

MASTER SERVICES AGREEMENT – TERM SHEET

Thank you for engaging 4Sight Communications Limited, trading as CloudClevr, to provide services to you in accordance with this MSA and associated Work Orders, which will govern transactions between CloudClevr and you in respect of the provision of Goods and Services as defined in the CloudClevr MSA Terms below, and detailed in each Work Order.

MSA Commencement Date:	[Insert either the date of the last signature below or any other agreed date for the commencement of the MSA or the first service.]
Client Name:	[Insert Client's Full Legal Trading Name and Company Registration Details]
Client Authorised Representative:	[Insert the Name of the Person Authorised to act on behalf of the Client]
Client Address:	[Insert registered trading address for Client]
Proposal:	[Insert the initial proposal date and reference where applicable]
Data Protection: Scope Processing, Personal Data And Data Subjects:	<ol style="list-style-type: none"> 1. Processing by CloudClevr, which is an electronic communications service provider of telecommunications network services and products, and related data and cloud services, and which manages personal and traffic data related to its Clients' use of its communications network (enterprise only), and other client information relating, but not limited to, client care, client management and client insight and analysis. <ol style="list-style-type: none"> 1.1 Scope: CloudClevr will only process Personal Data for the purposes of providing the Services. 1.2 Nature: CloudClevr will only process Personal Data for the purposes of providing the Services. 1.3 Purpose of processing: the Personal Data will only be collected for specified, explicit, and legitimate purposes, namely the provision of the Services (the Purpose). The Personal Data will not subsequently be processed in a manner that is incompatible with the Purpose. Only the Personal Data that are relevant and necessary to achieve the Purpose will be collected. The Purpose will be respected throughout the process of design/implementation of the processing. 1.4 Duration of the processing: only for as long as the Contract subsists and for not longer than 1 year thereafter, although CloudClevr may from time to time contact business contacts by e-mail or phone to determine whether there is a need within their business for its services. Data subjects can opt-out by contacting CloudClevr by e-mail or post. 2. Types of personal data: names, work addresses, telephone/mobile numbers and work email addresses. 3. Categories of data subject: employees, agents or sub-contractors of Clients
OUR LIABILITY:	PLEASE REVIEW CLAUSE 12 OF THE CloudClevr MSA TERMS WHICH SETS OUT THE LIMITATIONS ON CloudClevr'S LIABILITY TO CLIENT.

This CloudClevr Master Services Agreement ("**MSA**") comprises this Term Sheet, the attached CloudClevr MSA Terms and Conditions ("**CloudClevr MSA Terms**"), any Schedules attached to them and any other document or provision incorporated by explicit reference.

By our duly authorised signatures below, we agree to be bound by the terms of this MSA which has been entered into on the date of the last to sign below.

4SIGHT COMMUNICATIONS LTD, T/A CLOUDCLEVR		[INSERT CLIENT NAME]
Name: [Insert name]		Name: [Insert name]
Position: [Insert Position]		Position: [Insert position]
Date:		Date:

1. DEFINITIONS AND CONSTRUCTION

- 1.1 The following words and phrases, where used in the Contract, will have the following meanings, except where the context requires otherwise:
- 1.1.1 **"CloudClevr"** refers to the trading name under which 4Sight Communications Ltd conducts certain business operations. Any reference to "CloudClevr" within this Agreement are to be understood as references to 4Sight Communications Ltd, the legal entity responsible for all rights, obligations, and liabilities under this Agreement;
- 1.1.2 **"4Sight Communications Ltd"** means a company registered in England with number 08160359, of 7th Floor, Chancery House, St Nicholas Way, Sutton, Surrey SM1 1JB;
- 1.1.3 **"CloudClevr Equipment"** means the equipment (if any) owned by CloudClevr and/or its Vendors or their suppliers, which is located either at the Client Sites, the CloudClevr Sites or the Vendor Sites (as applicable) in order to provide the Services. Unless stated explicitly otherwise in the Contract, all equipment to be provided under the Contract is CloudClevr Equipment;
- 1.1.4 **"CloudClevr Site"** means the locations where the Services (other than those provided by Vendors) will be provided from (where applicable to a particular Service) including any data centres owned and operated by CloudClevr, its Vendors or their suppliers;
- 1.1.5 **"CloudClevr MSA Terms"** means these CloudClevr MSA Terms and Conditions, as updated from time to time;
- 1.1.6 **"CloudClevr Tools and Methodologies"** means all methodologies, software, software development tools, testing tools, methods, processes, templates, reports, concepts and techniques and other materials (including any enhancements thereto) owned by or licensed to CloudClevr and used by CloudClevr in the supply of Goods and/or provision of Services;
- 1.1.7 **"Acceptable Use Policy"** means the acceptable use policies of CloudClevr and/or any Vendor (to the extent applicable to a Service) as current from time to time;
- 1.1.8 **"Acceptance Date"** means the date on which the Client signs or is deemed to have signed the acceptance test certificate as set out in Clause 3.3.1 (if applicable);
- 1.1.9 **"Acceptance Test Period"** means five (5) Business Days from the date that the Client is notified by CloudClevr in writing that the Service is ready for use (if applicable);
- 1.1.10 **"Acceptance Tests"** means the tests to be carried out by the Client following handover of the Services during the Acceptance Test Period as set out in the relevant Service Document (if applicable) and **"Acceptance Testing"** shall be construed accordingly;
- 1.1.11 **"Authorised User"** means any employee, member, partner, agent or contractor of Client, duly authorised by Client;
- 1.1.12 **"Business Day"** means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;
- 1.1.13 **"Charges"** means the charges for the Goods, User Licences and/or Services payable by the Client to CloudClevr or, where applicable, direct to a Vendor, as set out in, or calculated in accordance with, an applicable Work Order or otherwise advised by CloudClevr to the Client, which shall include any Fixed Charge (where applicable), any Usage Charges (if applicable), any Non-Recurring Charges (if applicable) and any other charges set out in the Contract;
- 1.1.14 **"Client Data"** means all data, information, text, drawings or other materials which are embodied in any electronic or tangible medium of the Client to which CloudClevr has access during the Term;
- 1.1.15 **"Client Default"** has the meaning given to it in Clause 4.8;
- 1.1.16 **"Client Equipment"** means the hardware, plant, machinery, operating and other systems, software, applications, communications networks and other assets on which CloudClevr is requested to perform the Services and/or install the Goods;
- 1.1.17 **"Client Site"** means the Client's relevant premises, office accommodation and other facilities;
- 1.1.18 **"Confidential Information"** means all confidential information (however recorded or preserved) disclosed by a Party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Goods and/or Services (together, its **"Representatives"**) to the other Party and/or that Party's Representatives in connection with the Contract, which information is either labelled confidential, represents the non-public information of the relevant Party or should otherwise reasonably be considered as confidential because of its nature and the manner of its disclosure;
- 1.1.19 **"Contract"** means each contract between CloudClevr and the Client, each comprised of this MSA, being the Term Sheet and CloudClevr MSA Terms, together with a Live Work Order from time to time (together with any other documents or terms incorporated into the Contract by explicit reference in such Work Order, including any Service Document or to which the provision of certain Goods and/or Services hereunder is subject (including those of any Vendor)), which MSA and Live Work Order when signed by CloudClevr and the Client shall govern the supply of the relevant Goods and/or Services by CloudClevr to the Client, and any reference to the "Contract" shall be deemed to include reference to this MSA and all Live Work Orders (including any and all said referenced documentation and terms therein);
- 1.1.20 **"Data Protection Legislation"** means and includes the General Data Protection Regulation (EU) 2016/679 ("**GDPR**") and any national implementing laws, regulations and secondary legislation relating to data protection and privacy, including the Data Protection Act 2018 (DPA 2018) as amended from 31/12/2020 to incorporate GDPR ("**UK GDPR**"), the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), as amended or updated from time to time, in the UK, as well as any successor legislation to the UK GDPR and DPA 2018; and, controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisation measures, have the meanings set out in the Data Protection Legislation.
- 1.1.21 **"Deliverables"** means the Goods and/or the output of the Services including, where applicable, the installation and testing of the Goods;
- 1.1.22 **"Delivery Location"** has the meaning given to it in Clause 7.1;
- 1.1.23 **"Due Date"** means the due date for payment of an invoice for the Charges as set out in Clause 10.5;
- 1.1.24 **"Fixed Charges"** means the on-going fee for the provision of a Service, as detailed on a Work Order (and, if applicable, as amended in line with the Contract);
- 1.1.25 **"Goods"** means the goods (or any part of them) to be supplied to the Client by, on behalf of or through CloudClevr, as agreed in the applicable Work Order including, but not limited to, hardware, devices, components and software;
- 1.1.26 **"Goods Specification"** means any specification for the Goods, including any relevant plans or drawings, as specified in an applicable Work Order;
- 1.1.27 **"Intellectual Property Rights"** means any and all intellectual property rights of any nature, whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, Know-How and any other intellectual property rights that subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites, and in each case all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these that may subsist anywhere in the world, in each case for their full term, together with any future rights and renewals or extensions;
- 1.1.28 **"Know-How"** means all the ideas, designs, documents, diagrams, information, devices, technical and scientific data, secret and other processes and methods used in connection with a Party's business, as well as, all available information regarding marketing and promotion of the goods and services of a Party, as well as, all and any modifications or improvements to any of them which do not constitute entirely new goods or services;
- 1.1.29 **"Laws"** means 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 having force and effect in England and Wales;
- 1.1.30 **"Live Work Order"** means a Work Order which has come into force and neither expired nor otherwise terminated;
- 1.1.31 **"Minimum Term"** means the minimum term for which each Service shall be provided to the Client (if applicable), as set out on the Work Order and calculated from the Service Commencement Date for that Service or as otherwise specified in any applicable Service Document. The Minimum Term is not applicable to Pay As You Go Services;
- 1.1.32 **"MSA Commencement Date"** is the date set out in the Term Sheet;
- 1.1.33 **"MSA Termination Date"** is the date on which the MSA together with all then Live Work Orders, terminate, howsoever occurring;

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- 1.1.34 **"Network Services"** means the provision of a voice and/or data telecommunications service, whether via a telephone number, IP address etc. as described in each Work Order and the provision of which is subject to the terms and conditions scheduled to each Work Order;
- 1.1.35 **"Non-Recurring Charges"** means the one-off charges (if any) for the Services or Goods, including any installation fees or purchase fees, as detailed on a Work Order (and, if applicable, as amended in line with the Contract);
- 1.1.36 **"Normal Working Hours"** 9 a.m. to 5.30 p.m. on any Business Day;
- 1.1.37 **"Parties"** means CloudClevr and the Client collectively and **"Party"** will mean either one of them, as determined by the context;
- 1.1.38 **"Pay As You Go Services"** means Services described as such in the applicable Work Order, which are provided on the basis that there is no fixed Minimum Term and no commitment to paying a Fixed Charge;
- 1.1.39 **"Platform"** means a hosted, online platform owned, managed, licensed or otherwise provided by CloudClevr or a Vendor, which may include websites, a hosted VPN environment, hub, portal or similar, through which users access XaaS Services;
- 1.1.40 **"Platform Terms of Use"** means the terms of use applicable to, and accessible via, any Platform provided by CloudClevr or a Vendor to the Client or End Users for use with the Services or otherwise pursuant to the Contract;
- 1.1.41 **"Pricing Schedule"** means the then-current CloudClevr pricing schedule setting out the Usage Charges (if applicable) to a particular Service, as provided to the Client by CloudClevr from time to time in accordance with a Work Order or applicable Service Document;
- 1.1.42 **"Professional Services"** mean the services described in a Work Order (or applicable Service Document) for professional services;
- 1.1.43 **"Proposal Part B"** means Part B of the Proposal identified in the Term Sheet;
- 1.1.44 **"Service Commencement Date"** means in respect to each Service, 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 Client is notified by CloudClevr in writing that the Service is ready for use; or (iii) the date that the Client actually starts using the Service, unless otherwise agreed in writing between the Parties or otherwise specified in the applicable Service Document;
- 1.1.45 **"Service Document"** means CloudClevr's or a Vendor's service document current at the time of entering into and referenced on the Work Order, containing details of the services CloudClevr or its Vendor offers (or the component parts thereof) and any additional terms applicable thereto, which are available from CloudClevr upon request;
- 1.1.46 **"Service Levels"** means the service levels set out in the SLA in accordance with which CloudClevr will provide the Services, or, where clause 3.1.2 applies, the Vendor SLA (if any);
- 1.1.47 **"Services"** means the services to be provided to the Client by, on behalf of or through CloudClevr (including by Vendors), as agreed in the applicable Work Order, including the installation, provision of access to (including through the acquisition of User Licences), support and maintenance of, Goods, XaaS Services, Network Services, and network access and connectivity more generally, and the provision of ancillary professional services in respect to the foregoing;
- 1.1.48 **"Services Specification"** means the description or specification for the Services, including, where applicable, the scope, timetable and milestones of the Services together with any Deliverables, as set out in the applicable Work Order;
- 1.1.49 **"SLA"** means CloudClevr's service level agreement as set out on the Website (<https://CloudClevrcomms.com/service-level-agreements/>), as the same may be updated from time to time;
- 1.1.50 **"Software"** means any software (including any Platform where the context so admits) to which the Client is provided with access pursuant to the Contract, or any Vendor or third party software which the Client purchases through CloudClevr including any software embedded in the CloudClevr Equipment and/or Client Equipment;
- 1.1.51 **"Target Service Commencement Date"** means the date by which CloudClevr shall use reasonable endeavours to handover the Services (if applicable), as detailed in the applicable Work Order (or Service Document if applicable);
- 1.1.52 **"Term"** means the term of the Contract, which shall start on the MSA Commencement Date and terminate on the MSA Termination Date;
- 1.1.53 **"Term Sheet"** means the Term Sheet attached to these CloudClevr MSA Terms, and comprised in this MSA;
- 1.1.54 **"Third Party Materials"** has the meaning given to it in Clause 9.3;
- 1.1.55 **"Usage Charges"** means the fees (if any) for the use of a Service, calculated as set out in the relevant Pricing Schedule and the applicable Service Document and in accordance with the usage information collected by CloudClevr's or a Vendor's monitoring and reporting systems;
- 1.1.56 **"User Licences"** means licences required to enable the Client and its Representatives to access and use relevant Cloud Services and Data Services;
- 1.1.57 **"Vendor"** means a third party supplier of CloudClevr, which supplies Goods or Services to the Client under the Contract;
- 1.1.58 **"Vendor Equipment"** the equipment (if any) owned by a Vendor and/or its suppliers, which is located either at Client Sites or the Vendor's Sites (as applicable) in order to provide the Services;
- 1.1.59 **"Vendor Services"** means any Service provided by a Vendor;
- 1.1.60 **"Vendor SLA"** means a Vendor's service level agreement (copies of which may be found on the Website at <https://CloudClevrcomms.com/service-level-agreements/> or otherwise requested from CloudClevr) as may be applicable to a Vendor Service detailed as a Work Order Service in a Work Order;
- 1.1.61 **"Virus"** means, without limitation, any malicious code, trojans, worms and computer viruses, lock, authorisation key or similar device that impairs or could impair the operation of the Goods and/or the Services (including Vendor Services);
- 1.1.62 **"Website"** means CloudClevr's nominated website from time to time, currently <https://CloudClevrcomms.com/>;
- 1.1.63 **"Work Order"** has the meaning given to it in Clause 2.2, and
- 1.1.64 **"XaaS Services"** means any hosted, online data and/or cloud service, available via a Platform, which may comprise, without limitation, software as a service, platform as a service, infrastructure as a service, disaster-recovery-as-a-service, colocation and so forth.
- 1.2 In this MSA, each Work Order and throughout the Contract, the following rules apply:
- 1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.3 any phrase introduced by the terms **including, include, in particular** or any similar expression will be construed as illustrative and will not limit the sense of the words preceding those terms;
- 1.2.4 a reference to **"writing"** or **"written"** includes emails (and where CloudClevr is the recipient, emails should be sent to info@CloudClevrcomms.com); and
- 1.2.5 words of a technical nature used in the Contract will (unless inconsistent with the context) be construed in accordance with general trade use in the IT/telecommunications industry in the United Kingdom.
2. **BASIS OF CONTRACT**
- 2.1 This MSA will operate as a master services agreement which specifies the provisions governing the supply of Goods and/or the provision of Services to the Client and under which Work Orders (defined below) are executed.
- 2.2 A **"Work Order"** is an order for Goods and/or Services under this MSA which will form part of a Contract, as agreed between the Parties by way of any, or a combination, of the following:
- 2.2.1 a written agreement signed by an authorised representative of both Parties in a CloudClevr Work Order standard form (including Proposal Part B (if any)) and which includes the necessary information so as to constitute a Work Order, or some similar written document provided or approved by CloudClevr from time to time; and/or
- 2.2.2 an exchange of emails evidencing an intention to enter into a Work Order under this MSA, only when confirmed by CloudClevr in writing; and/or
- 2.2.3 a purchase or requisition order sent by the Client to CloudClevr, whether by email or otherwise, the content of which is agreed to by CloudClevr in writing.
- 2.3 All Work Orders will be subject to the terms of this MSA; in the event of a conflict between the MSA and the Work Order, the terms of the MSA will take precedence, unless the opposite is expressly stated in the Work Order; and in the event of a conflict between the Term Sheet and these CloudClevr MSA Terms, the Term Sheet shall take precedence.
- 2.4 Work Orders may be added, removed or revised from time to time in the same manner as under Clause 2.2.
- 2.5 A Work Order will only be deemed to be agreed and binding on the Parties if it is a written document, and such document is signed by an authorised representative of each Party, and a Work Order will commence on such date as is set out therein.
- 2.6 Each Live Work Order, together with the MSA, will constitute a separate and entire Contract between the Parties in relation to the subject matter of the applicable Work Order.
- 2.7 The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of CloudClevr or any applicable Vendor which is not set out in the Contract.
- 2.8 Any samples, drawings, descriptive matter or advertising issued by or on behalf of CloudClevr or, where applicable, a Vendor, and any descriptions of

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the Goods or illustrations or descriptions of the Services contained in CloudClevr's, or any applicable Vendor's, catalogues, brochures, website or other documentation or publication are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. Unless otherwise agreed by the Parties, they will not form part of the Contract or have any contractual force.

2.9 Unless explicitly stated by CloudClevr, any quotation or estimate given by CloudClevr will not constitute an offer, and is only valid for the period stated on the quotation or estimate or otherwise as communicated by CloudClevr to Client from time to time.

3. PROVISION OF SERVICES

3.1 CloudClevr will:

3.1.1 provide the Services in accordance with the Contract and with such skill and care as is generally acceptable within the telecommunications industry and, where maintenance and/or support Services are included, in accordance with any agreed Service Levels; or

3.1.2 where applicable, use its reasonable endeavours to ensure that the applicable Vendor provides the Vendor Services with reasonable skill and care and in accordance with the applicable Vendor SLA (if any).

3.2 Where a Vendor Service is partially or wholly unavailable, CloudClevr shall use its reasonable endeavours to propose appropriate remedial alternatives and the costs for the same, which the Client shall at its discretion determine whether or not to request a Work Order for the remedial alternative, subject always to the Client paying the costs.

3.3 Any Vendor Service (including XaaS Services) will be provided strictly subject to the relevant Vendor's standard terms and conditions copies of which will be made available to the Client via the Website or other Platform.

3.4 Where a Service has a Target Service Commencement Date, CloudClevr will notify the Client in writing when it is ready to hand-over that Service to the Client. Where a Service does not have a Target Service Commencement Date (such as Professional Services) CloudClevr shall inform the Client 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 Work Order (or Service Document if applicable):

3.4.1 The Client shall have the Acceptance Test Period in which to carry out the Acceptance Tests. The Client shall sign CloudClevr's standard acceptance test certificate upon the successful passing of the Acceptance Tests and promptly return it to CloudClevr.

3.4.2 In the event that the Services do not pass the Acceptance Tests, the Client shall serve written notice to this effect on CloudClevr. In the event that the Client has not: either (i) signed and returned the acceptance test certificate or (ii) served notice that the Services have failed to pass the Acceptance Tests, by the expiry of the Acceptance Test Period, the Client shall be deemed to have signed the acceptance test certificate upon expiry of the Acceptance Test Period. If the Client has served notice that the Services have failed to pass the Acceptance Tests before the expiry of the Acceptance Test Period then CloudClevr shall remedy any defect in the Services as soon as reasonably possible and re-submit the Services to the Client for Acceptance Testing.

3.4.3 CloudClevr, or its Vendor, shall have the right, but not the obligation, to be present during the carrying out of the Acceptance Tests and to that end, the Client shall provide CloudClevr with not less than two (2) Business Days' notice of the carrying out of the Acceptance Tests.

3.5 Where CloudClevr agrees to delay the Service Commencement Date following the Client's request, or the Target Service Commencement Date is not met as a result of the Client's delay or failure to fulfil its obligations under the Contract, the Fixed 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 CloudClevr to agree to any delayed handover of the Services.

3.6 CloudClevr shall use all reasonable endeavours to (or procure that the Vendor shall) meet any performance dates for the Services specified in the Work Order, but any such dates shall be estimates only, unless otherwise agreed in writing by the Parties.

3.7 CloudClevr will have the right to make such changes to the Services as are reasonably necessary to comply with any applicable Vendor's instructions, any applicable statutory, regulatory or safety or technical/operational requirement, provided that such changes do not materially affect the nature or quality of the Services, and that CloudClevr notifies the Client in writing prior to such changes taking effect.

3.8 With respect to any Services which include support and maintenance services, unless otherwise agreed in writing by CloudClevr, such Services do not include services relating to or required as a result of any of the following, and CloudClevr will be entitled to make additional charges for any such services as required from time to time:

3.8.1 the Client's installation of any new hardware or software onto the Client Equipment not supplied or approved by CloudClevr;

3.8.2 the Client's own maintenance, repair, substitution or replacement of any Client Equipment;

3.8.3 support in respect of any third party hardware or software application, whether or not connected to the Client Equipment, that is not supplied or approved by CloudClevr;

3.8.4 the addition of any third party hardware or software to the Client Equipment without CloudClevr's agreement in writing;

3.8.5 failure of the Client to maintain the necessary environmental conditions for the operation of Client Equipment;

3.8.6 failure of the Client to comply with CloudClevr's reasonable prior written recommendations relating to the use of the Client Equipment; or

3.8.7 any support or maintenance undertaken to the Client Equipment by persons not authorised or approved by CloudClevr.

3.9 Testing and acceptance criteria and procedure will be agreed in writing by the Parties in the applicable Work Order as part of the Services Specification.

3.10 Time will not be of the essence in relation to the Contract, and any Work Order thereunder.

4. CLIENT OBLIGATIONS

4.1 The Client will ensure that appropriate environmental conditions are maintained for the Goods and/or Deliverables and will ensure that such Goods and/or Deliverables are housed and operated in a proper manner in accordance with CloudClevr's and any applicable manufacturer's instructions.

4.2 Where appropriate, the Client will nominate an authorised representative to be available to liaise with, and respond to queries from, CloudClevr in respect of the provision of Services and the supply of Goods.

4.3 The Client will ensure that the Goods and/or Deliverables (or any part thereof) are not:

4.3.1 modified without CloudClevr's prior written approval (which will not be unreasonably withheld or delayed);

4.3.2 subjected to excessive physical and/or electrical stress, accident, neglect, misuse or other damage;

4.3.3 used in conjunction with any software, digital or magnetic-media, accessory or consumable which does not meet with CloudClevr or the relevant Vendor's specifications, or which are defective; or

4.3.4 attached to any object, repaired or reinstalled without CloudClevr's prior written approval (which will not be unreasonably withheld or delayed).

4.4 In the event that the Goods and/or Deliverables are subjected to any of the acts set out in Clause 4.3, CloudClevr reserves the right to charge for any remedial action required on a time and materials basis, in accordance with CloudClevr's then current rates from time to time in force.

4.5 The Client will:

4.5.1 co-operate with CloudClevr in its performance of the Services and provide any assistance or information as may reasonably be required by CloudClevr to facilitate the performance of the Services, including all relevant Client Data;

4.5.2 as soon as is practicable, report to CloudClevr in writing any faults in the Goods and/or Deliverables; and

4.5.3 carry out a back-up operation in accordance with CloudClevr's, and/or any applicable Vendor's, recommendation and keep full back-up copies of all of its data;

4.5.4 maintain adequate and up-to-date anti-Virus software on the Client Equipment at all times;

4.5.5 ensure that the terms of the Work Order and, where applicable, the Goods Specification and Services Specification are complete and accurate;

4.5.6 provide CloudClevr, its employees, agents, consultants and subcontractors, with access to the Client's Sites as reasonably required by CloudClevr in order to provide the Services and take reasonable care to ensure the safety of CloudClevr personnel and/or representatives while they are accessing the Client's Sites;

4.5.7 prepare the Client's Sites and the Client Equipment for the supply of the Services and/or installation and/or use of the Goods in accordance with CloudClevr's reasonable prior written requests;

4.5.8 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are scheduled to begin;

4.5.9 at its own expense, execute all documents and do all acts and things reasonably required by CloudClevr to give effect to the terms of the Contract and provide access to all information and documentation which is within its possession which is reasonably required by CloudClevr to enable it to fulfil its obligations hereunder; and

4.5.10 provide to CloudClevr in a timely manner all data, information, including answers to queries and decisions, and documentation reasonably required by CloudClevr to enable CloudClevr to perform its obligations under the Contract and will ensure that such data, information and documentation is complete and accurate.

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- 4.6 The Client will operate the Goods, applicable Services and/or Deliverables in accordance with CloudClevr's or, as appropriate, the applicable Vendor's instructions and/or best practice guidance provided to the Client by CloudClevr or such Vendor from time to time.
- 4.7 The Client will ensure that all personnel assigned by it to provide assistance to CloudClevr in its performance of its obligations under the Contract will have the requisite skills, qualifications and experience to perform the tasks assigned to them.
- 4.8 If CloudClevr's performance of any of its obligations in respect of the Services and/or Goods is prevented or delayed by any act or omission by the Client or failure or delay by the Client to perform any relevant obligation ("**Client Default**"):
- 4.8.1 CloudClevr will have the right, without limiting its other rights or remedies, to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays CloudClevr's performance of any of its obligations under the Contract;
- 4.8.2 CloudClevr will not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Client's failure or delay to perform any of its obligations as set out in this Clause 4.8; and
- 4.8.3 the Client will reimburse CloudClevr on written demand for any costs or losses sustained or incurred by CloudClevr arising directly or indirectly from a Client Default.
5. **CLIENT USER RELATED OBLIGATIONS**
- 5.1 The Client shall permit only its Authorised Users to use the Services, including access to any Platform.
- 5.2 The Client for itself and its Authorised Users agrees to use the Services solely in connection with its general business purposes. The Client acknowledges that the Services are not designed to be used in circumstances in which errors or inaccuracies in the content, functionality, services, data or information provided by the Services or the failure of the Services, could lead to death, personal injury, or severe physical or environmental damage. Unless expressly authorised by CloudClevr in the Contract, the Client agrees not to use (or allow any Authorised User to use) the Services for any such purpose.
- 5.3 With regard to Services, including the XaaS Services, certain Deliverables may be offered via the Website or Platform and the following provisions shall apply to Client's use of and access to such Services and Deliverables and access by your Authorised Users:
- 5.3.1 Client access and that of Client's Authorised Users is pursuant and limited to the licence set out in the relevant Work Order;
- 5.3.2 CloudClevr does not guarantee that any Platform, including the Website, or any content on it, will always be available, uninterrupted or error-free. Where applicable, access to the Platform is permitted on a temporary basis. CloudClevr or a relevant Vendor, may suspend, withdraw, discontinue or change all or any part of such Platform but, where reasonably practicable, shall give reasonable notice of such and endeavour to inform Client when the service has been resumed (but which may be, without limitation, a message on the access page to the Platform or by email);
- 5.3.3 Client is responsible for ensuring that all persons who access the Platform through its internet connection or pursuant to this Contract are aware of these terms of use in respect of the Services and any Platform, the Platform Terms of Use (if any), the applicable Acceptable Use Policy (if any) and any other applicable terms and conditions CloudClevr may reasonably notify to Client from time to time via the Website, or in writing, including all relevant Vendor terms, and that your users comply with them;
- 5.3.4 if Client or Client's Authorised Users choose, or are provided with, a user identification code, password or any other piece of information as part of CloudClevr's or a Vendor's security procedures, each must treat such information as confidential. Neither Client nor Client's Authorised Users may disclose the same to any third party;
- 5.3.5 CloudClevr and its relevant Vendors have the right to disable any user identification code or password, whether chosen by you, an Authorised User or allocated by CloudClevr or the Vendor, at any time, if in CloudClevr's reasonable opinion Client or an Authorised User has failed to comply with any of the provisions of Clauses 5.3.3 and/or 5.3.4;
- 5.3.6 if Client knows or suspects that anyone other than Client or an Authorised User knows a Platform user identification code and/or password, you must promptly notify CloudClevr in writing; and
- 5.3.7 you will notify CloudClevr promptly upon any person ceasing to be an Authorised User in order that CloudClevr or the relevant Vendor can remove their access to the Services.
- 5.4 The Client shall not (and shall procure that all users of the Services for whom it is responsible shall not):
- 5.4.1 use the Services, Platform, Software, CloudClevr Site, or CloudClevr Equipment in any way that violates any Laws, or act or omit to act in any way

- which will place CloudClevr in breach of any Laws including but not limited to the Communications Act 2003;
- 5.4.2 use the Services, Platform, Software, CloudClevr Site or CloudClevr 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);
- 5.4.3 allow any unauthorised user or third party access to, or use of the Client Equipment, the CloudClevr Equipment, the CloudClevr Site (if applicable) and/or the Services and shall take all reasonable security measures to prevent the same;
- 5.4.4 add to, modify nor interfere in any way with the Platform, Software, CloudClevr Equipment (if applicable), any equipment which is not Client Equipment, or the Services;
- 5.4.5 use the Platform, Software, CloudClevr Site, the CloudClevr Equipment, the Client Equipment, or the Services in any way that:
- (a) would or may be harmful, or would or may be harmful or detrimental to the reputation of CloudClevr and/or its Vendors; and/or
- (b) do anything that may be dangerous or a nuisance or inconvenience to other users of CloudClevr or its Vendor's services or the CloudClevr Site.
- 5.5 You acknowledge that the XaaS Services do not include (but other Services specified in your Work Orders with CloudClevr may):
- 5.5.1 any services, systems or equipment required to access the internet (and save as otherwise agreed with CloudClevr, that the Client is solely responsible for procuring access to the internet and for all costs and expenses in connection with internet access, communications, data transmission and wireless or mobile charges incurred by it in connection with use of XaaS Services); and
- 5.5.2 dedicated data back-up or disaster recovery facilities (and the Client should ensure it at all times maintains backups of all Client Data).
- 5.6 The Client is responsible for (and shall be liable to CloudClevr in respect of) the use of the Services (including any incurred charges) by any of its employees and any other person who has been given access to the Services by the Client or who has obtained access to the Services which is not due to CloudClevr's breach of the Contract and/or negligence, even if such use was not authorised by the Client.
6. **GOODS AND VENDOR WARRANTIES**
- 6.1 The Goods will be of a satisfactory quality and as described in the Goods Specification.
- 6.2 CloudClevr reserves the right to amend the Goods Specification or otherwise make changes to the Goods if required by the applicable Vendor or any applicable statutory, regulatory or safety requirements, and CloudClevr will notify the Client in writing as soon as is reasonably practicable in any such event.
- 6.3 Goods manufactured or developed by a Vendor are provided by CloudClevr on the basis of such Vendor's own terms and conditions, including such Vendor's warranty terms and, where applicable, software licence terms and conditions and the Client hereby accepts and agrees to the same.
- 6.4 In respect of Goods manufactured by a Vendor, CloudClevr will use its reasonable endeavours to procure that the Client receives the benefit of any applicable warranty provided by such Vendor.
- 6.5 Subject to any applicable Service Levels, if any Vendor Goods and/or Services fail to comply with any applicable specification and/or warranty CloudClevr will only be liable to the Client to the extent that it is able to claim against the relevant Vendor and will have no other liability whatsoever other than that which cannot lawfully be excluded.
- 6.6 Where the Client receives the benefit of a Vendor's warranty in respect of Goods, and a defect arises, the Client should be aware that such warranty may be limited or invalidated in circumstances including but not limited to:
- 6.6.1 the defect arises because the Client failed to follow the Vendor's or, where applicable, CloudClevr's, oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or, if there are none, good trade practice;
- 6.6.2 the Client alters or repairs the Goods without the written consent of CloudClevr and/or, where applicable, the relevant Vendor;
- 6.6.3 the defect arises as a result of fair wear-and-tear, wilful damage, negligence, or abnormal working conditions; and/or
- 6.6.4 the Goods differ from their description and/or any applicable Goods as a result of changes made to ensure that such Goods comply with applicable statutory or regulatory standards.
- 6.7 This MSA will apply to any repaired or replacement Goods supplied by CloudClevr in the event of a claim against a Vendor.
7. **DELIVERY OF THE GOODS**
- 7.1 Subject to Clause 7.6, CloudClevr will deliver the Goods to the location agreed in the Work Order or such other location as the Parties may agree in writing (the "**Delivery Location**") at any time after CloudClevr notifies the Client that

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- the Goods are ready or around such time and date as is stated in the Work Order.
- 7.2 Delivery of the Goods will be completed on the Goods' arrival at the Delivery Location.
- 7.3 Any dates quoted for delivery of the Goods are approximate only. CloudClevr will not be liable for any delay in delivery of the Goods, including where such delay is caused by a Force Majeure Event, Client Default or the Client's failure to provide CloudClevr with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 7.4 If CloudClevr fails to deliver the Goods paid for by the Client, its liability will be limited to the costs and expenses incurred by the Client in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 7.5 CloudClevr may deliver the Goods by instalments, which will be invoiced and paid for separately, subject to the prior written agreement of the Client (which shall not be unreasonably withheld or delayed). Any delay in delivery or defect in an instalment will not entitle the Client to cancel any other instalment.
- 7.6 In order to assist CloudClevr in meeting any applicable Service Levels, and subject to Clause 8, CloudClevr may request the Client's permission to store at the Client's Sites certain goods, spare parts, accessories, consumables, tools, wiring, devices or other equipment or items to be used by CloudClevr in its provision of the Services and the Client agrees to hold the same on a fiduciary basis as CloudClevr's bailee. Whilst such items are on the Client's Sites but are not yet earmarked for installation, the title in such items will remain with CloudClevr until such time as such items are transferred to the Client or installed at the Client's Sites as Goods and/or Deliverables.
- 7.7 Subject to Clause 8, CloudClevr may loan or procure the loan of equipment, systems or materials for trial and/or testing purposes or where required as a short term Services-solution or 'workaround' (for example, in respect of maintenance Services). In such circumstances, the Parties do not intend that title in such items will pass to the Client and the Client agrees to hold the same on a fiduciary basis as CloudClevr's bailee.
8. **TITLE AND RISK IN THE GOODS**
- 8.1 The risk in the Goods will pass to the Client on completion of delivery at the Delivery Location.
- 8.2 Title to the Goods will not pass to the Client until CloudClevr has received payment in full (in cash or cleared funds) for the Goods and any other goods that CloudClevr has supplied to the Client in respect of which payment has become due.
- 8.3 Until title to the Goods has passed to the Client, the Client will:
- 8.3.1 hold the Goods on a fiduciary basis as CloudClevr's bailee;
- 8.3.2 where practicable, store the Goods separately from all other goods held by the Client so that they remain readily identifiable as CloudClevr's property;
- 8.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 8.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on CloudClevr's behalf from the date of delivery;
- 8.3.5 notify CloudClevr immediately if it becomes subject to any of the events listed in Clause 17.2.2; and
- 8.3.6 give CloudClevr such information relating to the whereabouts and status of the Goods as CloudClevr may reasonably require from time to time, but the Client may use the Goods in the ordinary course of its business.
- 8.4 If, before title to the Goods passes to the Client, the Client becomes subject to any of the events listed in Clause 17.2.2, or CloudClevr reasonably believes that any such event is about to happen and notifies the Client accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into the Client's Equipment or another product, and without limiting any other right or remedy CloudClevr may have, CloudClevr may at any time require the Client to deliver up the Goods and, if the Client fails to do so promptly, CloudClevr is hereby granted an irrevocable license to enter any Client Sites during Normal Business Hours on not less than one Business Days' notice, or where the Goods are stored on the premises of a third party, the Client shall procure forthwith a licence for CloudClevr to enter such premises in order to recover them.
9. **USE OF THE CLIENT'S EQUIPMENT AND THIRD PARTY MATERIALS**
- 9.1 The Client will provide CloudClevr and its authorised representatives with such access, including remote access, to the Client Equipment, and any relevant licences and permits to operate the Client Equipment, as may be necessary in order for CloudClevr to perform the Services.
- 9.2 The Client grants to CloudClevr, with effect from the MSA Commencement Date and irrevocably for the duration of the Term, a worldwide, non-exclusive, royalty-free licence to use, operate, copy and modify materials owned or licenced by the Client solely for the purpose of fulfilling CloudClevr's obligations under the Contract.
- 9.3 The Client will obtain all necessary consents of third parties to the use by CloudClevr of any third party software, hardware, know how, equipment, documentation, products and other materials including any applicable element of the Client Equipment ("**Third Party Materials**") which the Client is permitted to use and is required by CloudClevr in order for it to provide the Services.
- 9.4 Where required for CloudClevr to perform the Services, the Client will maintain in force all current software maintenance agreements with the third parties supporting the Client Equipment and, where applicable, Third Party Materials, to ensure adequate assistance from such third parties.
10. **CHARGES AND PAYMENT**
- 10.1 In consideration for the supply of Goods and/or provision of Services by or on behalf of CloudClevr, the Client agrees to pay the applicable Charges.
- 10.2 Unless otherwise stated, the Charges for Goods are exclusive of all costs and charges of packaging, insurance and transport of the Goods, which will be paid in addition by the Client when the Client pays for the Goods.
- 10.3 In respect of Goods and/or Services, CloudClevr may:
- 10.3.1 invoice the Client as stated in the Work Order or as otherwise agreed in writing, before, upon or at any time after completion of delivery of the Goods and/or provision of the Services; or
- 10.3.2 where CloudClevr is required to make an advance purchase of Goods or, where applicable, procure licences, resources, components or other materials necessary for the provision of the Services, requiring capital expenditure on the part of CloudClevr, CloudClevr reserves the right to invoice the Client for the full amount of the Charges or require a deposit against the applicable Charges, and insist on receiving payment in cash or cleared funds in advance of incurring any such expenditure; or,
- if neither Clauses 10.3.1 or 10.3.2 apply;
- 10.3.3 the Non-Recurring Charges shall become invoiceable upon signature of the Work Order (or any variation thereto) as appropriate;
- 10.3.4 subject to Clause 3.4, the Fixed Charge (where applicable) shall be payable in advance from the Service Commencement Date in accordance with the payment frequency set out on the Work Order. The first payment (being for the remainder of the month in which the Service Commencement Date occurs, calculated on a pro-rata time basis, plus the following month / quarter / year, as applicable) shall be invoiceable by CloudClevr 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; and
- 10.3.5 Usage Charges (if applicable) shall be invoiceable monthly in arrears.
- 10.4 With effect from the expiry of the relevant Minimum Term, CloudClevr shall be entitled to revise the Charges to reflect CloudClevr's then current standard rates.
- 10.5 The Client will pay each invoice submitted by CloudClevr:
- 10.5.1 within Thirty (30) days of the date of the invoice; and
- 10.5.2 in full and in cleared funds to a bank account nominated in writing by CloudClevr.
- 10.6 All amounts payable by the Client under the Contract are payable in sterling and exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by CloudClevr to the Client, the Client will, on receipt of a valid VAT invoice from CloudClevr, pay to CloudClevr such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Goods or provision of the Services.
- 10.7 The Client will pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Client will not be entitled to assert any credit, set-off or counterclaim against CloudClevr in order to justify withholding payment of any such amount in whole or in part. CloudClevr may, without limiting its other rights or remedies, set-off any amount owing to it by the Client against any amount payable by CloudClevr to the Client.
- 10.8 If an undisputed invoice (or an undisputed part of an invoice) is not paid in full by the Due Date thereof, then without prejudice to CloudClevr's other rights and remedies CloudClevr reserves the right to:
- 10.8.1 charge interest on the outstanding sum on a daily basis (before as well as after any judgement) until the date of payment, at the Bank of England base rate plus four percent (4%), or if a negative rate, at four percent (4%); and/or
- 10.8.2 suspend the Services (or any part thereof) in accordance with Clause 16; and/or
- 10.8.3 use any deposit given by the Client under Clause 10.3.2, to pay any outstanding sum.
- 10.9 Any disputes not raised within six (6) months of the date of the invoice are irrevocably waived.

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- 10.10 CloudClevr reserves the right, by giving the Client prior written notice, to increase the Charges once a year in line with the percentage increase in the Retail Price Index in the preceding 12-month period plus 3%.
- 10.11 In the event of any changes in law occurring or changes by a Carrier and/or a Vendor which increase the cost for CloudClevr to deliver, operate and/or maintain the Services, CloudClevr shall be entitled to increase the Charges to reflect that increased cost at any time by serving not less than twenty-eight (28) days' written notice of such increase to the Client.

11. WARRANTIES

- 11.1 The Client warrants that:
- 11.1.1 it has the full capacity and authority to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Client;
- 11.1.2 it will provide from time to time on a timely basis all necessary information reasonably required by CloudClevr or a Vendor for the provision of the Services, and that all such information will, to the best of the Client's knowledge and belief having made reasonable enquiry, be accurate and complete;
- 11.1.3 it owns or has obtained valid licences, consents, permissions and rights to use, and where necessary to licence to CloudClevr, any materials reasonably necessary for the fulfilment of all its obligations under the Contract, including any third-party licences and consents in respect of the Client Equipment and any Third Party Materials;
- 11.1.4 it will comply with and use the Services in accordance with the terms of the Contract and all applicable laws, and will not do any act that will infringe the rights of any third party including the publishing or transmission of any materials contrary to applicable laws;
- 11.1.5 any material and/or communication received, transmitted, hosted or otherwise processed using the Services (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 Services are subject, or infringe the Intellectual Property rights of CloudClevr or its Vendors; and
- 11.1.6 CloudClevr's use in the provision of the Services or otherwise in connection with the Contract of any Third Party Materials licenced to the Client, including any hardware or software supplied by the Client to CloudClevr for use in the provision of the Services or otherwise in connection with the Contract, will not cause CloudClevr to infringe the rights, including any Intellectual Property Rights, of any third party.
- 11.2 CloudClevr warrants that:
- 11.2.1 it has the full capacity and authority to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of CloudClevr; and
- 11.2.2 it owns or has obtained valid licences, consents, permissions and rights to enable CloudClevr to comply with the Contract and to use any Intellectual Property Rights necessary for the fulfilment of its obligations under the Contract, including for the Client's use and receipt of the Goods and the Services, and that the use by CloudClevr of such Intellectual Property Rights will not, to the best of the knowledge and belief of CloudClevr (without making specific investigation in relation thereto) infringe the rights of any third parties and CloudClevr will not breach the provisions of any such necessary licences, consents, permissions and rights or cause the same to be breached.
- 11.3 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 Services during the currency of the Contract and for a period of 12 months following termination.
- 11.4 Additional costs incurred or the inability of the Client to use any Service pursuant to a breach of Clause 11.1, shall be the sole responsibility of the Client, including any and all associated Charges.

12. LIMITATION OF LIABILITY

- 12.1 THIS CLAUSE 12 SETS OUT THE ENTIRE FINANCIAL LIABILITY OF EACH PARTY TO THE OTHER (INCLUDING ANY LIABILITY FOR THE ACTS OR OMISSIONS OF ITS EMPLOYEES, AGENTS AND SUBCONTRACTORS) IN RESPECT OF:
- 12.1.1 ANY BREACH OF THE CONTRACT;
- 12.1.2 ANY USE MADE BY THE CLIENT OF THE GOODS AND/OR SERVICES; AND
- 12.1.3 ANY REPRESENTATION, MISREPRESENTATION (WHETHER INNOCENT OR NEGLIGENT), STATEMENT OR TORTIOUS ACT OR OMISSION (INCLUDING NEGLIGENCE) ARISING UNDER OR IN CONNECTION WITH THE CONTRACT.
- 12.2 EXCEPT AS EXPRESSLY AND SPECIFICALLY PROVIDED IN THIS MSA:
- 12.2.1 THE CLIENT ASSUMES SOLE RESPONSIBILITY FOR RESULTS OBTAINED FROM THE USE OF THE GOODS AND SERVICES, AND FOR CONCLUSIONS DRAWN FROM SUCH USE. CloudClevr WILL HAVE NO LIABILITY FOR ANY DAMAGE

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CAUSED BY ERRORS OR OMISSIONS IN ANY INFORMATION, INSTRUCTIONS OR SCRIPTS PROVIDED TO CloudClevr BY THE CLIENT IN CONNECTION WITH THE GOODS AND/OR SERVICES, OR ANY ACTIONS TAKEN BY CloudClevr BASED ON SUCH INFORMATION, INSTRUCTIONS OR SCRIPTS OR OTHERWISE AT THE CLIENT'S DIRECTION; AND

- 12.2.2 ALL WARRANTIES, CONDITIONS AND OTHER TERMS IMPLIED BY STATUTE OR COMMON LAW ARE, TO THE FULLEST EXTENT PERMITTED BY LAW, EXCLUDED FROM THE CONTRACT.
- 12.3 NOTHING IN THIS CONTRACT EXCLUDES OR LIMITS THE LIABILITY OF EITHER PARTY FOR:
- 12.3.1 DEATH OR PERSONAL INJURY CAUSED BY THAT PARTY'S NEGLIGENCE;
- 12.3.2 FRAUD OR FRAUDULENT MISREPRESENTATION;
- 12.3.3 A BREACH OF THE DATA PROTECTION LEGISLATION; OR
- 12.3.4 ANY OTHER LIABILITY WHICH CANNOT LAWFULLY BE EXCLUDED OR LIMITED.
- 12.4 WHERE APPLICABLE, SERVICE LEVELS STATE THE CLIENT'S FULL AND EXCLUSIVE RIGHT AND REMEDY, AND CloudClevr'S ONLY OBLIGATION AND LIABILITY, IN RESPECT OF THE PERFORMANCE AND AVAILABILITY OF THE SERVICES, OR THEIR NON-PERFORMANCE OR NON-AVAILABILITY.
- 12.5 SUBJECT TO CLAUSE 12.3 AND CLAUSE 12.4:
- 12.5.1 NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY WHETHER IN CONTRACT, TORT (INCLUDING FOR NEGLIGENCE OR BREACH OF STATUTORY DUTY), MISREPRESENTATION (WHETHER INNOCENT OR NEGLIGENT), RESTITUTION OR OTHERWISE, FOR ANY: LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF OR DAMAGE TO DATA, DEPLETION OF GOODWILL OR SIMILAR LOSSES, OR PURE ECONOMIC LOSS, OR FOR ANY INDIRECT OR CONSEQUENTIAL LOSS, COSTS, DAMAGES, CHARGES OR EXPENSES HOWSOEVER ARISING; AND
- 12.5.2 EACH PARTY'S 'S MAXIMUM LIABILITY IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY), MISREPRESENTATION (WHETHER INNOCENT OR NEGLIGENT), RESTITUTION OR OTHERWISE, ARISING IN CONNECTION WITH THE PERFORMANCE OR CONTEMPLATED PERFORMANCE OF THE CONTRACT, WILL BE LIMITED TO AN AMOUNT EQUAL TO THE CHARGES RECEIVED BY CloudClevr FOR THE GOODS AND/OR SERVICES DURING THE TWELVE (12) MONTHS PRECEDING THE DATE ON WHICH THE CLAIM AROSE.

13. CONFIDENTIALITY

- 13.1 Each Party will keep the other Party's Confidential Information confidential and will not:
- 13.1.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under the Contract ("**Permitted Purpose**"); or
- 13.1.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 13.
- 13.2 Each Party will take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Contract.
- 13.3 The Client acknowledges that CloudClevr's Confidential Information includes any designs, plans, software or other materials created by CloudClevr in connection with the supply of the Goods and/or Services and the Client agrees not to make use of any such material for any purpose other than receipt of the Goods and/or Services from CloudClevr.
- 13.4 CloudClevr acknowledges that the Client Data is the Confidential Information of the Client.
- 13.5 A Party may disclose the other Party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- 13.5.1 it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- 13.5.2 at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this Clause 13.
- 13.6 A receiving Party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and limits the disclosure so far as is possible.
- 13.7 Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information other than those expressly stated in this MSA or any Work Order are granted to the receiving Party, or to be implied from this MSA or any such Work Order.
- 13.8 The term "**Confidential Information**" does not include any information that:
- 13.8.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this Clause 13);

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- 13.8.2 was available to the receiving Party on a non-confidential basis before disclosure by the disclosing Party;
- 13.8.3 was, is or becomes available to the receiving Party on a non-confidential basis from a person who, to the receiving Party's knowledge, is not bound by a confidentiality agreement with the disclosing Party or otherwise prohibited from disclosing the information to the receiving Party;
- 13.8.4 was known to the receiving Party before the information was disclosed to it by the disclosing Party;
- 13.8.5 the Parties agree in writing is not confidential or may be disclosed; or
- 13.8.6 is developed by or for the receiving Party independently of the information disclosed by the disclosing Party.
- 13.9 The provisions of this Clause 13 will continue to apply after termination of the Contract.

DATA PROTECTION

- 14.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 14 is in addition to, and does not relieve, remove or replace a Party's obligations under the Data Protection Legislation.
- 14.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the data controller and CloudClevr is the data processor. The Term Sheet sets out the scope, nature and purpose of processing by CloudClevr, the duration of the processing and the types of personal data and categories of data subject.
- 14.3 Without prejudice to the generality of Clause 14.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to CloudClevr for the duration and purposes of the Contract.
- 14.4 Without prejudice to the generality of Clause 14.1, CloudClevr will, in relation to any personal data processed in connection with the performance by CloudClevr of its obligations under the Contract:
 - 14.4.1 process that Personal Data only on the written instructions of the Client unless CloudClevr is required by the laws of the UK or any member of the European Union or by the laws of the UK or the European Union applicable to CloudClevr to process personal data ("**Applicable Laws**"). Where CloudClevr is relying on the UK, a member of the European Union, UK law or European Union law as the basis for processing personal data, CloudClevr will promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit CloudClevr from so notifying the Client;
 - 14.4.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - 14.4.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
 - 14.4.4 not transfer any personal data outside of the UK and European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - (a) the Client or CloudClevr has provided appropriate safeguards in relation to the transfer;
 - (b) the data subject has enforceable rights and effective legal remedies;
 - (c) CloudClevr complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (d) CloudClevr complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the personal data;
 - 14.4.5 assist the Client, at the Client's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 14.4.6 notify the Client without undue delay on becoming aware of a personal data breach;
 - 14.4.7 at the written direction of the Client, delete or return personal data and copies thereof to the Client on termination of the Contract unless required by Applicable Law to store the personal data; and
 - 14.4.8 maintain complete and accurate records and information to demonstrate its compliance with this Clause 14 and allow for audits by the Client or the Client's designated auditor.

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- 14.5 CloudClevr does not outsource the processing of personal data, but in order to provide the Services it has to provide personal data to third parties, such as Vendors and localised service partners, to enable them to contact Clients. The Client consents to CloudClevr appointing certain third parties as third-party processors of personal data under the Contract. CloudClevr confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this Clause 14. As between the Client and CloudClevr, CloudClevr will remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this Clause 14.
- 14.6 Either Party may, at any time on not less than 30 days' notice, revise this Clause 14 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which will apply when replaced by attachment to this MSA).
- 15. **INTELLECTUAL PROPERTY RIGHTS**
- 15.1 Unless agreed expressly in writing in the Contract, neither Party will acquire any ownership interest in or licence of the other's Intellectual Property Rights by virtue of the Contract and, all Intellectual Property Rights belonging to a Party prior to the date of the Contract will remain vested in that Party.
- 15.2 In the absence of prior written agreement to the contrary, all Intellectual Property Rights created by CloudClevr or any employee, agent or sub-contractor of CloudClevr in the course of performing the Services will vest absolutely in CloudClevr.
- 15.3 Title to the Software and the Intellectual Property Rights within the Services, the Software and the Documentation is held by CloudClevr or its third party licensors ("**Licensors**").
- 15.4 In the event that the Client is provided with access to, or use of, third party Software, the Client agrees to abide (and shall procure that the Authorised Users agree 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 Client by CloudClevr (whether via the Platform, Website, the Software or otherwise). The Client shall (and shall procure that all users of the Software shall) only use the Software in accordance with such EULA applicable to the Software.
- 15.5 CloudClevr shall only be liable in respect of such Software to the extent liability is limited in accordance with the terms of the applicable EULA.
- 15.6 The Client agrees that CloudClevr may provide the Licensors with information regarding use of their software, including information on the number of licenses required for the Client's use or access of the Software, the country in which the Client is located and the Client's name and address.
- 15.7 The Client shall ensure that it promptly (and no later than reasonably required by CloudClevr) installs all updates to the Software that CloudClevr or its Vendors make available to the Client (unless the Contract stipulates that CloudClevr is responsible for installing such updates).
- 15.8 Unless expressly stipulated otherwise, the Client shall not (and shall procure that the Authorised Users 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, or as otherwise provided by applicable Law), (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 CloudClevr'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.
- 15.9 CloudClevr and/or a relevant Vendor or licensor (or its nominated representatives), may at CloudClevr's expense, access the Client Site and Client systems and records relevant to usage of the Software, to ascertain compliance with any EULA, during Normal Business Hours and subject to reasonable prior notice.
- 15.10 In the absence of prior written agreement to the contrary, all Intellectual Property Rights in and to the Client Equipment, the Client Data and/or Third Party Materials and any other information, materials or assets supplied or made accessible to CloudClevr or any applicable Vendor by the Client will vest in and will remain vested in the Client or, as applicable, its third party licensors, and CloudClevr will only use (and will use its reasonable endeavours to procure that such Vendor only uses) the same in accordance with the terms of the Contract and only for the purposes of supplying Goods and/or providing Services under the Contract.
- 15.11 The Client will grant or will procure the grant of a licence throughout the Term to CloudClevr and/or, where applicable a Vendor, to utilise the Client Equipment, Client Data and/or any Third Party Materials or such other information, materials or assets to the extent required for the supply of Goods and/or provision of the Services.

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15.12 All Intellectual Property Rights in and to the CloudClevr Tools and Methodologies vest in and will remain vested in CloudClevr and where any of such CloudClevr Tools and Methodologies are required by the Client to make effective use of any of the Goods and/or Services, CloudClevr grants to the Client a non-exclusive, non-transferable, non-sublicensable, royalty free licence to use such CloudClevr Tools and Methodologies for its internal business purposes only during the Term.

15.13 Subject to Clause 13 (Confidentiality), CloudClevr will be free to use its general knowledge, skill and experience and any underlying ideas, concepts, Know How, methodologies and techniques acquired as a result of the Contract or the provision of the Goods and/or Services.

15.14 The Client hereby indemnifies CloudClevr and its respective officers, directors, staff, successor and assigns against all liabilities, losses, demands, damages, charges, costs, claims, expenses and interest suffered by CloudClevr arising from, in connection with, or based on allegations that CloudClevr's access or use of the Client Data, Client Equipment and/or any Third Party Materials infringes the Intellectual Property Rights of a third party including infringement of rights which arise as a result of work carried out on any Client Data, Client Equipment and/or any Third Party Materials by CloudClevr or on CloudClevr's systems and/or the provision of any information, materials or other assets to CloudClevr by the Client (an "IPR Claim"). The Client will pay all costs and damages awarded or agreed to in settlement of an IPR Claim provided that CloudClevr:

15.14.1 furnishes the Client with prompt written notice of the IPR Claim;

15.14.2 provides the Client with all reasonable assistance in respect of the IPR Claim; and

15.14.3 gives the Client the sole authority to defend or settle the IPR Claim.

16. SUSPENSION

16.1 Without limiting its other rights or remedies, CloudClevr may, without terminating the Services, a Live Work Order or the Contract, suspend, and procure that any Vendor suspend, provision of any Services or any part thereof, in whole or in part, or all further deliveries of Goods under the Contract or any other contract between the Client and CloudClevr:

16.1.1 with immediate effect if the Client is in breach of Clause 5.4.1, 5.4.2 and/or Clause 11.1.4; and/or

16.1.2 immediately upon written notice if the Client is in breach of any other material obligation under the Contract and, in the case of remediable breach, the Client fails to remedy that breach within five (5) Business Days of written notice of the breach; and/or

16.1.3 immediately upon written notice if the Client becomes subject to any of the events listed in Clause 17.2.2, or CloudClevr has reasonable cause to believe that the Client is about to become subject to any of them; and/or

16.1.4 with immediate effect if the Client's use of the Services is damaging or disrupting the proper functioning of the infrastructure and/or equipment used to provide services to CloudClevr's other Clients or its Vendor's clients; and/or

16.1.5 with immediate effect if CloudClevr 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

16.1.6 with immediate effect where (i) CloudClevr receives notice from a third party alleging that the Client is using the Services to infringe third party Intellectual Property Rights and (ii) CloudClevr has reasonable grounds to believe that the third party's claim has merit or (iii) CloudClevr, acting reasonably, considers it necessary to suspend the Services in order to avoid or mitigate its own liability in respect of the alleged infringement.

16.2 CloudClevr's right to suspend a Service pursuant to Clause 16.1 above is without prejudice to CloudClevr's termination rights under Clause 17 below, or any other right under the Contract or at law.

16.3 Where CloudClevr has suspended the Services pursuant to Clause 16.1.1, 16.1.4, 16.1.5 or 16.1.6 above and it has not been practicable to provide written notice prior to such suspension, CloudClevr shall inform the Client as soon as is reasonably practicable thereafter.

16.4 CloudClevr shall reinstate any suspended Services as soon as reasonably possible once the circumstances giving rise to the suspension right no longer exist.

17. TERMINATION

17.1 At such time as there are no Live Work Orders in force between the Client and CloudClevr, and none anticipated within the next 3 months, either Party may give no less than 30 days' written notice to the other to terminate the Contract, including the MSA.

17.2 In addition to Clause 17.1 and without limiting its other rights or remedies (including in respect to any Live Work Order and/or any Work Order Service), each Party may terminate every Contract simultaneously (but not some only), with immediate effect by giving written notice to the other Party if:

17.2.1 the other Party commits a material breach of its obligations under such Contract and, either such breach is irremediable or, if such breach is remediable, the other Party fails to remedy that breach within fourteen (14) days after receipt of notice in writing of the breach; or

17.2.2 the other Party becomes insolvent, is unable to pay its debts or is capable of being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or an order is made or a resolution passed for the liquidation, administration, winding-up or dissolution of the other Party (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, trustee, liquidator, administrator, or similar officer is appointed over all or any substantial part of the assets of the other Party or the other Party enters into or proposes any composition or arrangement with its creditors generally or anything analogous to the foregoing occurs in any applicable jurisdiction or the other Party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business.

17.3 Without limiting its other rights or remedies, CloudClevr may terminate any Service, Live Work Order or the Contract with immediate effect by giving written notice to the Client:

17.3.1 if the Client fails to pay any amount due under the Contract within fourteen (14) days of the Due Date; and/or

17.3.2 if instructed to do so by a court of law, regulator or other appropriate authority; and/or

17.3.3 in the circumstances described in Clause 21.3.3.

17.4 Without limiting their other rights or remedies, either Party will be entitled to terminate each and every Contract simultaneously (but not some only) by prior notice in writing to the other of not less than 60 days in the event that the other Party is in breach of the Bribery Act 2010, the Modern Slavery Act 2015 or the Data Protection Legislation.

18. CONSEQUENCES OF TERMINATION

18.1 On termination of each and every Contract for any reason, as differentiated from the termination of a Live Work Order, each and every Live Work Order shall immediately co-terminate.

18.2 On termination of one or more Contracts and their associated Live Work Orders:

18.2.1 the Client will immediately pay to CloudClevr all of CloudClevr's outstanding unpaid invoices and interest under the Contract or relevant Live Work Orders as applicable, and, in respect of Services and/or Goods supplied but for which no invoice has yet been submitted, CloudClevr will submit an invoice, which will be payable by the Client immediately on receipt;

18.2.2 except in the event of termination of each and every Contract by the Client pursuant to Clauses 17.2.1 or 17.2.2 above, or by CloudClevr pursuant to Clause 17.3.2 above, where a Service is terminated or otherwise brought to an end by the Client, without cause, the Termination Payment shall be payable by the Client as a one-off lump sum upon termination.

For the purpose of this Clause 18.2.2, the "Termination Payment" shall mean:

(a) where a Minimum Term applies and termination occurs after the Service Commencement Date: (i) all arrears of Charges payable under the relevant Work Order 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 Minimum Term or the required notice period set out in a Work Order;

(b) where a Minimum Term applies but the Service Commencement Date has not yet occurred: (i) the Non-Recurring Charges, plus (ii) 50% of the first year's Fixed Charge plus (iii) all charges incurred or committed to by CloudClevr with Vendors, plus (iv) any charges identified in the relevant Work Order (or Service Document as applicable) as being recoverable pursuant to this sub-Clause, provided always that the Termination Payment to be paid pursuant to this part (b) does not exceed the total Charges which would otherwise be payable by the Client in respect of the Minimum Term;

(c) where the Service is a Pay As You Go Service: there shall be no Termination Payment; and/or

(d) where the Service is a Professional Service: as set out in the Work Order for Professional Services;

18.2.3 the Client acknowledges and agrees that the Termination Payment is based upon CloudClevr's revenue expectation which was reflected in the Charges and is compensatory in nature and not a penalty or unconscionable;

18.2.4 The Client will at the Client's sole discretion, either pay for in full or return all Deliverables which have not been fully paid for. If the Client fails to return or pay for such Deliverables, then CloudClevr is hereby irrevocably licensed by the Client (including after termination) to enter the Client's Sites and take possession of them. Until such Deliverables have been returned or paid for, the Client will be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract; and

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- 18.2.5 the accrued rights and remedies of the Parties as at termination will not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 18.3 Clauses which expressly or by implication have effect after termination will continue in full force and effect.
- 18.4 The Client shall, if required by CloudClevr, allow CloudClevr personnel to enter the relevant Client Sites during Normal Business Hours, subject to reasonable advance notice, for the purpose of removing any CloudClevr Equipment and de- installing the Services.
19. **DISPUTE RESOLUTION**
- 19.1 If a dispute arises under any part of a Contract, including any Work Order ("**Dispute**"), including any Dispute arising out of any amount due to a Party hereto, then before bringing any suit, action or proceeding in connection with such Dispute, a Party must first give written notice of the Dispute to the other Party describing the Dispute and requesting that it is resolved under this dispute resolution process ("**Dispute Notice**").
- 19.2 If the Parties are unable to resolve the Dispute within thirty (30) days of delivery of the Dispute Notice, then each Party will promptly (but no later than five (5) Business Days thereafter):
- 19.2.1 appoint a designated representative who has sufficient authority to settle the Dispute and who is at a higher management level than the person with direct responsibility for the administration of the Contract ("**Designated Representative**"); and
- 19.2.2 notify the other Party in writing of the name and contact information of such Designated Representative.
- 19.3 The Designated Representatives will then meet as often as they deem necessary in their reasonable judgment to discuss the Dispute and negotiate in good faith to resolve the Dispute. The Designated Representatives will mutually determine the format for such discussions and negotiations, provided that all reasonable requests for relevant information relating to the Dispute made by one Party to the other Party will be honoured.
- 19.4 If the Parties are unable to resolve the Dispute within thirty (30) days after the appointment of both Designated Representatives, then either Party may proceed with any other available remedy.
- 19.5 Notwithstanding the foregoing, either Party may seek interim or other equitable relief necessary (including an injunction) to prevent irreparable harm.
20. **ASSIGNMENT AND SUBCONTRACTING**
- Neither Party will, without the other Party's prior written consent (such consent not to be unreasonably withheld or delayed), assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
21. **GENERAL**
- 21.1 **Non-solicitation:** The Parties agree that neither of them will either on their own account or in partnership or association with any person, firm, company or organisation or otherwise, and whether directly or indirectly during, or for a period of six (6) months from the end of the Term, solicit or entice away or attempt to entice away or authorise the taking of such action by any other person, any person who has been engaged in the provision of the Services provided under the Contract or involved in the receipt of such Services at any time during the Term.
- 21.2 **Entire Agreement:** This MSA supersedes all prior agreements, arrangements and undertakings between the Parties and, together with all Live Work Orders, constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Parties confirm that they have not entered into the Contract on the basis of any representation that is not expressly incorporated into the Contract. Notwithstanding the foregoing, the obligations of the Parties under any pre-existing non-disclosure agreement will remain in full force and effect insofar as there is no conflict between the same.
- 21.3 **Force Majeure:**
- 21.3.1 For the purposes of this Contract, "**Force Majeure Event**" means an event beyond the reasonable control of CloudClevr including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of CloudClevr or any other party), failure of a utility service or transport network, act of God, war, pandemic, epidemic, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of CloudClevr's or subcontractors.
- 21.3.2 CloudClevr will not be liable to the Client as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 21.3.3 If the Force Majeure Event prevents CloudClevr from providing any of the Services and/or Goods for more than six (6) weeks, CloudClevr will, without

limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Client.

21.4 **Notices:**

- 21.4.1 Any notice or other communication required to be given to a Party under or in connection with this Contract will be in writing and will be delivered to the other Party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or by email.
- 21.4.2 Any notice or other communication will be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 9.00am on the second Business Day after posting, if delivered by commercial courier, on the date and at the time that the courier's delivery receipt states, or if sent by email during business hours, one hour after sending, otherwise at 9am on the next Business Day, provided always that the email has been correctly addressed to the nominated recipient of the receiving Party as set out in the Term Sheet (which nominated recipient and their email address may be updated from time to time by giving notice in accordance with this clause) and no delivery failure notification is received.
- 21.4.3 This Clause 21.4 will not apply to the service of any proceedings or other documents in any legal action.
- 21.4.4 For the purposes of this Clause 21.4, "**writing**" includes email.

21.5 **Waiver and cumulative remedies:**

- 21.5.1 A waiver of any right under the Contract is only effective if it is in writing and will not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a Party in exercising any right or remedy under the Contract or by law will constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy will preclude or restrict the further exercise of that or any other right or remedy.
- 21.5.2 Subject to the specific limitations agreed in the Contract, no remedy conferred by any provision of the Contract is intended to be exclusive of any other remedy except as expressly provided for in the Contract and each and every remedy will be cumulative and will be in addition to every other remedy given under the Contract or existing at law or in equity by statute or otherwise.

21.6 **Severability:**

- 21.6.1 If a court or any other competent authority finds that any provision (or part of any provision) of the Contract, is invalid, illegal or unenforceable, that provision or part-provision will, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract, will not be affected.
- 21.6.2 If any invalid, unenforceable or illegal provision of this Contract would be valid, enforceable and legal if some part of it were deleted, the provision will apply with the minimum modification necessary to make it legal, valid and enforceable.
- 21.7 **No partnership:** Nothing in the Contract is intended to, or will be deemed to, constitute a partnership or joint venture of any kind between any of the Parties, nor constitute any Party the agent of another Party for any purpose. No Party will have authority to act as agent for, or to bind the other Party in any way.
- 21.8 **Third parties:** A person who is not a Party to the Contract, will not have any rights under or in connection with it. Subject as specifically set out in the Contract, a person who is not a Party to the Contract will have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract, including this MSA and any Work Order, but this does not affect any right or remedy of a third party which exists or is available apart from such Act.

- 21.9 **Variation:** Except as set out in the Contract or as required by any applicable legislation or regulation, any variation, including the introduction of any additional terms and conditions to the Contract, will only be binding on the Parties when agreed in writing and signed by representative of each of the Parties.

22. **GOVERNING LAW AND JURISDICTION:**

- 22.1 **English Law:** This Contract shall be governed by, and shall be construed in accordance with, English law.
- 22.2 **English Courts:** Each Party irrevocably agrees for the benefit of each other that the courts of England shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with this Performance Undertaking (respectively "**Proceedings**" and "**Disputes**") and, for such purposes, irrevocably submits to the exclusive jurisdiction of such courts.
- 22.3 **Appropriate Forum:** Each Party irrevocably waives any objection which it might now or hereafter have to the courts referred to in Clause 22.2 (English Courts) being nominated as the forum to hear and determine any

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Proceedings and to settle any Disputes and agrees not to claim that any such court is not an appropriate forum.

22.4 **Consent to Enforcement:** Each of the Parties hereby consents generally in respect of any Proceedings to the giving of any relief or the issue of any process in connection with such Proceedings including the making,



enforcement or execution against any property whatsoever (irrespective of its use or intended use or location) of any order or judgment which may be made or given in such Proceedings.