

## BROADCLOUD GROUP LTD - NETWORK SERVICES GENERAL TERMS & CONDITIONS

BroadCloud Group LTD and the Customer hereby agree as follows:

### 1 DEFINITIONS

1.1 In the Contract, the following terms shall have the meanings assigned to them below:

<b>“Acceptable Use Policy”</b>	the acceptable use policy document of BroadCloud Group LTD (where applicable to a Service) as current from time to time (copy available from BroadCloud Group LTD upon request).
<b>“Acceptance Date”</b>	the date on which the Customer signs or is deemed to have signed the acceptance test certificate as set out in Clause 2.2.1 (if applicable).
<b>“Acceptance Test Period”</b>	five (5) Working Days from the date that the Customer is notified by BroadCloud Group LTD in writing that the Service is ready for use (if applicable).
<b>“Acceptance Tests”</b>	the tests to be carried out by the Customer / End User following handover of the Service(s) during the Acceptance Test Period as set out in the relevant Service Document (if applicable) and “Acceptance Testing” shall be construed accordingly.
<b>“Affiliate”</b>	an entity that directly or indirectly controls, is controlled by or is under common control with a Party. For the purposes of the foregoing, “control” shall mean the ownership of more than fifty percent (50%) of the (i) voting power to elect the directors of the said entity, or (ii) ownership interest in the said entity.
<b>“Annual Charge”</b>	the on-going fee for the provision of the Service(s), where applicable, as detailed on the Order Form (and, if applicable, as amended in line with the Contract).
<b>“Change Management Process”</b>	the process of requesting and recording changes to the Service(s) and/or the Contract detailed in the BroadCloud Group LTD Change Management Process Document.
<b>“Change Management Process Document”</b>	the BroadCloud Group LTD change management process document as current from time-to-time, copy available upon request.
<b>“Change Order”</b>	the change order agreement prepared in accordance with BroadCloud Group LTD’s Change Management Process.
<b>“Charges”</b>	the charges payable for the Service(s) as detailed in the Contract which shall include any Annual Charge (where applicable), any Usage Charges (if applicable), any Non-Recurring Charges (if applicable) and any other charges set out in the Contract.
<b>“Confidential Information”</b>	any information concerning the business, accounts, finance, contractual dealings, customers, pricing, transactions or affairs of a Party which are designated as, or which should reasonably be considered as being, confidential.

<b>“Connectivity Service”</b>	a service set out in BroadCloud Group LTD’s Service Document for Connectivity Services, as current from time-to-time.
<b>“Contract”</b>	an Order Form together with (i) any commercial offer terms incorporated by reference on the Order Form, (ii) any special terms incorporated by reference on the Order Form and signed by the Parties; and/or (iii) these General Terms; and (iv) the applicable Service Document(s); and (v) any additional documents that are expressly stated to form part of the Contract in the applicable Service Document.
<b>“Documentation”</b>	any documentation provided to the Customer by BroadCloud Group LTD for the purpose of providing the Service(s).
<b>“Due Date”</b>	the due date for payment of an invoice for the Charges as set out in Clause 5.6.
<b>“Electronic Signature”</b>	a signature that consists of one or more letters, characters, numbers or other symbols in digital form incorporated in, attached to or associated with a human readable electronic version of the Contract documents using BroadCloud Group LTD’s designated electronic signature software.
<b>“End User”</b>	the end user of the Services, being the entity which contracts with Customer for receipt of the Service(s) and/or products provided by BroadCloud Group LTD to the Customer under the Contract, and whose details are set out on the Order Form.
<b>“End User Content”</b>	the works of authorship, marks, data, information, materials and other content that is sent, received, transmitted, hosted, stored, replicated or otherwise made available by means of the Service(s), including (without limitation) names, domain names, logos, designs, computer software, recorded visual imagery (including video recordings and photographs), sounds, audio materials (including master recordings), musical compositions (including arrangements and lyrics), graphics (including animation), textual matter, and any combination of the above. For the avoidance of doubt, End User Content does not include Materials. All End User Content is and will remain the property of the End User.
<b>“End User Site(s)”</b>	the End User locations at which the Service(s) will be provided (if applicable), as specified on the Order Form.
<b>“BroadCloud Group LTD”</b>	BroadCloud Group LTD, registered in England and Wales under company registration number 09038852.
<b>“BroadCloud Group LTD Equipment”</b>	the equipment (if any) owned by BroadCloud Group LTD and/or its suppliers, which is located either at the End User Site(s) or the BroadCloud Group LTD Site(s) (as applicable) in order to provide the Service(s).
<b>“BroadCloud Group LTD Personnel”</b>	the staff and contractors of (i) BroadCloud Group LTD and (ii) BroadCloud Group LTD’s contractors and suppliers engaged in the provision of the Service(s).
<b>“BroadCloud Group LTD Site”</b>	the location(s) where the Service(s) will be provided from (where applicable to a particular Service) including any data centres owned and operated by BroadCloud Group LTD or its suppliers.

<b>“Force Majeure Event”</b>	any circumstance beyond a Party’s reasonable control (including, without limitation, act of God, the act or omission of the other Party, labour dispute, act or omission of government or other appropriate authority, act of terrorism, war, technological attack (including, but not limited to denial of service attacks, attacks involving Malicious Code and computer hacking), and regulatory and legal changes).
<b>“Initial Term”</b>	the initial term for which each Service shall be provided to the Customer (if applicable), as set out on the Order Form and calculated from the Service Commencement Date for that Service or as otherwise specified in the applicable Service Document. The Initial Term is not applicable to Pay As You Go Services.
<b>“Insolvent”</b>	(i) the appointment of, or the application to a court for the appointment of a liquidator, provisional liquidator, administrator, administrative receiver or receiver; or (ii) entering into a scheme of arrangement or composition with or for the benefit of creditors generally or any class of creditors; or (iii) any reorganisation, moratorium or other administration involving its creditors or any class of creditors; or (iv) a resolution, or proposed resolution, to wind it up or strike it off; or (v) becoming unable to pay debts as and when they become due or becoming deemed to become unable to pay debts as and when they become due within the meaning of Section 123 of the Insolvency Act 1986.
<b>“Intellectual Property”</b>	patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
<b>“Laws”</b>	all treaties and applicable statutory enactments (as amended, replaced, or re-enacted from time to time) and any bye-laws, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made, required or granted thereunder and any condition attaching thereto, including any specific laws mentioned by name herein.
<b>“Malicious Code”</b>	viruses, logic bombs, worms, trojan horses or other types of destructive, disruptive or nuisance programs.
<b>“Materials”</b>	all literary works or other works of authorship (such as computer programs, program listings, programming tools, Documentation, reports, drawings and similar works) that are developed or provided by BroadCloud Group LTD to the Customer pursuant to the Contract or otherwise in connection with the Service(s). For

	the avoidance of doubt, Materials do not include End User Content.
<b>“Non-Recurring Charges”</b>	the one-off charges (if any) for the Service(s) or Purchased Equipment, including any installation fees or purchase fees, as detailed on the Order Form (and, if applicable, as amended in line with the Contract).
<b>“Normal Business Hours”</b>	9 a.m. to 5.00 p.m. on any Working Day.
<b>“Order Form”</b>	the completed BroadCloud Group LTD order form signed by the Parties.
<b>“Parties”</b>	the Customer and BroadCloud Group LTD and “Party” shall be construed accordingly.
<b>“Customer”</b>	the entity purchasing BroadCloud Group LTD’s products and/or services as detailed on the Order Form.
<b>“Customer Contact”</b>	the Customer’s authorised representative specified as such in the Contract, nominated to liaise and work with BroadCloud Group LTD in connection with the Service(s).
<b>“Customer / End User Equipment”</b>	items of equipment owned or leased by the Customer or End User located either at the End User Site(s) or at an BroadCloud Group LTD Site (as applicable to the particular Service(s)) and used in order to provide and/or receive the Service(s).
<b>“Pay As You Go Services”</b>	services described as such in the applicable Service Document, and designated as such on the Order Form, which are provided on the basis that there is no fixed Initial Term and no commitment to paying an annual Charge.
<b>“Portal Terms of Use”</b>	the terms of use applicable to, and accessible via, any portal provided by BroadCloud Group LTD to the Customer for use with the Service(s) or otherwise pursuant to the Contract.
<b>“Professional Services”</b>	the services described in BroadCloud Group LTD’s Service Document for Professional Services as current from time to time.
<b>“Purchased Equipment”</b>	the equipment (if any) purchased by the Customer and sold by BroadCloud Group LTD in conjunction with the provision of a Service, as specified on an Order Form and clarified in the Service Document.
<b>“Rate Card”</b>	the then-current rate card setting out the Usage Charges (if applicable) to a particular Service, as provided to the Customer by BroadCloud Group LTD from time to time in accordance with the applicable Service Document.
<b>“Service(s)”</b>	the service(s) to be provided by BroadCloud Group LTD to the Customer as set out on the Order Form and further explained in the applicable Service Document.
<b>“Service Commencement Date”</b>	the earlier of (i) where a Service is subject to Acceptance Tests the Acceptance Date of that Service and (ii) where a Service is not subject to Acceptance Tests, the date that the Customer is notified by BroadCloud Group LTD in writing that the Service is ready for

use; or the date that the Customer or End User actually starts using the Service, unless otherwise agreed in writing between the Parties or otherwise specified in the applicable Service Document.

**“Service Delivery Form”**

the form provided to the Customer by BroadCloud Group LTD requiring technical contact details and relevant technical information such as (where applicable) rack and comms room locations, PSTN DDI numbers, server names, applicable number ranges and features.

**“Service Document”**

BroadCloud Group LTD’s service document current at the time of entering into the Contract and referenced on the Order Form, containing details of the service(s) BroadCloud Group LTD offers (or the component parts thereof) and the Additional Terms applicable thereto, which are available from BroadCloud Group LTD upon request.

**“Software”**

any software to which the Customer / End User is provided with access pursuant to the Contract, or any third party software which the Customer purchases through BroadCloud Group LTD including any software embedded in the BroadCloud Group LTD Equipment and/or Customer / End User Equipment.

**“Target Service Commencement Date”**

the date by which BroadCloud Group LTD shall use reasonable endeavours to handover the Service(s) (if applicable), as detailed in the applicable Service Document.

**“Usage Charges”**

the fees (if any) for the use of a Service, calculated as set out in the relevant Rate Card and the applicable Service Document and in accordance with the usage information collected by BroadCloud Group LTD’s, or their suppliers, monitoring and reporting systems.

**“Working Day”**

Monday to Friday (inclusive), excluding all public and bank holidays in England and Wales.

1.2 In the event of any conflict between (i) the Order Form, (ii) any special terms incorporated by reference on the Order Form and signed by the Parties, (iii) any commercial offer terms incorporated by reference on the Order Form, (iv) these General Terms, (v) the applicable Service Document(s), and (vi) any additional documents that are expressly stated to form part of the Contract in the applicable Service Document, the hierarchy of precedence shall be as stated here (with the Order Form having the highest precedence).

1.3 The headings in these General Terms are for ease of reference only and shall not be taken into account in the construction or interpretation of these General Terms.

**2 ORDERING, SERVICE PROVISION & ACCEPTANCE**

2.1 An BroadCloud Group LTD order form signed and submitted by the Customer to BroadCloud Group LTD shall constitute an offer to acquire the Services specified in the order in accordance with the terms referenced therein. No order shall be deemed to have been accepted by BroadCloud Group LTD until that order form has been signed in acceptance by BroadCloud Group LTD. Once accepted by BroadCloud Group LTD, each Order Form shall form a Contract between the Parties from the date the Order Form is accepted by BroadCloud Group LTD. Each Order Form shall form a separate contract in its own right.

2.2 Where a Service has a Target Service Commencement Date, BroadCloud Group LTD will notify the Customer in writing when it is ready to hand-over that Service to the Customer. Where a Service does not have a Target Service Commencement Date (such as Professional Services) BroadCloud Group LTD

shall inform the Customer in writing when it is ready to commence performance of such Services. The following acceptance clauses shall apply where Acceptance Tests apply to a Service (as detailed in the applicable Service Document):

- 2.2.1 The Customer shall have the Acceptance Test Period in which to carry out (or allow the End User to carry out) the Acceptance Tests. The Customer shall sign BroadCloud Group LTD's standard acceptance test certificate upon successful passing of the Acceptance Tests and promptly return it to BroadCloud Group LTD. In the event that the Services do not pass the Acceptance Tests, the Customer shall serve written notice to this effect on BroadCloud Group LTD. In the event that the Customer (i) has not signed and returned the acceptance test certificate or (ii) served notice that the Service(s) have failed to pass the Acceptance Tests, by the expiry of the Acceptance Test Period, the Customer shall be deemed to have signed the acceptance test certificate upon expiry of the Acceptance Test Period. If the Customer has served notice that the Service(s) have failed to pass the Acceptance Tests before the expiry of the Acceptance Test Period then BroadCloud Group LTD shall remedy any defect in the Service(s) as soon as reasonably possible and resubmit the Service(s) to the Customer for Acceptance Testing. BroadCloud Group LTD shall have the right, but not the obligation, to be present during the carrying out of any Customer Acceptance Tests and to that end, the Customer shall provide BroadCloud Group LTD with not less than two (2) Working Days' notice of its intention to carry out the Acceptance Tests.
- 2.3 Where BroadCloud Group LTD agrees to delay the Service Commencement Date following the Customer's written request, or the Target Service Commencement Date is not met as a result of the Customer's delay or failure to fulfil its obligations under the Contract, the Annual Charges for that Service shall be payable from the Target Service Commencement Date for that Service, unless otherwise agreed in writing by the Parties. Nothing in this clause shall oblige BroadCloud Group LTD to agree to any delayed handover of the Service(s).
- 2.4 BroadCloud Group LTD reserves the right, at any time, to make any modification, change or addition to, or replacement of, any Service (or part thereof) or the BroadCloud Group LTD Equipment, where this is required to conform with any applicable safety requirements or Laws.
- 2.5 Subject to Clause 2.4 above and any specific provisions in the applicable Service Document(s), all requested changes to the Service(s) shall be dealt with in accordance with BroadCloud Group LTD's Change Management Process.

### **3 END USER SITE ACCESS**

- 3.1 Where necessary to enable BroadCloud Group LTD to carry out its obligations and exercise its rights under the Contract, the Customer shall provide (or shall procure that the End User shall provide) BroadCloud Group LTD Personnel with such access to the End User Site(s) as BroadCloud Group LTD shall reasonably require, subject to reasonable advance notice. Any period of delay in providing BroadCloud Group LTD Personnel with access to the End User Site(s) shall be excluded from any service level calculations.
- 3.2 The Customer shall ensure (or shall procure that the End User shall ensure) that BroadCloud Group LTD Personnel have a safe working environment at the End User Site(s). BroadCloud Group LTD Personnel will comply with all reasonable health and safety and security policies applicable to the End User Site, provided in writing prior to, or at the time of entry to, the End User Site(s).

### **4 FAULT MANAGEMENT**

- 4.1 BroadCloud Group LTD will support the Service(s) and deal with faults as per the provisions of the applicable Service Document(s). The Service(s) (or the component parts thereof) will be subject to the service levels (if any) set out in the applicable Service Document(s).
- 4.2 The Customer shall notify BroadCloud Group LTD of any material non-conformity or fault with the Service(s) as per the Service Document.
- 4.3 Any time incurred by BroadCloud Group LTD in investigating alleged faults or non-conformities with the Service(s) notified to it by the Customer, which are later found not to have existed, may be charged

to the Customer in accordance with BroadCloud Group LTD's then-current standard rates together with any third party supplier costs incurred in investigating the same. The Customer shall be entitled to see reasonable documentary evidence attesting to such third party costs.

## **5 FEES AND PAYMENT**

- 5.1 The Non-Recurring Charges shall become invoiceable upon the Service Commencement Date or, where such Non-Recurring Charges apply after the Service Commencement Date, they shall become invoiceable upon signature of the Order Form and/or Change Order as applicable.
- 5.2 Subject to Clause 2.3, the Annual Charge (where applicable) shall be payable in advance from the Service Commencement Date in accordance with the payment frequency set out on the Order Form. The first payment (being for the remainder of the month in which the Service Commencement Date occurs, calculated on a pro-rata temporis basis, plus the following month / quarter / year, as applicable) shall be invoiceable by BroadCloud Group LTD on or following the relevant Service Commencement Date. Subsequent payments shall become invoiceable at the start of the month immediately preceding the month / quarter / year being invoiced.
- 5.3 Usage Charges (if applicable) shall be invoiceable monthly in arrears.
- 5.4 As from the Service Commencement Date, the Annual Charge shall, subject to anything contrary in the applicable Service Document, be firm and fixed for the duration of the Initial Term. With effect from the expiry of the Initial Term, BroadCloud Group LTD shall be entitled to revise the Annual Charge to reflect BroadCloud Group LTD's then current standard rates, by giving the Customer not less than ninety (90) days prior written notice.
- 5.5 All Charges are payable in sterling and are exclusive of Value Added Tax and any other applicable taxes which shall be payable by the Customer in addition, in the manner prescribed by law.
- 5.6 Invoices for the Charges (save where specified otherwise herein) shall be paid by the Customer within thirty (30) days of the date of the invoice. The Customer shall pay all invoiced amounts without any deductions, with-holdings, counter-claims and/or set-offs (sums subject to reasonable and notified dispute in accordance with Clause 5.7 below excepted).
- 5.7 In the event that the Customer has a bona fide dispute as to sums invoiced, the Customer shall serve notice to this effect on BroadCloud Group LTD as soon as reasonably practicable and in any event prior to the Due Date for payment thereof, detailing the sums disputed and the reason for the dispute. All non-disputed sums shall be paid by the Due Date. The Parties shall use all reasonable good faith endeavours to resolve any billing dispute prior to the Due Date for payment. In the event that a billing dispute remains outstanding 45 days after the date of notice of the same to BroadCloud Group LTD, either Party may refer the matter for resolution in accordance with Clauses 15.1 and 15.2.
- 5.8 If an undisputed invoice (or an undisputed part of an invoice) is not paid in full by the Due Date for payment thereof, then without prejudice to BroadCloud Group LTD's other rights and remedies BroadCloud Group LTD reserves the right to:
  - 5.8.1 charge interest on the outstanding sum on a daily basis (before as well as after any judgement) until the date of payment, at Barclays Bank base rate plus four percent (4%); and/or
  - 5.8.2 suspend the Service(s) (or any part thereof) in accordance with Clause 11; and/or
  - 5.8.3 use any deposit given by the Customer under Clause 5.9 below, to pay any outstanding sum.
- 5.9 BroadCloud Group LTD may require the Customer to pay a deposit and/or require the Customer to procure that the Customer's parent company or related company guarantees the payment of the Charges due under the Contract. The Customer agrees to enter into (and/or procure the execution of) any reasonable agreement or deed BroadCloud Group LTD submits for such purpose.

## **6 INTACLOUD LIMITED'S OBLIGATIONS AND WARRANTIES**

- 6.1 Subject to any service description in the Contract, BroadCloud Group LTD is free to determine how the Service(s) shall be provided.
- 6.2 BroadCloud Group LTD's obligation to provide the Service(s) is limited to an obligation to use all reasonable endeavours to provide the same. The Customer acknowledges and agrees that BroadCloud Group LTD cannot (and does not) guarantee, represent or warrant that the Service(s) will be error-free or uninterrupted.

- 6.3 BroadCloud Group LTD shall use all reasonable endeavours to meet the Target Service Commencement Date and any other dates or timescales set out in the Contract, but time shall not be the essence of the Contract.
- 6.4 BroadCloud Group LTD shall use the reasonable care and skill expected of a competent information technology and telecommunications provider in exercising its rights, and carrying out its obligations, under the Contract.
- 6.5 Subject to any further description in the Service Document(s) and the Customer performing its obligations, BroadCloud Group LTD shall install and configure the Software (if applicable) if it is specified in  
the Contract that BroadCloud Group LTD is responsible for installing the Software or (where not so specified) BroadCloud Group LTD shall provide limited remote support to the Customer to enable the Customer to install and configure the Software if such remote support is required.
- 6.6 BroadCloud Group LTD warrants that it has the legal capacity and authority to enter into the Contract.
- 6.7 BroadCloud Group LTD warrants that the Service(s) shall be provided in compliance with all applicable Laws.
- 6.8 BroadCloud Group LTD is not responsible to the Customer for unauthorised access to End User Content or the unauthorised access to, or use of, the Service(s) unless the unauthorised access or use results from BroadCloud Group LTD's failure to meet any security obligations stated in the Contract.

## **7 CUSTOMER OBLIGATIONS AND WARRANTIES**

- 7.1 The Customer shall:
  - 7.1.1 follow BroadCloud Group LTD's reasonable instructions and guidelines in relation to the Service(s), including any set out in the Documentation; and
  - 7.1.2 provide BroadCloud Group LTD with such up-to-date information, co-operation and support as BroadCloud Group LTD may reasonably require pursuant to the Contract; and
  - 7.1.3 appoint the Customer Contact and designate suitably knowledgeable, qualified and authorised employees, who have access rights to all of the Customer's/ End User's relevant systems and Customer / End User Equipment to provide co-ordination and assistance to BroadCloud Group LTD. The Customer agrees  
and warrants that the Customer Contact and any additional or replacement nominated employees have the appropriate level of authority to make decisions relating to the Service(s). The Customer shall notify BroadCloud Group LTD in writing of any updates required to such authorised personnel. BroadCloud Group LTD shall have no liability for failure to deal with requests or respond to instructions from persons not appropriately authorised by the Customer in writing; and
  - 7.1.4 maintain (or procure the maintenance by the End User of) any Customer / End User Equipment to a safe standard; and
  - 7.1.5 ensure that any Customer / End User Equipment located at an BroadCloud Group LTD Site(s) is clearly labelled as belonging to the Customer; and
  - 7.1.6 inform BroadCloud Group LTD forthwith if the Customer / End User Equipment is subject to interference or  
malfunctioning and it may, or is reasonably likely to, affect the Service(s); and
  - 7.1.7 promptly provide sufficient technology to enable BroadCloud Group LTD to provide remote support where it is necessary to do so; and
  - 7.1.8 promptly install and configure (or procure that the End User installs and configures) the Software, if (as specified in the Contract or as otherwise notified to the Customer) the Customer/End User is responsible for installing the Software; and
  - 7.1.9 ensure that, where applicable, the Customer's / End User's systems comply with the reasonable hardware and software requirements notified to the Customer by BroadCloud Group LTD or detailed in the  
applicable Service Document; and
  - 7.1.10 ensure that the Software (where applicable) is compatible with the Customer's / End User's systems; and
  - 7.1.11 comply with the Portal Terms of Use; and
  - 7.1.12 only use (and procure the End User only uses) the Service(s) (where applicable) in accordance with the Acceptable Use Policy; and



- 7.1.13 use any Customer / End User Equipment, BroadCloud Group LTD Equipment and/or Software in a skilful and proper manner by properly trained personnel; and
  - 7.1.14 to the extent that the Service(s) is reliant upon the continued provision of other BroadCloud Group LTD services (such as Connectivity Services), ensure that the Customer continues to contract with BroadCloud Group LTD for those other services for the duration of the Service(s); and
  - 7.1.15 be responsible for the accuracy of information provided on the Service Delivery Form and promptly complete and return the same to BroadCloud Group LTD; and
  - 7.1.16 take all reasonable steps (including testing with the latest commercially available detection software) to ensure that any software used with or in conjunction with the Service(s) is not infected by Malicious Code; and
  - 7.1.17 undertake any work required to be carried out by the Customer (and procure that the End User undertakes any work required to be carried out by the End User) as specified in the applicable Service Document(s), in a timely manner; and
  - 7.1.18 provide suitable space and environment for the Customer / End User Equipment and the BroadCloud Group LTD Equipment (other than when located at BroadCloud Group LTD Sites) in a timely manner. The Customer's compliance with this Clause 7.1 shall be entirely at the Customer's cost.
- 7.2 The Customer shall not (and shall procure that all users of the Service(s) for whom it is responsible pursuant to Clause 7.8 below shall not):
- 7.2.1 use the Service(s), Software, BroadCloud Group LTD Site, or BroadCloud Group LTD Equipment in any way that violates any Laws, or act or omit to act in any way which will place BroadCloud Group LTD in breach of any Laws including but not limited to the Communications Act 2003; and/or
  - 7.2.2 use the Service(s), Software, BroadCloud Group LTD Site or BroadCloud Group LTD Equipment in any way that would constitute or contribute to the commission of a crime, tort, fraud or other unlawful activity (including activities deemed unlawful under a complainant's jurisdiction); and/or
  - 7.2.3 allow any unauthorised user or third party access to, or use of the Customer / End User Equipment, the BroadCloud Group LTD Equipment, the BroadCloud Group LTD Site(s) (if applicable) or the Service(s) and shall take all reasonable security measures to prevent the same; and/or
  - 7.2.4 add to, modify or interfere in any way with the Software, BroadCloud Group LTD Equipment (if applicable), any equipment which is not Customer / End User Equipment, or the Service(s); and/or
  - 7.2.5 use the Software, BroadCloud Group LTD Site, the BroadCloud Group LTD Equipment, the Customer / End User Equipment, or the Service(s) in any way that:
    - 7.2.5.1 would or may be harmful, or would or may be harmful or detrimental to the reputation of BroadCloud Group LTD and/or its suppliers; and/or
    - 7.2.5.2 do anything that may be dangerous or a nuisance or inconvenience to other users of BroadCloud Group LTD's service(s) or the BroadCloud Group LTD Site(s).
- 7.3 The Customer warrants that any material and/or communication received, transmitted, hosted or otherwise processed using the Service(s) (other than entirely unsolicited communications) will not be menacing, of a junk-mail or spam-like nature, illegal, obscene, threatening, defamatory, discriminatory, promote illegal or unlawful activity, be otherwise actionable or in violation of any Laws to which the use of the Service(s) is subject, or infringe the Intellectual Property rights of BroadCloud Group LTD or any third party.
- 7.4 The Customer shall indemnify and keep BroadCloud Group LTD indemnified and hold BroadCloud Group LTD harmless from and against all losses, liabilities, damages, costs, claims, demands and expenses arising out of, or in relation to, any breach by the Customer (including any user of the Service(s) for whom the Customer is responsible pursuant to Clause 7.8 below) of the provisions of Clauses 7.1.12, 7.2.1, 7.2.2 and/ or 7.3 above.
- 7.5 The Customer agrees to use the Service(s) (and shall procure that the End User agrees to use the Service(s)) solely in connection with its and/or the End User's general business purposes. The Customer acknowledges that the Service(s) are not designed to be used in circumstances in which errors or inaccuracies in the content, functionality, services, data or information provided by the Service(s) or the failure of the Service(s), could lead to death, personal injury, or severe physical or environmental damage. Unless expressly authorized by BroadCloud Group LTD in the Contract, the Customer agrees not to use (or allow the End User to use) the Service(s) for any such purpose.
- 7.6 The Customer warrants that it has the legal capacity and authority to enter into the Contract.

- 7.7 The Customer warrants it shall comply with all applicable Laws and any relevant licences and permits to operate the Customer / End User Equipment and to provide the End User Content to the extent required under the Contract.
- 7.8 The Customer is responsible for (and shall be liable to BroadCloud Group LTD in respect of) the use of the Service(s) (including any incurred charges) by any of its or the End User's employees and any other person who has been given access to the Service(s) by the Customer or End User, and any person who gains access to the End User Content or the Service(s) as a result of the Customer's or End User's failure to use reasonable security precautions, even if such use was not authorised by the Customer.
- 7.9 The Customer shall include and maintain in its agreement with any End User terms and conditions equivalent to those contained in Clauses 7.1.12, 7.2, 7.3, 7.5, 7.7, 7.8, 9.2 and 10.4. The Customer shall notify BroadCloud Group LTD of any breach of those provisions by the End User and shall take all actions reasonably within its control to ensure the End User remedies any default and complies with the provisions moving forward.

## **8 STAFF AND CONTRACTORS**

- 8.1 BroadCloud Group LTD shall ensure that BroadCloud Group LTD Personnel possess appropriate skills and experience. BroadCloud Group LTD reserves the right to replace any BroadCloud Group LTD Personnel at any time without the Customer's consent.
- 8.2 Neither Party shall, without the other Party's prior written consent, actively initiate recruitment of any staff of the other Party directly involved in the provision and/or support of the Service(s) during the currency of the Contract and for a period of 12 months following termination.

## **9 RISK, TITLE AND WARRANTY**

- 9.1 On delivery of each item of the Purchased Equipment and/or the BroadCloud Group LTD Equipment (if applicable), full risk of damage to, or loss of, such equipment shall pass to the Customer. The Customer shall be responsible to BroadCloud Group LTD for the safety, safe custody and safe use of the Purchased Equipment and/or the BroadCloud Group LTD Equipment whilst it is in the Customer's / End User's custody and the Customer shall be liable to BroadCloud Group LTD for any loss or damage to the BroadCloud Group LTD Equipment except for (i) fair wear and tear and (ii) any loss or damage caused by the negligent act or omission of BroadCloud Group LTD.
- 9.2 On full payment of the Non-Recurring Fee, title in the Purchased Equipment shall pass to the Customer. If the Non-Recurring Fee is not paid in full, then title in the Purchased Equipment shall not pass to the Customer and without prejudice to BroadCloud Group LTD's other rights and remedies, BroadCloud Group LTD reserves the right to recover and resell the Purchased Equipment and, for that purpose, the Customer grants to BroadCloud Group LTD an irrevocable licence to enter the premises where the Purchased Equipment is located during Normal Business Hours following two (2) Working Days' notice. The Customer shall keep (and shall procure that the End User keeps) the Purchased Equipment wholly identifiable and distinguishable from other goods until such time that title passes to the Customer. For the avoidance of doubt, nothing in the Contract shall act to transfer ownership of any BroadCloud Group LTD Equipment to the Customer.
- 9.3 Purchased Equipment which is subject to a maintenance service by BroadCloud Group LTD shall be maintained as per the applicable Service Document.
- 9.4 Where a manufacturers' warranty applicable to items of Purchased Equipment does not automatically transfer to the Customer upon the sale of the Purchased Equipment, BroadCloud Group LTD shall use all reasonable endeavours to assign to the Customer the benefit of any such manufacturers' warranty.

BroadCloud Group LTD does not provide any additional warranty for items of Purchased Equipment.

## **10 INTELLECTUAL PROPERTY & LICENSING, END USER CONTENT, DATA PROTECTION AND CONFIDENTIALITY**

- 10.1 Title to the Software and the Intellectual Property within the Service(s), the Software and the Documentation is held by BroadCloud Group LTD or its third party licensors (“Licensors”).
- 10.2 In the event that BroadCloud Group LTD provides the Customer and/or End User with access to, or use of, third party Software, the Customer agrees to abide (and shall procure that the End User agrees to abide) by any third party software conditions of use as set out in any relevant End User License Agreements (EULA) provided or made available to the Customer / End User by BroadCloud Group LTD (whether via the Portal or otherwise).
- 10.3 The Customer agrees that BroadCloud Group LTD may provide the Licensors with information regarding use of their software, including information on the number of licenses required for the Customer’s / End User’s use or access of the software, the country in which the Customer/ End User is located and the Customer’s name and address. The Customer hereby releases BroadCloud Group LTD from any and all liability BroadCloud Group LTD may have to the Customer in relation to any use or other dealing with that information provided pursuant to this Clause 10.3, by Licensors, and agrees to co-operate with BroadCloud Group LTD in order to provide this information.
- 10.4 BroadCloud Group LTD and/or a Licensor (or its nominated representatives), may at BroadCloud Group LTD’s expense, access the End User Site and End User systems and records relevant to usage of the Software, to ascertain compliance with any EULA and Clause 10.3 above, during Normal Business Hours and subject to reasonable prior notice.
- 10.5 If the Customer and/or End User uses software it has purchased for itself in the receipt of the Service(s) which has not been licensed by BroadCloud Group LTD, the Customer shall acquire permission (and shall procure that the End User acquires permission) to use the software from the person with the rights to the software and shall comply (and shall procure the End User complies) with any restrictions regarding license mobility where applicable.
- 10.6 The Customer grants (or shall procure that the End User grants) BroadCloud Group LTD a worldwide, irrevocable (except on Contract termination), royalty-free, non-exclusive, sub-licensable (to BroadCloud Group LTD’s authorised subcontractors only) right for the duration of the Contract to process the End User Content to the extent reasonably necessary to perform its obligations under the Contract. This provision does not apply where the Service is a Connectivity Service, as BroadCloud Group LTD acts as a mere conduit for End User Content.
- 10.7 Unless expressly stipulated otherwise, the Customer shall not (and shall procure that the End User shall not) (i) reverse engineer, disassemble, decompile or otherwise attempt to access or determine the source code of the Software (except as and only to the extent any of the foregoing is permitted by the licensing terms governing use of any open sourced components included with the Software), (ii) copy, “frame” or “mirror” any content available on the Software on any other server or wireless Internet-based device, (iii) re-distribute or sublicense the Software, or any part thereof, to any third party, (iv) operate the Software for use by third parties or otherwise operate the Software on a service bureau basis, without BroadCloud Group LTD’s express prior written consent, (v) copy, or reproduce the Software in any way, in whole or in part, (vi) modify or create any derivative work based on the Software, or (vii) allow, permit or assist any third party to do any of the foregoing.
- 10.8 BroadCloud Group LTD shall indemnify the Customer in respect of all claims, losses, reasonable costs and reasonable expenses (including reasonable legal fees) that are made against, or incurred by, the Customer as the result of a claim by a third party that the provision of the Service(s) and/or Software by BroadCloud Group LTD to the Customer, infringes the Intellectual Property rights of any third party. BroadCloud Group LTD shall only be liable to indemnify pursuant to this Clause provided that: (i) BroadCloud Group LTD is promptly notified of any such claim; (ii) BroadCloud Group LTD is given sole control of the claim and the freedom to defend or settle the claim as it deems fit; (iii) the Customer provides all reasonable assistance to BroadCloud Group LTD at BroadCloud Group LTD’s cost in respect of the claim; (iv) the Customer makes no statements or admits any liability in respect of the claim; (v) the claim does not arise from the use of the Service(s) otherwise than as permitted under the Contract; (vi) the claim does not arise from the combining of the Service(s) with any services or equipment not supplied by BroadCloud Group LTD; (vii) the claim does not arise from any modification to the Service(s) or Software not carried out or authorised in writing by

- BroadCloud Group LTD; and (viii) the claim does not arise from the use of the Software other than in accordance with the applicable software licence.
- 10.9 The Customer shall indemnify and hold harmless BroadCloud Group LTD in respect of all claims, losses, reasonable costs and reasonable expenses (including reasonable legal fees) that are made against, or incurred by, BroadCloud Group LTD as a result of a claim by a third party that BroadCloud Group LTD's installation, use, transmission, storage, possession or accessing of the Customer / End User Equipment, End User Content, material or third party software provided by the Customer / End User in connection with the Service(s) infringes the Intellectual Property or other rights of a third party. The Customer shall only be liable to indemnify pursuant to this Clause provided that: (i) the Customer is promptly notified of any such claim; (ii) the Customer is given sole control of the claim and the freedom to defend or settle the claim as it deems fit; (iii) BroadCloud Group LTD provides all reasonable assistance to the Customer at the Customer's cost in respect of the claim; (iv) BroadCloud Group LTD makes no statements or admits any liability in respect of the claim.
- 10.10 The Customer acknowledges that any software may contain known or unknown security vulnerabilities. BroadCloud Group LTD shall not be liable to the Customer or any third party for any loss or damage (including, without limitation, any direct, indirect, special or consequential loss) arising from known or unknown security vulnerabilities with any software (including the Software).
- 10.11 The Customer / End User may apply updates, new releases, upgrades or patches ("Modifications") to the software it uses in connection with the Service(s). In such event, the Customer acknowledges that (i) new or amended Software may be required to maintain compatibility but may not be available or immediately available and (ii) if it installs such Modifications before any new or amended Software is available, the Service(s) may be affected. BroadCloud Group LTD shall not be liable for any adverse effects caused in whole or in part by the installation of Modifications to Customer's / End User's software pursuant to this Clause 10.11.
- 10.12 The Customer shall ensure that it promptly (and no later than reasonably required by BroadCloud Group LTD) installs (or procures that the End User installs) all Modifications to the Software that BroadCloud Group LTD makes available to the Customer (unless the Contract stipulates that BroadCloud Group LTD is responsible for installing such Modifications).
- 10.13 The Customer and BroadCloud Group LTD will each comply with the provisions of the Data Protection Act 1998 (the "Act") in relation to the processing of data received pursuant to the Contract. In relation to Customer Personal Data (defined within the Act) received by BroadCloud Group LTD pursuant to the Contract, BroadCloud Group LTD shall act as the "data processor" and the Customer shall be the "data controller" for the purposes of the Act. The Customer confirms that it has obtained all necessary consents from the data subjects concerned for the transfer of Personal Data to BroadCloud Group LTD. The Customer agrees, subject to the requirements of this Clause, that although BroadCloud Group LTD does not store Personal Data outside of the European Economic Area (EEA), BroadCloud Group LTD Personnel working outside of the EEA may have access to the systems upon which the Personal Data is held. BroadCloud Group LTD agrees and warrants that it will not provide access to Personal Data to any BroadCloud Group LTD Personnel outside of the EEA unless that person meets the requirements stated below during the entire time that it has access to such Personal Data:
- 10.13.1 the BroadCloud Group LTD Personnel who may access the Personal Data is either (i) located in a country for which the European Commission has made a positive finding of adequacy, or (ii) the BroadCloud Group LTD Personnel is located in the United States and has certified to the United States Department of Commerce "Safe Harbour Framework", and
- 10.13.2 the BroadCloud Group LTD Personnel that have access to the relevant BroadCloud Group LTD systems have signed a confidentiality agreement with BroadCloud Group LTD containing substantially equivalent clauses regarding data protection and confidentiality.
- 10.14 Without prejudice to BroadCloud Group LTD suspension and termination rights, and although BroadCloud Group LTD cannot routinely access any End User Content, BroadCloud Group LTD will notify the Customer if it becomes aware of (or aware of any allegation of) End User Content that violates the terms of the Contract ("Prohibited Content") and such Prohibited Content shall promptly be removed from the Service(s).  
If the Customer fails to promptly remove (or fails to promptly procure the removal by the End User of)

the Prohibited Content, BroadCloud Group LTD may (without liability) remove the Prohibited Content from the Service(s) or disable access to the Prohibited Content. Notwithstanding the foregoing, BroadCloud Group LTD may (without liability) remove or disable access to the Prohibited Content without prior notice as required by applicable legislation or to comply with any judicial, regulatory or other governmental order or request or order of any law enforcement office. If BroadCloud Group LTD removes Prohibited Content without prior notice, it will promptly notify the Customer thereafter, unless prohibited from doing so by law.

- 10.15 Subject to Clauses 10.15.1 and 10.15.2 below, neither the Customer nor BroadCloud Group LTD shall, without the other Party's prior written consent, disclose to any third party any Confidential Information of the other Party which comes to that Party's attention pursuant to the Contract. Each Party shall only use the Confidential Information of the other Party as reasonably required to exercise its rights and/or perform its obligations under the Contract and shall only disclose it to those of its employees, agents and contractors having a reasonable need to know pursuant to the Contract. Each Party shall use no lesser degree of care in respect of the other Party's Confidential Information than it uses in respect of its own Confidential Information and which in any event shall be not less than reasonable care. Upon termination of the Contract, if requested to do so by the other Party, a Party shall promptly return or certify destroyed all of the other Party's Confidential Information.
- 10.15.1 The Customer agrees that BroadCloud Group LTD may disclose relevant information pertaining to the Contract and the Service(s), to any relevant third party (including but not limited to its suppliers and the End User's landlords at the End User Site(s) to the extent reasonably required by such third party in order to allow provision of the Service(s).
- 10.15.2 Each Party agrees that the other Party may disclose the Confidential Information belonging to the first party, required to be disclosed pursuant to any applicable law, court or regulatory authority. Each Party shall promptly notify the other Party of any such disclosure requirement to the extent that it is legally permissible to do so.
- 10.16 Each Party agrees that damages alone would not be an adequate remedy for any breach of Clause 10.15 and accordingly, without prejudice to any other rights or remedies available, each Party shall be entitled to seek injunctive or other equitable relief to prevent any breach or threatened breach of Clause 10.15 by the other Party.
- 10.17 Neither Party shall make, or permit any person to make, any public announcement concerning the Contract without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 10.18 The Customer acknowledges and agrees that it (or the End User) is the best judge of the value and importance of the End User Content and it (or the End User) is solely responsible for taking out any insurance policy or other financial cover for any costs, expenses, loss or damage, which may arise from any loss, damage or destruction of End User Content, howsoever occurring.
- 10.19 The Customer acknowledges and agrees that BroadCloud Group LTD has no knowledge of, and accepts no responsibility for, the content, quality, value or use of the End User Content, traffic or goods or services provided by Customer to End Users in connection with the Service(s). The Customer should therefore take all reasonable steps to mitigate the risks inherent in the provision of the Service(s) including, but not limited to, data loss. The Customer shall ensure that the End User is aware of this Clause 10.19.
- 10.20 BroadCloud Group LTD maintains certain security procedures for the End User Content while it is stored on or transmitted over equipment and facilities BroadCloud Group LTD controls. As between BroadCloud Group LTD and the Customer, the Customer is responsible for management of the End User Content stored on, or transmitted by means of, the Service(s), including selection and use of the security features and options that BroadCloud Group LTD provides as Service(s). Except to the extent included in the Service(s), as identified in the Contract, the Customer (and the End User where appropriate) is responsible for developing and maintaining data management and security procedures the Customer/End User deems appropriate, such as application logon security, encryption of data and Malicious Code protection, and retaining source documents and maintaining a procedure that will allow the Customer/End User to recover lost or damaged data. INTACLOUD LIMITED DOES NOT GUARANTEE THAT ITS SECURITY PROCEDURES WILL PREVENT THE LOSS OF, ALTERATION OF, OR IMPROPER ACCESS TO, END USER CONTENT.

## 11 SUSPENSION

- 11.1 BroadCloud Group LTD may, without terminating the Service(s) or the Contract, suspend provision of any Service(s), in whole or in part:
- 11.1.1 with immediate effect if the Customer is in breach of Clause 7.1.12, 7.2.1, 7.2.2 and/or Clause 7.3; and/or
  - 11.1.2 immediately upon written notice if the Customer is in breach of any other material obligation under the Contract and, in the case of remediable breach, the Customer fails to remedy that breach within five (5) Working Days of written notice of the breach; and/or
  - 11.1.3 immediately upon written notice if the Customer becomes Insolvent; and/or
  - 11.1.4 with immediate effect if the Customer's / End User's use of the Service(s) may damage or disrupt the proper functioning of the infrastructure and/or equipment used to provide services to BroadCloud Group LTD's other customers; and/or
  - 11.1.5 with immediate effect if BroadCloud Group LTD is obliged to comply with the order, instruction or request of a court, government, emergency services organisation or other competent judicial, governmental, administrative or regulatory authority; and/or
  - 11.1.6 for operational reasons (including but not limited to, planned and emergency works) in accordance with the applicable Service Document.
- 11.2 BroadCloud Group LTD's right to suspend a Service(s) pursuant to Clause 11.1 above is without prejudice to BroadCloud Group LTD's termination rights under Clause 12 below, or any other right under the Contract or at law.
- 11.3 Where BroadCloud Group LTD has suspended the Service(s) pursuant to Clause 11.1.1, 11.1.4 or 11.1.5 above and it has not been practicable to provide written notice prior to such suspension, BroadCloud Group LTD shall inform the Customer as soon as is reasonably practicable thereafter.

## 12 TERM AND TERMINATION

- 12.1 Subject to earlier termination of the Contract in accordance with its terms, the Contract shall continue in force:
- 12.1.1 until the expiry of the Initial Term (where an Initial Terms applies) and thereafter unless or until terminated by either Party giving to the other Party not less than three (3) months' prior written notice to expire no earlier than the end of the Initial Term or at any time thereafter; or
  - 12.1.2 for the period stated on the Order Form where it relates to a project or a specific number of days; or
  - 12.1.3 where the Services are purely Pay As You Go Services, for the period such Service(s) are in use by the Customer / End User.
- 12.2 In the event that the Customer wishes to cancel a Service, the Customer shall send an email to [telecoms@inta.cloud](mailto:telecoms@inta.cloud) specifying the Customer's name, the site (including postcode) at which the relevant Service(s) is provided, what the Service(s) is and any applicable service reference numbers. BroadCloud Group LTD shall confirm such cancellation, and any relevant Termination Payment (defined below) to the Customer within 10 Working Days of receipt of such request.
- 12.3 Each Party shall have the right on immediate notice to the other Party, to terminate the Contract at any time in the event that the other Party:
- 12.3.1 has committed a material breach of the Contract (other than a failure on the part of the Customer to make payment of sums when due) and fails to remedy such breach within twenty-eight (28) days of notice from the other Party requiring the breach to be remedied. The aforementioned twenty-eight (28) day remedy period shall only apply where a breach is capable of remedy; if it is not capable of remedy, the Contract shall be terminable by immediate written notice; or
  - 12.3.2 becomes Insolvent.
- 12.4 BroadCloud Group LTD shall have the right on immediate notice to the Customer, to terminate the Contract at any time in the event that the Customer fails to make payment of any undisputed Charges by the Due Date and fails to remedy such breach within fourteen (14) days of notice from BroadCloud Group LTD requiring the breach to be remedied.

- 12.5 BroadCloud Group LTD shall have the right to terminate any Service and/or the Contract immediately upon written notice if instructed to do so by a court of law, regulator or other appropriate authority.
- 12.6 Except in the event of termination of the Contract by the Customer pursuant to Clauses 12.3.1 or 12.3.2 above, or by BroadCloud Group LTD pursuant to Clause 12.5 above, where a Service is terminated or otherwise brought to an end by the Customer, without cause, the Termination Payment shall be payable by the Customer. For the purpose of this Clause, the Termination Payment shall mean:
- (a) where an Initial Term applies and termination occurs after the Service Commencement Date: (i) all arrears of Charges payable under the Contract up to the date of termination plus (ii) all remaining Charges not yet paid which would otherwise have been payable for the greater of the remainder of the Initial Term or the required three(3) month notice period;
  - (b) where an Initial Term applies but the Service Commencement Date has not yet occurred: (i) the Non-Recurring Charges, plus (ii) 50% of the first year's Annual Charge plus (iii) all charges incurred or committed to by BroadCloud Group LTD with third party suppliers, plus (iv) any charges identified in the relevant Service Document as being recoverable pursuant to this Sub-Clause. provided always that the Termination Payment to be paid pursuant to this sub-clause does not exceed the total Charges which would otherwise be payable by the Customer in respect of the Initial Term;
  - (c) where the Service is a Pay As You Go Service: there shall be no Termination Payment;
  - (d) where the Service is a Professional Service: as set out in the Service Document for Professional Services. The Customer acknowledges and agrees that the Termination Payment is based upon BroadCloud Group LTD's revenue expectation which was reflected in the Charges and is compensatory in nature and not a penalty.
- 12.7 Termination of a Service and/or the Contract shall be without prejudice to the accrued rights and liabilities of either Party subsisting under the Contract prior to termination.
- 12.8 Upon termination of a Service and/or the Contract for any reason:
- 12.8.1 the Customer shall (and shall procure that the End User shall) immediately cease to make use of the relevant Service(s) and the BroadCloud Group LTD Equipment (if applicable); and
- 12.8.2 the Customer shall (and shall procure that the End User shall), if required by BroadCloud Group LTD, allow BroadCloud Group LTD Personnel to enter the End User Site(s) during Normal Business Hours, subject to reasonable advance notice, for the purpose of removing any BroadCloud Group LTD Equipment and deinstalling the Service(s); and
- 12.8.3 the Customer shall, within five (5) Working Days of termination of the Contract, return (or procure that the End User returns) to BroadCloud Group LTD by same day courier any BroadCloud Group LTD Equipment (if applicable) or pay BroadCloud Group LTD for the BroadCloud Group LTD Equipment at its then-current new purchase price if not so returned; and
- 12.8.4 licences granted to the Customer/ End User by BroadCloud Group LTD pursuant to the Contract shall immediately terminate.
- 12.9 Following termination of the Contract (other than by BroadCloud Group LTD pursuant to Clause 12.3.1, Clause 12.3.2 or Clause 12.4 above) and provided that the Customer's account is fully paid-up, BroadCloud Group LTD will:
- 12.9.1 following the Customer's written request, provide reasonable assistance to the Customer as regards migrating the End User to an alternative service provider, at BroadCloud Group LTD's then-current standard charges; and
- 12.9.2 promptly refund to the Customer any Annual Charges paid in advance relating to the period after the effective date of termination, calculated on a pro-rata temporis basis.
- 12.10 Clause 5 (Fees and Payment), Clause 7 (Customer Obligations), Clause 8.2 (non-solicitation), Clause 10 (Intellectual Property, Data Protection and Confidentiality), Clauses 12.8 and 12.9 (actions following termination) Clause 13 (Force Majeure, Warranties and Limitation of Liability) and Clause 15 (Disputes, Jurisdiction and Governing Law) and other terms and conditions forming part of the Contract which are agreed by the Parties to survive termination or which by their nature are clearly intended by the Parties to survive termination, shall survive and continue in full force and effect.

### **13 FORCE MAJEURE, WARRANTIES AND LIMITATION OF LIABILITY**

- 13.1 Neither Party shall be liable for any delay or failure in performing its obligations under the Contract caused by a Force Majeure Event. A Party affected by a Force Majeure Event shall serve prompt written notice of the Force Majeure Event and its expected duration on the other Party and shall take all reasonable steps to mitigate the effects of the same.
- 13.2 THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSES 13.3 TO 13.8 INCLUSIVE.
- 13.3 ALL WARRANTIES, CONDITIONS, OBLIGATIONS AND TERMS WHICH WOULD OTHERWISE BE IMPLIED INTO THE CONTRACT BY STATUTE, CUSTOM OR LAW (INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES WITH RESPECT TO MERCHANTABILITY, FITNESS FOR PURPOSE AND SATISFACTORY QUALITY), ARE HEREBY EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.
- 13.4 NEITHER PARTY EXCLUDES OR LIMITS THEIR LIABILITY UNDER THE CONTRACT:
- 13.4.1 FOR DEATH OR PERSONAL INJURY CAUSED BY ITS (OR ITS EMPLOYEES', AGENTS' OR CONTRACTORS') NEGLIGENCE; AND
- 13.4.2 FOR FRAUDULENT MISREPRESENTATION; AND
- 13.4.3 FOR BREACH OF THE DATA PROTECTION AND/OR CONFIDENTIALITY OBLIGATIONS SET OUT IN CLAUSE 10); AND
- 13.4.4 TO INDEMNIFY THE OTHER PARTY PURSUANT TO THE CONTRACT; AND
- 13.4.5 TO MAKE ANY TERMINATION PAYMENT DUE PURSUANT TO CLAUSE 12.6 ABOVE.
- 13.5 WITHOUT PREJUDICE TO CLAUSE 13.4 ABOVE, EACH PARTY'S ENTIRE LIABILITY FOR DAMAGE TO THE TANGIBLE PROPERTY OF THE OTHER PARTY, CAUSED BY ITS NEGLIGENCE (OR THE NEGLIGENCE OF ITS EMPLOYEES', AGENTS' AND CONTRACTORS), SHALL NOT IN ANY EVENT EXCEED ONE MILLION POUNDS (£1,000,000) PER EVENT OR SERIES OF CONNECTED EVENTS AND TWO MILLION POUNDS (£2,000,000) IN THE AGGREGATE FOR ALL EVENTS IN ANY 12 MONTH PERIOD.
- 13.6 WITHOUT PREJUDICE TO CLAUSE 13.4 ABOVE, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY
- LOSS OF PROFITS
  - LOSS OF BUSINESS OPPORTUNITY
  - LOSS OF REVENUE,
  - LOSS OF ANTICIPATED SAVINGS,
  - WASTED EXPENDITURE,
  - DEPLETION OF GOODWILL
  - LOSS OF USE
  - LOSS AND/OR CORRUPTION OF DATA OR INFORMATION (UNLESS OTHERWISE SPECIFICALLY PROVIDED FOR IN THE APPLICABLE SERVICE DOCUMENT)
  - ANY SPECIAL, INDIRECT OR CONSEQUENTIAL LOSS, COST, DAMAGE, CHARGE OR EXPENSE
- 13.7 ANY LIABILITY OF EITHER PARTY TO THE OTHER PARTY WHICH IS NOT (I) UNLIMITED UNDER CLAUSE 13.4 ABOVE, (II) NOT CAPPED UNDER CLAUSE 13.5 ABOVE AND (III) NOT EXCLUDED UNDER CLAUSE 13.6 ABOVE, SHALL NOT IN ANY EVENT EXCEED GREATER OF (I) 150% OF THE TOTAL CHARGES PAID BY THE CUSTOMER UNDER THE CONTRACT IN THE 12 MONTHS PRECEDING THE DATE OF THE RELEVANT CLAIM; AND (II) FIVE THOUSAND POUNDS (£5,000) REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM A BREACH OF CONTRACT, IN TORT OR OTHERWISE.
- 13.8 THE CUSTOMER ACKNOWLEDGES AND AGREES THAT THE CHARGES REFLECT THE LEVEL OF LIABILITY UNDERTAKEN BY INTACLOUD LIMITED AND THAT THE EXCLUSIONS AND LIMITATIONS CONTAINED IN THIS CLAUSE 13 ARE REASONABLE GIVEN THE CHARGES THAT ARE PAYABLE.

## 14 GENERAL

- 14.1 Unless otherwise stated in the Contract, the Contract may only be modified by the written and signed agreement of the Parties.
- 14.2 BroadCloud Group LTD shall have the right, by serving notice to the Customer, to amend the Contract at any time when this is required to comply with any applicable statutory or regulatory requirements.



- 14.3 BroadCloud Group LTD may enter into subcontracts for the performance of its obligations under the Contract. BroadCloud Group LTD shall be vicariously liable for the acts and omissions of its contractors acting in the course of their engagement by BroadCloud Group LTD.
- 14.4 Neither Party shall at any time assign or transfer (or purport to assign or transfer) the Contract and/or any of its rights or obligations thereunder, in whole or in part, without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), save that BroadCloud Group LTD may at any time assign or transfer the Contract and/or any of its rights or obligations thereunder, in whole or in part to any Affiliate of BroadCloud Group LTD; or to any successor to BroadCloud Group LTD following a reorganisation or merger of BroadCloud Group LTD with another organisation; upon notice but without consent.
- 14.5 No delay, neglect or forbearance by either Party in enforcing its rights under the Contract shall be deemed to be a waiver of, or prejudice, such rights.
- 14.6 Any notice or other communication required to be given to a Party under, or in connection with, this Contract, shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service providing proof of delivery, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other Party's main fax number. Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt, or if sent by fax, at 9.00 am on the next Working Day after transmission, or otherwise at 9.00 am on the second Working Day after posting (or at the time recorded by the delivery service).
- 14.7 If any part of the Contract is held by the courts to be unlawful, invalid or unenforceable, that part shall be considered struck-out and the remainder of the Contract shall remain in full force and effect. BroadCloud Group LTD and the Customer shall work together in good faith to agree an enforceable replacement provision capturing the spirit of the original.
- 14.8 The Contract supersedes any prior contracts, arrangements and undertakings between the Parties in relation to the subject-matter thereof and constitutes the entire agreement of the Parties relating to the subject-matter thereof. No terms and conditions set out on any Customer paperwork submitted to BroadCloud Group LTD pursuant to the Contract shall have any force or effect. The Customer shall have no remedy in respect of any statement made to it upon which it relied when entering into the Contract, unless such statement was made fraudulently by BroadCloud Group LTD.
- 14.9 The Parties agree that signed Contract documents delivered by electronic means shall have the same force and effect as signed originals.
- 14.10 The Parties expressly acknowledge and agree: (i) a human readable electronic version of the Contract documents containing the Parties' Electronic Signatures, or containing a mix of physical signatures and Electronic Signatures, shall constitute an original version of such Contract documents; (ii) a Party's use of a key pad, mouse or other device to select an item, button, icon or similar act/action, to otherwise insert their Electronic Signature into Contract documents constitutes that Party's signature as if it had manually signed the same; and (iii) BroadCloud Group LTD's chosen Electronic Signature software shall be accepted as a valid and the solely-required authentication technology.
- 14.11 Both Parties shall:
- 14.11.1 comply with the Bribery Act 2010 at all times and shall not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; and
- 14.11.2 promptly report to the other Party any request or demand which if complied with would amount to a breach of Contract or would not be compliant with the Bribery Act 2010.
- 14.12 Breach of Clause 14.11 shall be deemed a material breach of the Contract which is not capable of remedy.

## **15 DISPUTES, JURISDICTION AND GOVERNING LAW**

- 15.1 Following written notice of a dispute under the Contract, the Parties shall attempt to resolve any such dispute through negotiations between senior executives of the Parties who have authority to settle the same.
- 15.2 If the dispute has not been resolved by such senior executives within thirty (30) days of the initiation of that procedure, the dispute may be referred by either Party to the English courts and the Parties hereby submit to the exclusive jurisdiction of the courts of England.

- 15.3 The Contract shall be governed by, and interpreted in accordance with, the laws of England and Wales.
- 15.4 The Contract is personal to the Customer and BroadCloud Group LTD. The Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract and unless specifically provided for in the Contract, no entity other than the Customer and BroadCloud Group LTD shall have any rights or obligations under the Contract and no entity other than the Customer and BroadCloud Group LTD shall have the right to enforce the Contract or have it enforced against them.