiry or termination of this Agreement for any reason:
- 10.4.1 you shall immediately pay to Us all of Our outstanding unpaid invoices, payments for Third Party Services, all Fees unpaid for the Term of the Agreement and related unpaid interest;
- 10.4.2 we shall disable the Services and you shall return to us all user documentation and other materials provided by Us in connection with the Services;
- 10.4.3 the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving, shall not be affected or prejudiced.
- 10.5 This clause 10 shall apply in addition to any provisions regarding termination as may be set out in any Service Specific Conditions.

11 CONFIDENTIALITY

- 11.1 Each party shall protect the Confidential Information of the other party 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.
- 11.2 Confidential Information of the disclosing party may be disclosed by the receiving party to its employees, affiliates and professional advisers, provided that the receiving party procures that any such recipient complies with the provisions of this clause 11.
- 11.3 The obligations set out in this clause 11 shall not apply to Confidential Information which the receiving party can demonstrate:
- 11.3.1 is or has become publicly known other than through breach of this clause 11; or
- 11.3.2 was in possession of the receiving party prior to disclosure by the other party; or
- 11.3.3 was received by the receiving party from an independent third party who has a full right of disclosure; or
- 11.3.4 was independently developed by the receiving party; or
- 11.3.5 is required to be disclosed by a governmental authority, stock exchange or regulatory body, provided that the party subject to such requirement to disclose gives the other party prompt written notice of the requirement to the extent lawfully possible.
- 11.4 This clause 11 shall survive termination or expiry of this Agreement, however arising and shall continue thereafter for a period of 3 years or such other period as may be agreed by the Parties.

12 NON-SOLICITATION

- 12.1 During the Term and for the period of 12 months following upon its termination, you will not directly or indirectly and whether for your benefit or for the benefit of another, solicit or induce or endeavour to solicit or induce any officer, employee, agent or authorised contractor to leave our engagement, or engage any such individual without our prior written consent.

These General Terms and Conditions for CloudSuite apply to your use of the CloudSuite Services in addition to the Service Specific Conditions which apply to those Services which are identified on your Order and which together form your CloudSuite Solution.

12.2 Should you engage the services of any officer, employee, agent or authorised contractor whether the engagement is an employee or as an independent contractor, during the Term or within twelve months thereof, you will pay a fee of 50% of the starting annual salary of that said person.

13 GENERAL

13.1 We may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. Where practicable, we will give you at least 30 days' notice of any change.

13.2 We shall have no liability to you under the Agreement if We are prevented from, or delayed in performing, Our obligations under the Agreement or from carrying on Our business by acts, events, omissions or accidents beyond Our reasonable control.

13.3 Subject to clause 12.1, no variation of the Agreement shall be valid unless it is in writing and signed by us.

13.4 A waiver of any right under the Agreement is only effective if it is in writing and shall not be construed as a waiver of any other provision of this Agreement.

13.5 If any provision of the Agreement (or part of any provision) is found by the court to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Agreement, and the validity and enforceability of the other provisions of the Agreement shall not be affected.

13.6 The Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. These terms and conditions (together with the terms of any applicable Service Specific Conditions) are the sole and exclusive terms and conditions applicable in relation to the Agreement to the exclusion of any terms or conditions which you may seek to import into the Agreement.

13.7 Each party acknowledges, in entering into the Agreement, that it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly provided in this Agreement provided that nothing in this condition shall limit or exclude any liability for fraud.

13.8 You shall not, without our prior written consent, assign, transfer, subcontract or deal in any manner with any of your rights or obligations under the Agreement.

13.9 We may at any time subcontract or delegate in any manner any or all of our obligations under the Agreement to any third party or agent.

13.10 A person who is not a party to this Agreement shall not have any rights under or in connection with it.

13.11 Any notice required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by recorded delivery or by commercial courier to the other party to the address set out in the Order or as otherwise specified by the relevant party by notice in writing to the other party. Any notice shall be deemed to have been duly received if delivered personally, when left at the address set out in the Order or, if sent by recorded delivery, at 9.00 am on the second business day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

13.12 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with, English law and shall be subject to the exclusive jurisdiction of the English courts.