



## 1. Introduction

1.1 The following General Terms and Conditions are the terms and conditions upon which etiCloud provides Services to a Customer who has purchased them using an Quotation or any other method agreed in place of an Quotation between the parties.

1.2 Each Service purchased may also have a set of service specific terms which may be set out in a Service Schedule

1.3 An Quotation or any other method agreed in place of an Quotation between the parties (such as email or new user form), the General Terms and Conditions and any Service Schedules which are applicable to the Services ordered, together form a Services Agreement between etiCloud and the Customer.

1.4 There are a number of capitalised terms in these General Terms and Conditions. The meaning of those terms as well as rules governing the way in which a Services Agreement shall be interpreted are detailed in clause 33 (below).

## 2. Term, Minimum Service Term, Professional Service Term

2.1 A Services Agreement shall commence on the Effective Date and shall expire on the expiry or other lawful termination of all Services ordered under that Services Agreement (save in circumstances where it is terminated earlier pursuant to these General Terms and Conditions).

2.2 The term of each Service shall commence on the Service Commencement Date and shall either:

2.2.1 in the case of each Service other than Professional Services, continue for the Minimum Service Term and thereafter, until terminated in accordance with the General Terms and Conditions; or

2.2.2 in the case of Professional Services, shall terminate upon expiry of the Professional Service Term, save in circumstances where the Service is either terminated prior to the expiry of the Minimum Service Term and/or Professional Service Term, pursuant to these General Terms and Conditions.

## 3. Services, Service Levels and Service Credits

3.1 In consideration for and subject to the payment by the Customer of the applicable Charges, etiCloud shall provide the Services selected in an Quotation to the Customer at the Site, and shall use reasonable endeavours to ensure that they are provided in accordance with:

3.1.1 these General Terms and Conditions; and

3.1.2 the relevant Service Schedule (including the Service Description and Service Levels); and

3.1.3 in the case of Professional Services, the Acceptance Criteria (if any), in each case subject to the Customer complying with the Customer Obligations applicable to its receipt of the relevant Services.

3.2 Subject to clause 3.3, the Customer can remedy for total service loss of the managed platform as outlined in 2.4.2 of the Service Level Agreement by either payment of Service Credits or damage is limited to refund of the service loss.

3.3 Where a Warranty Period is provided for any Bespoke Software and/or other Deliverables under a Professional Services Schedule, the Customer's sole and exclusive remedy for failure by etiCloud to provide the Professional Services in accordance with the relevant Professional Service Schedule shall be during the Warranty Period and at etiCloud option either the:

3.3.1 repair, correction and/or replacement of the Professional Services (including Bespoke Software and/or other Deliverables) such that they are provided materially in accordance with the relevant Professional Service Schedule; or

3.3.2 refund of the applicable part of any Charges paid in respect of the Professional Services (including Bespoke Software and/or other Deliverables) which are not provided materially in accordance with the relevant Professional Service Schedule.

3.4 Whilst etiCloud does not guarantee fault free Services (it being technically impracticable to do so), insofar as it is reasonably possible, etiCloud will use reasonable efforts to restore a Service to the contracted level of service as quickly as possible in the event of any failure.

3.5 Any timescales in a Services Agreement (including in a Professional Service Plan) in relation to etiCloud provision of the Services are indicative only. etiCloud will use reasonable efforts to meet such timescales and will notify the Customer (where it is reasonably practical to do so) where it is unable to comply with such timescale

3.6 Where the Customer requires services (and etiCloud agrees to provide such services) which are additional to the Services (including for the avoidance of doubt, Professional Services) typically offered by etiCloud, the terms upon which such additional services shall be supplied will be detailed in a separate Quotation and Services Schedule and the parties will agree any necessary amendments to these General Terms and Conditions to take account of such additional services. Such additional services shall be considered to be Services and shall form part of a Services Agreement from the date of the relevant Quotation for those additional services.

## 4. Professional Service Schedules

4.1 The Customer shall provide the Supplier with a request for a Professional Service (in the form specified by etiCloud from time to time) setting out the requirements and specifications of the services which it is requesting from etiCloud, including a description of what work is to be done, dates by



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which it or each stage of the work is requested to be started and finished, Deliverables, In- put Materials and such other information as etiCloud may request to allow etiCloud to prepare a draft Professional Service Schedule.

4.2 etiCloud shall, as soon as reasonably practicable, provide the Customer with a draft Professional Service Schedule.

4.3 Customer shall discuss and agree the draft Professional Service Schedule and when it has been agreed, they shall both sign a copy of it and it shall become a Professional Service Schedule and together with the relevant Quotation, become a Services Agreement.

4.4 Unless specified otherwise in a Professional Service Schedule, etiCloud may charge for the preparation of a Professional Service Schedule on a time and materials basis.

4.5 Once a Professional Service Schedule has been agreed and signed in accordance with clause 4.3, no amendment shall be made to it except in accordance with a Services Agreement.

4.6 Details for the Acceptance Tests and Acceptance Criteria for sign off of any campaign or other distinct set of activities the subject of the Professional Service Schedule shall be detailed in the Professional Service Schedule. If no Acceptance Tests or Acceptance Criteria are specified, acceptance of Services will occur upon their performance. Unless specified to the contrary in a Professional Service Schedule, the Customer agrees that productive use of the Services will constitute deemed acceptance of the Services.

4.7 If the Services fail their Acceptance Tests then at the Customer's option:

4.7.1 etiCloud shall promptly analyse and report to the Customer on the root cause of such failure and then modify the Services to the extent the Customer reasonably determines is necessary for it to pass repeated Acceptance Tests.

### 5. Customer Obligations and Use of the Services

5.1 The Customer shall at all times comply with any Customer Obligations which are applicable to Services which it has purchased under a Services Agreement.

5.2 The Customer shall be entitled to use a Service for its own internal business purposes in accordance with the terms of a Services Agreement unless otherwise explicitly set out in a Service Schedule. The Customer shall:

5.2.1 comply with the provisions of a Services Agreement;

5.2.2 not and ensures its Users do not use or permit the use of the Services in such a way as to cause interruption, interference, impairment or

degradation of any communications network that is used to provide the Services;

5.2.3 comply with and ensures that its Users comply with the Law in the receipt of and use of the Services including ensuring that they are not used for any unauthorised access or denial of service attacks which is or would be an offence under Section 1, 2, or 3 of the Computer Misuse Act 1990;

5.2.4 obtain and maintain all necessary licences and consents in relation to the use of the Customer In-put Material and Customer Equipment necessary for the provision and receipt of the Services;

5.2.5 comply with and ensures that its Users comply with the Service Schedules and any Acceptable Use Policies applicable to the Services received as described in the Acceptable Usage Policy;

5.2.6 comply with and ensure that its Users comply with any reasonable instructions given to it by etiCloud as previously agreed with the Customer's management from time to time in connection with the Services;

5.2.7 not make or permit any modifications to the Service without etiCloud prior written consent (save as may be permitted by the relevant Service Schedule);

5.2.8 be responsible for any access and use of the Service by Users, all charges incurred and compliance with all terms and conditions by it and Users under a Services Agreement;

5.2.9 ensure that it maintains a database of its Users and request in a reasonable timeframe to terminate access immediately for anyone who is no longer a User; and

5.2.10 provide, in a timely manner, such Customer In-put Material as is specified in a Service Schedule and such other Customer In-put Material as etiCloud may reasonably request, and ensure that it is accurate in all material respects.

5.3 The Customer shall ensure that both it and its Users do not use the Services:

5.3.1 to create, send, knowingly receive, upload, download, or use any material or data which is capable of being resolved into material which is defamatory, offensive, abusive, indecent, obscene or menacing, or in breach of copyright, confidence, privacy or any other rights;

5.3.2 to cause annoyance, inconvenience or anxiety;

5.3.3 to "spam" or to send or provide unsolicited advertising or promotional material or, knowingly to receive responses to any spam, unsolicited advertising or promotional material sent or provided by any third party;

5.3.4 to forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted via the Site;



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5.3.5 to upload, post or otherwise transmit any Content that you do not have a right to transmit under Law or under contractual or fiduciary relationships;

5.3.6 to upload, post or otherwise transmit any Content that infringes any Intellectual Property Rights of any party;

5.3.7 to harm minors in any way;

5.3.8 to impersonate any person or entity or falsely state or otherwise misrepresent your affiliation with a person or entity;

5.3.9 to forge headers or spoof or monitor/sniff IP packets;

5.3.10 to upload, post or otherwise transmit any Content that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;

5.3.11 to promote or provide instructional information about illegal activities, promote physical harm or injury against any group or individual;

5.3.12 in any way which, in etiCloud reasonable opinion, is or is likely to be detrimental to the provision of Services (or bring etiCloud network into disrepute) to the Customer or any of etiCloud other customers, or to etiCloud business and/or reputation;

5.3.13 to run public internet relay chat services; and

5.3.14 in a way that does not comply with any instructions provided to the Customer.

5.4 The Customer shall allow, where required by etiCloud due to technical or other reasons and with reasonable notice, renumber any IP addresses issued to it as part of the Services.

5.5 The Customer will comply with etiCloud reasonable requests which are necessary for reasons of health, environment/sustainability, security, safety or the quality and/or performance of any Service provided to the Customer or any other customer.

### 5.6. Unauthorised use

5.6.1 The Customer will be liable for all Charges incurred for the use of the Services, irrespective of whether the Services have been used by the Customer, its employees, agents or representatives and any unauthorised third party.

5.6.2 The Customer will be responsible for:

5.6.2.1 preventing unauthorised use of the Services;

5.6.2.2 maintaining the security of all systems, network elements and equipment within its (or its employees', agents' or contractors') control; and

5.6.2.3 maintaining (and ensuring that each of its authorised users maintains) the integrity and secrecy of all passwords, log-in details and access codes used for the purposes of accessing or using the Services or any systems, network elements or equipment.

5.6.3 Without limiting clause 5.6.2, the Customer will (or will procure that appropriately qualified third parties will) put in place and comply at all times with the security measures recommended by etiCloud. To be found in etiCloud Security Policy (available on request from etiCloud). etiCloud shall not be liable to the Customer for any losses, damages, fines, costs, expenses (including legal expenses) which arise as a result of the Customer's failure to comply with its obligations in this clause 5.6.3 or in clause 5.6.2, and the Customer agrees to indemnify etiCloud against any third party claims suffered by it (including any damages, fines, costs, expenses including legal expenses which arise in connection therewith) as a result thereof.

5.6.4 Without prejudice to the foregoing, etiCloud is only bound to manage any Services being provided by it or to monitor usage where such activities expressly form part of the Service as set out in the relevant Service Description.

5.6.5 The Customer will notify etiCloud immediately of any illegal, fraudulent or unauthorised use of the Services of which it becomes aware. On receipt of such a notice, etiCloud shall use reasonable efforts to suspend or prevent such use by the unauthorised third party.

5.6.6 etiCloud will be entitled to suspend or terminate the provision of the Services upon receipt of the Customer's notice under clause 5.6.5. etiCloud will lift its suspension or recommence its provision of the Services within a reasonable timescale after the Customer demonstrates to etiCloud reasonable satisfaction that appropriate technical, organisational, security or other measures have been put in place to prevent any further unauthorised use of the Services, failing which etiCloud will be entitled to terminate the relevant Services Agreement immediately or on such other notice as it may consider appropriate in the circumstances. The Customer will remain liable for the payment of the charges for the Services whilst the Service is suspended or terminated in accordance with this clause.

### 6. Charges and Payment

6.1 The Charges for a Service are set out in an Quotation and the applicable Service Schedule and are exclusive of VAT.

6.2 Unless otherwise stated to the contrary in an Quotation and/or a Service Schedule, one-off



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Charges may be invoiced on the Effective Date and all recurring Charges shall be invoiced monthly in advance.

6.3 The Charges shall be paid by such method as is specified in the Quotation and, where the method is not specified in an Quotation, by direct debit payment, etiCloud reserves the right to charge an administrative fee to customers not paying by direct debit of £10 per month.

6.4 etiCloud shall be entitled to vary the Charges in relation to a particular Service at any time:

6.4.1 following the expiry of the Minimum Service Term for that Service, by such amount as etiCloud considers appropriate in its absolute discretion;

6.4.2 where it is required to do so by Law, or is otherwise directed to do so by a regulatory authority; or

6.4.3 where there is an increase in the charges levied on etiCloud by its third party service providers for a particular Service, by any amount which corresponds to such an increase in those charges.

6.4.4 Removed - there will be an annual price review between the parties in January each year whereby etiCloud will be entitled to increase prices for services provided by no more than the current Retail Price Index as published at the end of the previous month.

6.5 Where reasonably practicable, etiCloud will give to the Customer not less than thirty (30) days notice of any such variation in Charges.

6.6 Unless otherwise stated to the contrary in the Quotation or a Service Schedule, the Customer shall pay the Charges for the Services within thirty (30) days from receipt of an invoice from etiCloud without any set-off, counterclaim or deduction.

6.7 Notwithstanding anything else stated in the Services Agreement, in the event that etiCloud and the Customer agree that the Service will be made available for the Customer's use in part prior to making the full scope of the Service available, then etiCloud shall invoice and the Customer shall pay a pro rata proportion of the Charges which will be calculated in relation to the percentage of the Service that is made available.

6.8 If etiCloud has been unable to commence or complete installation by any Delivery Date, the sole reason being the inability of etiCloud to obtain required information from the Customer, or a Customer act or omission which prevented etiCloud from commencing or completing the installation by the Delivery Date, etiCloud shall be entitled at the Delivery Date to invoice the Customer for the full Charges for installation/set-up and the Customer shall be obliged to pay the same, as if installation had been completed.

6.8.1 the Delivery Date shall be determined as a maximum of 90 days following the receipt of a

signed order from the customer or as a date agreed between the parties which is less than 90 days from the receipt of signed order.

6.9 etiCloud may set-off any amounts it owes to the Customer against any amounts owed by the Customer to etiCloud under a Services Agreement.

6.10 In respect of any late payment by the Customer etiCloud shall be entitled:

6.10.1 to charge interest accruing at a daily rate from the due date until the date payment is made in full at a rate of 4% per annum over the Bank of England Base Rate; and

6.10.2 where such late payment exceeds 10 Business Days, to suspend any Service to which such late payment relates by giving 24 hours notice to the customer.

6.11 Following receipt of any outstanding payment (plus interest) in full together with a reconnection charge, etiCloud shall use reasonable efforts to recommence the provision of any Service suspended pursuant to clause 6.10.2.

6.12 The Customer may apply USC's (in accordance with the USC Conditions) to any Professional Services, provided those Professional Services are eligible Professional Services under the USC Conditions or etiCloud has otherwise agreed in writing that USC's can be applied to them. These shall be applied in accordance with the USC Conditions or as may otherwise be agreed in writing between etiCloud and the Customer.

6.13 Excess Construction Charges – in the event that etiCloud will incur third party carrier excess construction charges in respect of delivery of connectivity Services, etiCloud shall notify the Customer as soon as reasonably practicable. The Customer shall be liable for all such excess construction charges. If the Customer notifies etiCloud within 5 days of receipt of notice of such excess charges that it does not accept these, etiCloud will make reasonable efforts to procure the relevant third party supply from an alternative carrier. If the additional charges payable by the Customer are still not acceptable to it, it may within 5 days of etiCloud notice terminate the relevant connectivity Service without penalty.

## 7. Access to Sites and Data

7.1 The Customer will, upon reasonable notice from etiCloud, allow etiCloud (including etiCloud Personnel), its agents and subcontractors access to the Sites as well as to the data relating to the operation of a Service as may be reasonably necessary for the performance by etiCloud of its obligations under a Services Agreement, including the installation and/or maintenance of any etiCloud Equipment or recovery or removal of any etiCloud Equipment.



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7.2 When on the Site or other premises of the Customer, etiCloud shall use reasonable endeavours to ensure its employees, agents and subcontractors observe the Customer's reasonable site regulations previously advised in writing to etiCloud

7.3 Any access under this section shall comply with Data Protection Law.

### 8. etiCloud Equipment

8.1 Subject to the express provisions of a Service Schedule, the purchase of equipment from etiCloud is expressly excluded from a Services Agreement and any purchases of equipment from etiCloud are subject to a separate Quotation and terms and conditions.

8.2 Where etiCloud requires access to the Site to enable etiCloud to provide a Service (including to install etiCloud Equipment), the Customer will prior to installation (at its own expense):

8.2.1 carry out all necessary preparatory work required by etiCloud in sufficient time in order for etiCloud to fulfil its obligations under a Services Agreement;

8.2.2 obtain all necessary consents, including consents for any necessary alterations to buildings from the landlord;

8.2.3 provide a suitable and safe working environment, including all necessary trunking, conduits and cable trays, in accordance with the relevant installation standards;

8.2.4 provide any electricity and telecommunication connection points required by etiCloud;

8.2.5 provide any openings in buildings required to connect Equipment to appropriate telecommunications facilities; and

8.2.6 provide internal cabling between etiCloud Equipment to any Customer Equipment.

8.3 etiCloud (or its Affiliates or third party suppliers) shall at all times retain title to and interest in etiCloud Equipment. The Customer shall at all times retain title and interest in the Customer Equipment.

8.4 Risk in the etiCloud Equipment installed at the Site, shall pass to the Customer upon delivery to the Site.

8.5 The Customer shall not move, add to, modify or in any way interfere with etiCloud Equipment, nor allow anyone else (other than someone authorised by etiCloud) to do so.

8.6 The Customer shall be liable to etiCloud for any loss of or damage to etiCloud Equipment, except where the loss or damage is due to fair wear and

tear or is caused by etiCloud or anyone acting on its behalf.

8.7 etiCloud provides no guarantees that any etiCloud Equipment shall be error- free or fault-free.

### 9. Customer Equipment

9.1 The Customer is responsible for the provision, installation, configuration, monitoring and maintenance of any Customer Equipment connected to the Service (save to the extent that etiCloud is under an express obligation to provide Services akin to these services under a Service Schedule).

9.2 The Customer shall ensure that any Customer Equipment:

9.2.1 connected to or used with the Service is connected and used in accordance with any instructions, safety and security procedures applicable to the use of that Customer Equipment;

9.2.2 does not cause harm to or otherwise interfere with the Equipment or etiCloud network; and

9.2.3 attached (directly or indirectly) to the Service by the Customer is technically compatible with the Service and approved for that purpose under any Law, and is approved by etiCloud

9.3 If any Customer Equipment does not comply with the requirements of this clause 9, it shall upon notice from etiCloud, disconnect such Customer Equipment or direct etiCloud to do the same, etiCloud doing so subject to payment by the Customer of etiCloud charges incurred in carrying out such disconnection.

9.4 etiCloud shall not be liable for failure to meet any Service Level or other obligations under a Services Agreement if the failure is caused by any Customer Equipment which is found to be connected otherwise than in accordance with this clause 9.

9.5 etiCloud expressly excludes any commitment to the Customer regarding the interoperability between a Service and any Customer Equipment.

### 10. Warranties

10.1 Each party warrants that it has the necessary rights, licences and permissions to enter into and perform its obligations under the terms of a Services Agreement.

10.2 Except as expressly set forth in the Service Level Agreement, etiCloud disclaims all implied warranties with respect to the Services and etiCloud equipment provided under the Service Agreement and all components and elements thereof including but not limited to implied warranties of satisfactory quality."



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10.3 etiCloud warrants that in the provision of the Services EtiCloud will not knowingly introduce any virus, Trojan horse, worm, time-bomb, lock, dongle, copy protection feature, any other disabling, malicious, hidden, or surreptitious software or firmware code or component (including without limitation any program, module, library, database, driver, or other code), or any other code or component (or portion thereof) that may: (A) lock, disable, or erase any Customer materials, software, firmware, or other data or (B) harm or otherwise interfere with Customer's System or Customer data ("Software Virus");

10.4 etiCloud further warrants in addition to clause 10.3, that it shall take all reasonable precautions to prevent any Software Virus from being introduced into any Customer Systems or the networks of the Customer by etiCloud or a subcontractor, including ensuring that virus protection software is used and kept up to date, in accordance with Good Industry Practice, and to the extent that a Software Virus is already present in such Customer Systems, etiCloud shall not knowingly or intentionally invoke such a Software Virus without the Customer's prior written consent.

10.5 etiCloud warrants that the provision of the Services shall be performed in accordance with Law and Good Industry Practice;

10.6 etiCloud warrants that it has the full legal right, title and interest to offer and provide the Services contemplated hereunder.

10.7 etiCloud warrants that the Services shall be provided in accordance with and to meet or exceed the Service Levels;

10.8 etiCloud warrants that the Services shall be configured in such a way that they are compatible with Customer's Software.

10.9 etiCloud warrants that it shall act in accordance with the then current version of the ISO 27001 standard form from time to time;

10.10 etiCloud warrants that it shall act in a manner that shall not damage the goodwill, name or reputation of the Customer and its Group or the Client and its Group.

### 11. Intellectual Property and Licence Grant

11.1 Except as stated in a Services Agreement:

11.1.1 the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of etiCloud, its Affiliates or its licensors, including:

11.1.1.1 the etiCloud Software;

11.1.1.2 the Third Party Software;

11.1.1.3 the Deliverables;

11.1.1.4 the Bespoke Software;

11.1.1.5 in any other materials either pre-existing or created by etiCloud, its Affiliates or its licensors during or arising from the performance of a Services Agreement.

11.2 Except as stated in a Services Agreement, etiCloud shall not acquire any right, title or interest in the Customer Input Material.

11.3 Where either party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in clauses 11.1 or 11.2, it shall assign in writing such Intellectual Property Rights as it has acquired to the other party on the request of the other party (whenever made). If requested to do so by the other party, the party acquiring title to Intellectual Property Rights that are inconsistent with the allocation of title set out in clauses shall without charge to the other party execute all documents and do all further acts as the other party may require to perfect the assignment under this clause

11.4 Where Deliverables are provided under a Professional Services Schedule, etiCloud grants the Customer (or provided that it is able to, will procure the grant from a third party) a non-exclusive, non-transferable right and licence to use all such Deliverables and applicable documentation which is provided to the Customer pursuant to the relevant Services Agreement solely for the Customer's internal use and solely as necessary for receipt of the Deliverables and in accordance with the relevant Services Agreement and the applicable documentation.

11.5 Where Software is provided as part of a Service, etiCloud grants the Customer (or provided that it is able to, will procure the grant from a third party) a non-exclusive, non-transferable right and licence to use all such Software and applicable documentation which is provided to the Customer pursuant to a Services Agreement solely for the Customer's internal use and solely as necessary for receipt of the Services (and where applicable Deliverables) and in accordance with a Services Agreement and the applicable documentation. The licence in this clause is to the object code version of the Software only unless otherwise agreed in a Professional Service Schedule. Notwithstanding the licence grants set forth in this clause 11.5, any Third Party Software which is licensed to the Customer pursuant to a Services Agreement will be subject to the licence terms applicable to such Third Party Software and set forth or referred to in the relevant Service Schedule.

11.6 The Customer grants etiCloud, its Affiliates and its licensors a non-exclusive, non-transferable, worldwide licence to use the Customer Input Material in order to provide the Services.



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11.7 The licence granted under clause 11.5 shall be without prejudice to any Open Source software licence terms, which terms shall apply independent of such licence grant.

11.8 Save to the extent specified to the contrary in an Quotation and/or a Professional Service Schedule;

11.8.1 the term of any licence granted by etiCloud pursuant to clause shall be perpetual;

11.8.2 the term of any licence granted by etiCloud pursuant to clause (save in the case of Bespoke Software) shall be coterminous with the term for the Service with which the Software is associated;

11.8.3 the term of any licence granted (insofar as it applies to Bespoke Software) pursuant to clause 11.5 shall be perpetual; and

11.8.4 the term of any licence granted by the Customer pursuant to clause shall be coterminous with the term for the Service in respect of which the Customer In-put Material is provided.

11.9 Without prejudice to any Open Source software licence terms, which terms shall apply independent of this licence grant, except as permitted by applicable law or as expressly permitted in a Services Agreement, the Customer undertakes not to copy, decompile or modify any Software or knowingly allow or permit anyone else to do so.

11.10 Subject to clause 11.11 and clause 11.12, etiCloud will indemnify the Customer against all claims and proceedings arising from infringement of any third party's copyright and/or patent (in both cases limited to rights which are registered or subsisting in the United Kingdom) by etiCloud provision of a Service, Deliverable or Software (excluding Third Party Software).

11.11 The indemnity set out in clause 11.10 shall not apply to claims or proceedings arising from:-

11.11.1 use of the Service, a Deliverable or any Software in conjunction or combination with other equipment or software or any other service not supplied by etiCloud;

11.11.2 any Software which is Third Party Software or derives from Open Source;

11.11.3 any unauthorised alteration or modification of the Service, a Deliverable or any Software;

11.11.4 Customer In-put Material;

11.11.5 Customer Content, designs or specifications supplied by or on behalf of the Customer; or

11.11.6 use of a Service, Deliverable or any Software other than in accordance with a Services Agreement.

11.12 The indemnity in clause 11.10 is subject to the Customer:

11.12.1 notifying etiCloud promptly in writing of any allegation of infringement;

11.12.2 making no admission relating to the alleged or actual infringement;

11.12.3 allowing etiCloud to conduct all negotiations and proceedings and giving etiCloud all reasonable assistance in doing so.

11.13 If a Service, Deliverable or Software, becomes, or etiCloud believes it is likely to become, the subject of a claim of infringement of any intellectual property rights as referred to in clause 11.10, etiCloud, at its option and expense, may (a) secure for the Customer a right of continued use or (b) modify or replace the Service, Deliverable or Software so that it is no longer infringing provided that modification or replacement must not materially affect the performance of the Service, Deliverable or Software.

11.14 The indemnity in clause 11.10 sets out the Customer's exclusive remedy for claims of infringement of Intellectual Property Rights.

11.15 To the extent that etiCloud is permitted to do so under its contracts with third parties, it will pass on the benefits of any warranties or indemnities to the Customer which it receives from third parties in relation to intellectual property claims arising out of Third Party Software.

## 12. Customer Indemnity

12.1 The Customer shall indemnify, keep indemnified and hold harmless etiCloud and its Affiliates against any losses, damages, fines, costs, expenses (including legal expenses) which arise as a result of:

12.1.1 the Customer's breach of a Services Agreement or any part thereof, limited to amounts paid for services in the last six month;

12.1.2 any claim by a User made against etiCloud in relation to the provision of the Services, except where the User is also the Customer

12.1.3 any third party claim against etiCloud or its Affiliates that the use of Customer In-put Material and/or Customer Content infringes their Intellectual Property Rights; and

12.1.4 the Customer's breach of Law.

## 13. Limitation of Liability

13.1 Subject to clause 13.2, in no circumstances whatsoever shall etiCloud be liable to the Customer (whether in contract, for breach of duty, for negligence or otherwise), limited to £1m or the total amount of fees paid whichever is the higher for:

13.1.1 loss of revenue;

13.1.2 loss of actual or anticipated profits (including loss of profits on contracts);

13.1.3 loss of anticipated savings;



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- 13.1.4 loss of business;
- 13.1.5 loss of opportunity;
- 13.1.6 loss of goodwill;
- 13.1.7 loss of reputation;
- 13.1.8 loss or corruption of, or damage to, data, systems or programs; or
- 13.1.9 any indirect or consequential loss or damage howsoever caused.

13.2 Nothing in a Services Agreement seeks to limit either party's liability for any of the following;

- 13.2.1 for death or personal injury caused by negligence;
- 13.2.2 for any breach of the obligations implied by s.12 Sale of Goods Act 1979 or s.2 Supply of Goods and Services Act 1982;
- 13.2.3 for fraud or fraudulent misrepresentation; or
- 13.2.4 for any other liability which cannot be excluded or limited by applicable law.
- 13.2.5 for any of the indemnities given by EtiCloud under this Agreement;
- 13.2.6 for failure by EtiCloud to comply with any Law including any losses, fines and expenses imposed by a Regulator upon the Customer

13.3 Subject to clause 13.2 and clause 13.4, etiCloud liability to the Customer for failure to provide the Services in accordance with the relevant Service Schedule shall be limited to the amounts payable to the Customer by way of Service Credits as set out in the applicable Service Schedule.

13.4 Subject to clause 13.2, where Service Credits are not specified as a remedy for failure to provide a Service under a Service Schedule, etiCloud total liability to the Customer in relation to the relevant Service (including pursuant to any related provision under these General Terms and Conditions) shall be limited to the Charges paid by the Customer to etiCloud for the relevant Services.

13.5 Subject to clause 13.2, etiCloud aggregate liability to the Customer of any sort (including for breach of contract and negligence) in connection with a Services Agreement shall not exceed the total Charges paid by the Customer to etiCloud pursuant to a Services Agreement.

## 14. Confidentiality

14.1 Except to the extent set out in this clause 14 or where disclosure is expressly permitted elsewhere in these General Terms and Conditions, each party shall:

14.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and

14.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

14.2 Clause 14.1 shall not apply to the extent that:

14.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure;

14.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

14.2.3 such information was obtained from a third party without obligation of confidentiality;

14.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of a Services Agreement;

14.2.5 it is independently developed without access to the other party's Confidential Information;

14.2.6 disclosure to the operator or administrator of the Network or such other telecommunications system that is used to provide the Services is necessary; or

14.2.7 disclosure is made to a party's legal counsel or its independent auditors.

## 15. Security and Data Protection

15.1 Omitted

15.2 The Customer understands and accepts the performance by etiCloud of certain of the Services may carry a risk to the Customer of loss or corruption of data. The Customer accepts that it shall be responsible at all times for maintaining an appropriate data backup procedure (whether the Customer's own procedure or etiCloud Managed Back-up Services) to enable the recovery of lost or corrupted data files. The Customer understands and accepts that, save where Managed Back-up Services as detailed in the Quotation and the Services Description in the applicable Service Schedule are purchased, the Customer bears full responsibility for the loss or corruption of data. Further, where etiCloud provides Managed Back-up Services for the Customer to upload its data onto a managed server, etiCloud disclaims all liability in respect of the integrity of such data.





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15.3 The Customer has contracted with etiCloud to complete all appropriate data and application back up procedures at regular intervals during the continuance of a Services Agreement in accordance with accepted industry practice and at such other times as etiCloud may advise.

15.4 The terms “data controller”, “data processor”, “data subject” and “personal” data in this clause 15 shall have the meaning given to them in Data Protection Law.

15.5 For the purposes of a Services Agreement, the Customer shall be the data controller and etiCloud shall be the data processor, refer to the separate Data Processor Agreement available on request.

15.6 The parties agree to comply with their respective obligations under Data Protection Law.

15.7 EtiCloud shall reasonably co-operate with any investigation relating to security which is carried out by or on behalf of the Customer, including the provision to the Customer or its authorised agents of any relevant records relating to EtiCloud’s compliance with this Clause 15.

15.8 Each Party shall advise the other Party as soon as it is aware (in the case of the EtiCloud, in any event not later than thirty (30) minutes after it becomes aware) of any security breach or potential security breach which affects or is likely to affect the Services or the business or systems of any member of the Customer Group receiving the Services, or Customer Data or the relevant records (each a “Data Incident”). EtiCloud shall, and shall ensure that all subcontractors, shall comply with all reasonable instructions of the Customer in relation to a Data Incident.

15.9 EtiCloud shall ensure that it, and shall procure that its subcontractors shall ensure that their, security management in connection with the Services, at a minimum, is implemented in accordance with the “Controls” and “Implementation guidance” as defined and laid down in information security management system family of standards ISO/IEC 27000, including clearly defined security responsibilities, processes for risk management, access control, authorisation and administration, security design and configuration management, audit and assurance.

15.10 EtiCloud shall comply with, and Customers digital security team and its delegates may review and confirm the ongoing existence and compliance with, standards, requirements and guidance no less than as set out in ISO 27001 and (or any standards replacing and/or updating the same), and/or review, assess and confirm the adequacy of digital security management of EtiCloud and/or any subcontractor in relation to the provision of the Services.

15.11 EtiCloud shall promptly report in writing to Customer, any act or omission of itself, any subcontractors or any other third party, or any issue or potential issue of which the EtiCloud and/or any subcontractors is or becomes aware which has or may have an adverse effect on the provision of the Services or on the availability, confidentiality or integrity of Customer’s information or information technology systems. In the event of such a report EtiCloud shall and shall procure that any subcontractors shall co-operate fully with the Customer to resolve any such adverse effects.

15.12 EtiCloud shall nominate a digital security representative who will be responsible for all aspects of digital security relating to the Services.

15.13 If the Services will involve use of or access to Confidential Information and/or Personal Data, by any personnel of EtiCloud, EtiCloud will ensure vetting and verification checks are conducted in respect of such employees and shall provide to the Customer confirmation in writing that such vetting and verification checks have taken place. Where the Customer reasonably requests additional details of the same, EtiCloud shall use all reasonable endeavours to comply with such request, including where applicable seeking the consent of the relevant employees to the provision of such information to the Customer where so required under Applicable Laws and Regulations. EtiCloud shall retain responsibility for verifying that employees are appropriately checked. The Customer reserves the right to audit EtiCloud’s compliance with this Clause 15.

15.14 To the extent that any Customer Data is corrupted, lost or degraded as a direct result of the EtiCloud’s or its subcontractors’ or any EtiCloud personnel’s failure to comply with the IT Security Standard or any other breach by EtiCloud of this Agreement, then if requested by the Customer EtiCloud shall restore and/or replace the corrupted, lost or degraded Customer Data or, at the Customer’s election, and without prejudice to the Customer’s other rights or remedies, reimburse the Customer for any additional costs the Customer may incur (whether internal costs or those of a Third Party) in restoring and/or replacing the corrupted, lost or degraded Customer Data to the last available back-up made or procured by the Customer and at the EtiCloud’s own cost and expense, (where applicable) carry out any remedial action necessary to restore Customer Data to the state it was in immediately prior to the state it was in immediately prior to the corruption, loss or degradation of such Customer Data.

15.15 In all other circumstances not covered by Clause 15.14, if Customer Data is corrupted, lost



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or degraded, etiCloud shall carry out, so far as it is reasonably capable, those remedial actions which are reasonably necessary to restore Customer Data as the Customer may reasonably require and such remedial work will be agreed via the Change Management Procedure.

15.16 Without prejudice to the foregoing provisions of this Clause 15 EtiCloud shall, and shall ensure that each subcontractor and each member of EtiCloud's Group shall (unless agreed otherwise in writing by the Customer);

15.16.1 not transmit or send any Customer Data in any format unless that data is encrypted and the key/password to decrypt that personal information is not communicated as part of the transmission of the data;

15.16.2 not transmit or send any Customer Data in any format to any Third Party without the prior written consent of the Customer;

15.16.3 not transmit or send any Customer Data in any format outside of the United Kingdom without the prior written consent of the Customer;

15.16.4 not remotely access any Customer System or Customer Data other than across a virtual private network or similar that requires a minimum of two factor authentication;

15.16.5 ensure access to any Customer Data that is stored on a System requires the entry of a valid ID and password set;

15.16.6 use reasonable endeavours to:

15.16.6.1 prevent password sharing by employees;

15.16.6.2 ensure employees take reasonable care with their passwords (and similar);

15.16.6.3 ensure employees report any loss of a password (or similar) and/or any suspected misuse or abuse of a password (or similar) in each case as soon as reasonably possible;

15.16.7 prevent unauthorised physical access to any Systems on which Customer Data is stored and restrict authorised physical access to any such Systems to known individuals who reasonably require access to the same;

15.16.8 restrict the number of paper copies of Customer Data made and/or kept by EtiCloud's staff to the minimum number reasonably required in order to provide the Services;

15.16.9 prevent unauthorised physical access to any such paper copies (unless they have been shredded);

15.16.10 shred any such paper copy if it is no longer reasonably required for the purpose of providing the Services;

15.16.11 restrict the number of electronic copies of Customer Data made and/or kept to the minimum number reasonably required in order to provide the Services; securely delete any such electronic copy if it is no longer reasonably required for the purpose of providing the Services so that it cannot be recovered or restored;

15.16.12 and encrypt all Customer Data when stored on a EtiCloud Group computer system or peripheral that is portable including laptops, mobile devices and/or portable storage devices (with the encryption key being kept separately from the relevant system/peripheral).

15.17 The Customer shall make all required notifications to the Information Commissioner's Office which are required to enable EtiCloud to carry out its processing activities under a Services Agreement.

15.18 Without prejudice to the generality of clause 15.6, the Customer shall ensure that it has obtained all necessary consents from data subjects and made all required notifications to the Information Commissioner's Office which are required to enable etiCloud to carry out its processing activities under a Services Agreement.

## 16. Legal and Regulatory Compliance

16.1 The parties will comply with any supplementary conditions to a Services Agreement that may be required by Law. Such supplementary conditions shall be incorporated into a Services Agreement, as appropriate.

16.2 If a legal or regulatory intervention or ruling of any sort prevents the accomplishment of the purpose of a Services Agreement, etiCloud and the Customer shall immediately commence good faith negotiations to explore whether a similar economic effect can be obtained consistent with the applicable legal or regulatory requirements.

16.3 The delay or failure by etiCloud to perform any of its obligations under a Services Agreement which is caused by or materially contributed to by a restriction of a legal or regulatory nature which affects, wholly or partly, the provision of the Service(s), shall not constitute a breach of a Services Agreement.

## 17. Force Majeure

17.1 Neither party shall be in breach of the service agreement or otherwise liable to the other party for any failure to perform or delay in failure to perform its obligations under a Services Agreement to the



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extent that such failure or delay is due to a Force Majeure Event except where the obligation is by the Customer to pay charges where this section shall only apply to the delay in payment but not to the obligation to

pay the charges, the obligation remaining in force throughout the Force Majeure Event affecting the Customer

17.2 If a Force Majeure Event occurs, the party affected shall:

17.2.1 use reasonable efforts to give the other party written notice of the occurrence, anticipated duration and impact of the Force Majeure Event;

17.2.2 use reasonable endeavours to mitigate the effects of the Force Majeure Event, to continue to perform the affected obligations notwithstanding the occurrence of the Force Majeure Event and to ensure that the Force Majeure Event comes to an end; and

17.2.3 continue to perform all of its obligations under a Services Agreement the performance of which are not affected by the Force Majeure Event.

17.3 A party shall not be in breach of a Services Agreement or otherwise liable to the other party for any failure to perform or delay in performing its obligations under a Services Agreement to the extent that this is due to a Force Majeure Event affecting the other party.

### 18. Dispute Resolution

18.1 If a Dispute arises out of or in connection with a Services Agreement (including in relation to any non-contractual obligations) either party may during the term of a Services Agreement by written notice to the other party's representative, refer the matter for resolution.

18.2 If the Dispute remains unresolved after 21 days either party may send written notice to the other party's representative requiring the Dispute to be escalated and stating to whom the party has escalated the Dispute. The representative receiving such notice shall acknowledge receipt of such notice within 4 Business Days and state to whom the Dispute has been escalated. Following such notice the parties shall use their reasonable endeavours to resolve the dispute within 14 days of escalation, involving appropriate senior managers.

18.3 If the Dispute remains unresolved 14 days after escalation under clause 18.2, all Disputes arising out of or in connection with a Services Agreement may

be settled by reference to the Courts of England and Wales.

18.4 Nothing in this clause 18 will prevent or delay either party from:

18.4.1 seeking orders for specific performance, interim or final injunctive relief;

18.4.2 exercising any rights it has to terminate a Services Agreement or any part thereof; or

18.4.3 commencing any proceedings where this is necessary to avoid any loss of a claim due to the rules on limitation of actions.

### 19. Change Management Process

19.1 If either party require execution of the Services, the parties shall follow the process in the Change Management Process, a copy of which will be provided to the Customer on request.

19.2 etiCloud shall have no obligation to proceed with any change unless and until the parties have agreed the necessary variations to its Charges, the Services and the Service Schedules.

19.3 etiCloud may charge the Customer for the time it spends assessing a request for change from the Customer on a time and materials basis.

### 20. Suspension of and Changes to the Services

20.1 etiCloud may, at its discretion:

20.1.1 suspend and/or ban access to a Service, either in whole or in part:

20.1.1.1 in an event of emergency and/or to safeguard the integrity and security of its network and/or maintain, repair or enhance the performance of its network;

20.1.1.2 where it is required to do so by Law (including where directed to do so by a regulatory authority);

20.1.1.3 to comply with an order, instruction or request of government, an emergency services organisation, or other competent administration;

20.1.1.4 for any breach or suspected breach of clause 5, 48 hours notice will be given;

20.1.1.5 where it is required to remove it from the customer for legal reasons by one of its third party service providers;

20.1.1.6 where the Customer is the subject of an Insolvency Event or fails to pay any Charges under a Services Agreement as and when they become due; or

20.1.1.7 where it is expressed to have the right to do so elsewhere in a Services Agreement;

20.1.2 for operational reasons change the codes or numbers used by it for the provision of any Service or the technical specification of the Service, provided that any such change to the technical



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specification does not materially decrease or impair performance of the Service; and

20.1.3 provide an alternative service, provided that any such change to the technical specification does not materially decrease or impair performance of the Service; and

20.1.4 change the Services such that they comply with Law or a regulatory authority)

20.2 etiCloud will in each case described in this clause 20, give the Customer as much notice as is reasonably possible of the change and/or suspension occurring.

20.3 Where services are suspended under clause 20.1, etiCloud shall not be liable to the Customer for such suspension.

20.4 etiCloud shall have the right to examine, from time to time and in compliance with the Data Protection Law, the use of which the Customer puts the Service and the nature of the data/information that the Customer is transmitting or receiving via the Service where such examination is necessary: (i) to protect/safeguard the integrity, operation and functionality of etiCloud (and neighbouring) networks or the networks of any third parties used to provide the Service; or (ii) to comply with police, judicial, regulatory or governmental orders, notices, directives or requests. The Customer hereby consents to such examination.

20.5 The Customer shall bear all responsibility and liability regarding the content of the information or data transmitted on any communications network through its use of the Service.

### 21. Termination of Services and Services Agreements

21.1 Unless otherwise stated to the contrary in an Quotation and/or a Service Schedule, either party may terminate any individual Service for convenience at any time by giving at least ninety (90) days' (or such other notice period as specified in the Service Schedule) written notice to the other, such notice not to take effect prior to the expiry of the applicable Minimum Service Term. Any contrary provisions with regard to length of notice required to terminate an individual Service (and when such notice must expire) contained in an Quotation and/or a Service Schedule shall prevail over the provisions of this clause 21.1.

21.1.1 In the event of a cancellation prior to the minimum service term the customer shall be immediately liable to pay an amount equivalent to the remainder of the contract term.

21.2 etiCloud is not obliged to suspend a Service or give a notice of suspension before exercising its

right to terminate a Services Agreement and/or a particular Service Schedule.

21.3 Termination of any individual Service will not affect the parties' rights and obligations with regard to any other Service.

21.4 Either party may immediately by written notice terminate a Services Agreement and/or any Service if one of the following events occurs:

21.4.1 the other party is in material breach of a Services Agreement, such breach being irremediable (for the avoidance of doubt an irremediable breach would be service loss of the management platform for more than 8 hours)

21.4.2 the other party is in material breach of a Services Agreement and where such breach is capable of being remedied, that breach has not been remedied within thirty (30) days' notice from the party not in breach. Where the origin of a fault is unclear, etiCloud will assist the Customer in fault identification. If it is confirmed that the fault does not lie with etiCloud or its agents, Affiliates or sub-contractors, a reasonable charge may be made by etiCloud for such assistance at its then prevailing rates and no Service Credit shall be available in respect of the fault in question. This provision shall not apply for services provided solely over the phone. etiCloud is fully responsible for anything we invoice for and etiCloud will act as an agent on the customers behalf for any 3rd party provided software or solution.;

21.4.3 if the other party is the subject of an Insolvency Event.

21.5 etiCloud may, upon written notice to the Customer, terminate any Software licence granted to the Customer pursuant to a Services Agreement in the event that the Customer breaches any material terms of such licence.

21.6 etiCloud may immediately by written notice to the Customer terminate a Service (either in whole or in part) if:

21.6.1 any governmental or regulatory authority with competence and / or jurisdiction over the parties decides that the provision of the relevant Service under a Services Agreement is contrary to Law or where a regulatory authority directs etiCloud that the relevant Service should be terminated; or

21.6.2 any of the authorisations or regulatory formalities required to provide and/or receive that Service is not obtained, withdrawn or is no longer valid, for whatever reason.

## 22. Consequences of Termination

22.1 Any termination of a Services Agreement or termination or expiry of any Service shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or continuation in force of any other clauses and provisions of a Services Agreement which are expressly or by implication intended to come into force or continue in force on or after termination of a Services Agreement or termination or expiry of any Service, including clauses 6, 12, 14 and this clause 22.

22.2 If a Services Agreement or a Service is terminated by etiCloud under clause the Customer shall, in respect of any terminated Service pay etiCloud (within 14 days of the date of termination) any remaining Charges which would have been due to etiCloud under a Services Agreement until the end of any applicable Minimum Service Term or Professional Service Term (notwithstanding that such Services have not been provided due to the termination). Without prejudice to the foregoing, termination of a Services Agreement or a Service may in certain circumstances result in cancellation charges becoming payable by the Customer on a different basis as specified in the applicable etiCloud Services Invoicing Schedule (as amended and replaced from time to time in accordance with these General Terms and Conditions, any Services Agreement, or as otherwise agreed by the parties in writing). The etiCloud Services Invoicing Schedule applicable to the Services is available from etiCloud on request.

22.3 If a Services Agreement or a Service is properly terminated by the Customer under clause 21.4, etiCloud agrees to credit or repay the Customer within a reasonable period the appropriate proportion of any Charges paid in advance for the period after the cessation of the Customer's liability to pay Charges.

22.4 Following notice of termination of a Service pursuant to clause 21.1:

22.4.1 etiCloud shall, subject to the payment of any applicable Charges, continue to provide the Services until the date of termination;

22.4.2 the Customer shall cease using any IP addresses or address blocks provided to it as part of the relevant Service.

22.5 Following notice of termination of any Software licence pursuant to clause 21.5, the Customer shall immediately cease to use the relevant Software and shall delete such Software from its systems and promptly return to etiCloud all partial or complete copies of such Software in its possession or destroy the same (and provide satisfactory evidence to etiCloud of such destruction).

22.6 Following the date of termination of a Services Agreement and/or a Service, the Customer shall, in accordance with clause 6.12 provide such access to etiCloud as is necessary for etiCloud to recover etiCloud Equipment.

## 23. Notices

23.1 All notices given under a Services Agreement shall be in writing, in the English language, unless the parties agree otherwise or local law and regulations provide for differently, and shall be sent by prepaid post or by facsimile, delivered to etiCloud or the Customer's principal place of business and addressee shown on an Quotation or to any other address or addressee either party has given to the other for that purpose.

23.2 Notices given under a Services Agreement are deemed to be given by the sender and received by the addressee:

23.2.1 if sent by prepaid post, three (3) Business Days from and including the date of postage; or

23.2.2 if sent by facsimile, when transmitted to the addressee; but if transmission is on a day which is not a Business Day or after 4p.m, it is deemed to be duly given and received on the next Business Day.

23.2.3 if sent by email, when transmitted by the addressee with read receipt request; except when transmission occurs after 5pm on a business day or on a non-business day. Then on the first business day following transmission

## 24. Assignment and Subcontracting

24.1 etiCloud may assign (whether absolutely or by way of security and whether in whole or in part), transfer, mortgage, charge, declare itself a trustee for a third party of, or otherwise dispose of (in any manner whatsoever) the benefit of a Services Agreement or any part thereof to an Affiliate without the consent of the Customer, so long as reasonable notice has been given to the Customer.

24.2 etiCloud may subcontract or otherwise delegate the performance of any of its obligations (including the provision an individual Service, or the Services collectively) under a Services Agreement without the consent of the Customer, so long as reasonable notice has been given to the Customer.

24.3 The Customer may not assign (whether absolutely or by way of security and whether in whole or in part), transfer, mortgage, charge, declare itself a trustee for a third party of, or otherwise dispose of (in any manner whatsoever) the benefit of a Services Agreement or any part thereof without the prior written agreement of etiCloud.

24.4 The Customer may not subcontract or otherwise delegate the performance of any of its



obligations under a Services Agreement without the prior written agreement of etiCloud.

## 25. Governing Law and Jurisdiction

25.1 A Services Agreement and any claims or disputes arising out of contractual and/or non-contractual obligations, relating to or in connection with it shall be governed by and construed in accordance with the laws of England. Subject to clause 18, the parties submit to the exclusive jurisdiction of the English Courts in relation to contractual and non-contractual obligations.

## 26. Variation of a Services Agreement

26.1 Subject to clause 19, clause 20, clause 26.2 and clause 26.3, no variation of a Services Agreement (or any document referred to in it) shall be effective unless it is in writing signed by or on behalf of each of the parties to a Services Agreement. The expression "variation" includes any variation, supplement, deletion or replacement, however effected.

26.2 etiCloud may vary a Services Agreement (or any document referred to or incorporated in it) without the Customer's consent if it is required to do so by Law and any notice period shall be compliant with Law and if no notice period is required by Law such period shall be no less than 30 days.

26.3 For the avoidance of doubt, etiCloud shall be entitled to vary the Policy Documents at any time without the consent of the Customer. etiCloud will use reasonable endeavours to give the Customer as much notice as is reasonably possible of such changes and will be no worse than the current Policy Documents.

## 27. Entire Agreement

27.1 Subject to clause 13.2.3, a Services Agreement represents the entire agreement and understanding between the parties with regard to the supply of the Services and the provision of any etiCloud Equipment, to the exclusion of all prior agreements, arrangements and understandings. Any other term which might be implied or incorporated into a Services Agreement, by statute, at common law or otherwise, is excluded, to the fullest extent permitted by Law.

27.2 Subject to clause 13.2.3, the Customer acknowledges and agrees that in entering into a Services Agreement it has not relied upon any oral or written representation, statement or understanding (whether negligently or innocently made) by any etiCloud employees, agents, subcontractors or representatives other than as expressly set out in a Services Agreement.

## 28. Waiver

28.1 The rights and remedies of the parties shall not be affected by any failure to exercise or delay in exercising any right or remedy or by the giving of any indulgence by any other party or by anything whatsoever except a specific waiver or release in

writing and any such waiver or release shall not prejudice or affect any other rights or remedies of the parties. No single or partial exercise of any right or remedy shall prevent any further or other exercise thereof or the exercise of any other right or remedy.

## 29. Severance and Unenforceable Provisions

29.1 Subject to clause 16, if any provision or part of a Services Agreement is illegal, unlawful, void or unenforceable due to any Law, it shall be deemed to be deleted and the remaining provisions of a Services Agreement shall continue in full force and effect.

## 30. Rights of Third Parties

30.1 Any etiCloud Affiliate may enforce the terms of a Services Agreement and any other third party who is expressly conferred a benefit and a right to enforce such benefit under a Services Agreement may enforce the relevant terms of the Services Agreement subject to and in accordance with the Contracts (Rights of Third Parties) Act 1999.

30.2 The parties may vary or rescind a Services Agreement without the consent of any third party.

30.3 Subject to clause 30.1, a person who is not a party to a Services Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of a Services Agreement.

## 31. Non-Solicitation

31.1 The Customer shall not, without the prior written consent of etiCloud, at any time from the date of a Services Agreement to the expiry of 12 months after the date of termination of a Services Agreement, solicit or entice away from etiCloud or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of etiCloud in the provision of the Services. For the purposes of this clause 31.1, "solicit or entice away" means to approach an individual (whether directly or through a third party) with a view to employing, engaging, or procuring the employment or engagement of that individual as an employee, director, officer, independent contractor or consultant other than by way of bona fide general advertising.

31.2 Any consent given by etiCloud in accordance with clause 31.1 shall be subject to the Customer paying to etiCloud a sum equivalent to 20% of then current annual remuneration of etiCloud employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.

## 32. Provisions Applicable to Ofcom Regulated Services

32.1 The Customer shall be entitled to use an Ofcom Regulated Service for its own internal business purposes, provided that the Customer complies with



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and ensures that its Users comply with the Law in the receipt of and use of the Ofcom Regulated Service, including ensuring that they are not used:

32.1.1 for the improper use of a public electronic communications network which is or would be an offence under Section 127 of the Communications Act 2003; or

32.1.2 to commit an offence under the Regulation of Investigatory Powers Act 2000.

32.2 Where pursuant to clause 6.4.1 and/or 6.4.2, etiCloud exercises its right to vary the Charges relating to an Ofcom Regulated Service, then the Customer agrees that:

32.2.1 any variation of the Charges that complies with clause 6.4.2 or clause 6.4.3; or

32.2.2 which amounts to an increase of less than 5% to the then current Charges, shall not cause any material detriment to the Customer.

32.3 The Customer shall ensure that any Customer Equipment connected to or used with an Ofcom Regulated Service is connected and used in accordance with any OFCOM directions and decisions.

32.4 In respect of Ofcom Regulated Services, the obligations in clause 14.1 shall not apply to the extent that such disclosure is required by Ofcom.

32.5 Where a Dispute relates to an Ofcom Regulated Service:

32.5.1 domestic and small business customers shall have the right to refer Disputes to the Communications and Internet Services Adjudicator Scheme (CISAS) in accordance with our complaints handling procedure where this procedure applies, it shall take precedence over the procedures set out in clause 18; and

32.5.2 nothing in clause 18 will prevent or delay either party from referring that Dispute to Ofcom.

32.6 etiCloud may, at its discretion:

32.6.1 suspend an Ofcom Regulated Service, either in whole or in part, where it is required to do so by Ofcom.

32.6.2 change an Ofcom Regulated Service where directed to do so by Ofcom.

32.7 etiCloud will in each case described in clause 32.6, adhere to any minimum notice periods stipulated by Ofcom.

32.8 etiCloud may immediately, by written notice to the Customer, terminate an Ofcom Regulated Service either in whole or in part if Ofcom decides that the provision of the relevant Ofcom Regulated Service under a Services Agreement is contrary to Law or where Ofcom directs etiCloud that the relevant Ofcom Regulated Service should be terminated.

32.9 etiCloud may vary a Services Agreement (or any document referred to or incorporated in it) without the Customer's consent if it is required to do so by Ofcom and any notice period shall be as directed by Ofcom, or, if no notice period is directed such period shall be no less than 30 days.

## 33. Definitions and Interpretation

33.1 In a Services Agreement the following definitions (together with any contained in a Service Schedule) apply:

**"Acceptable Use Policy"** a policy which is referred to in a Service Schedule and which contains restrictions on the ways in which an applicable Service may be used by the Customer and its Users;

**"Acceptance Criteria"** the criteria which the parties agree that the relevant Services, Bespoke Software and/or Deliverables must meet under a Professional Service Schedule;

**"Acceptance Tests"** the tests which the parties agree to carry out to test Services, Bespoke Software and/or Deliverables against the Acceptance Criteria, as specified in a Professional Service Schedule;

**"Affiliate"** in relation to a body corporate, any other entity which directly or indirectly Controls, is controlled by, or is under direct or indirect common Control with, that body corporate from time to time;

**"Bespoke Software"** Software, other than etiCloud Software, developed by etiCloud for the Customer under a Professional Service Schedule;

**"Business Day"** a day not being a Saturday, Sunday, bank or public holiday on which trading banks are generally open for business in the City of London;

**"Change Management Process"** etiCloud documented change management process as may be updated by etiCloud and its Affiliates from time to time;

**"Charges"** the fees payable for Services as detailed in an Quotation and the relevant Service Schedule;

**"Confidential Information"** a Services Agreement and all materials, data and other documents which are disclosed by one party to the other in fulfilling the provisions and intent of a Services Agreement;

**"Control"** where a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the



ownership of voting shares, by contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly;

“**Customer**” the entity named as such in an Quotation;

“**Customer Content**” any information or content which is created, transmitted or displayed in connection with a Service by the Customer or a User;

“**Customer In-put Material**” all documents, information and materials provided by the Customer relating to the Services, including computer programs, data, reports and specifications and any other in-put materials specified in a Services Schedule;

“**Customer Equipment**” (i) equipment which the Customer elects to provide themselves, as an alternative to the Services being provided exclusively using etiCloud Equipment (ii) any other Customer owned or leased equipment which is necessary for the Customer to receive the Services;

“**Customer Obligations**” any obligations contained in the General Terms and Conditions which are applicable to the Customer’s receipt of a Service together with any Customer obligations detailed in the relevant Service Schedule;

“**Deliverables**” any deliverables (other than Software) which etiCloud agrees to supply to a Customer under a Professional Service Schedule;

“**Delivery Date**” the date by which etiCloud shall use its reasonable endeavours to commence provision of a Service as detailed on the Quotation or agreed in writing between etiCloud and the Customer;

“**Dispute**” any dispute, difference or question of interpretation arising out of a Services Agreement, including any dispute, difference or question of interpretation relating to the Services or any matter where a Services Agreement directs the parties to resolve an issue by reference to the dispute resolution procedure in clause 18;

“**Effective Date**” the date upon which an Quotation incorporating these General Terms and Conditions has been signed by both parties;

“**Force Majeure Event**” an act of God; or war, insurrection, riot, civil commotion, act or threat of terrorism; or lightning, earthquake, fire, flood, storm, or extreme weather condition; or theft, malicious damage; or strike, lockout, industrial dispute (whether affecting the workforce of a party and/or any other person); or breakdown or failure of plant or machinery; or inability to obtain

essential supplies or materials; or change in Law; or any failure or default of a supplier or sub-contractor of the relevant party; or any other event or circumstance to the extent it is beyond the reasonable control of the relevant party;

“**General Terms and Conditions**” clauses 1 to 33 (inclusive) of these terms and conditions;

“**etiCloud**” the supplier of the Services identified in an Quotation, a company registered in England and Wales under Company no. 09777907

“**etiCloud Equipment**” equipment (including any Software on it) which is used by etiCloud to provide the Services (whether remotely or on the Site) the ownership of which vests with etiCloud, its Affiliates or its third party suppliers;

“**etiCloud Personnel**” etiCloud employees and/or etiCloud appointed sub- contractors;

“**etiCloud Software**” Software which is proprietary to etiCloud and which is licensed by etiCloud to the Customer under a Services Agreement and is (i) detailed in an Quotation; and/or (ii) on etiCloud Equipment;

“**Insolvency Event**” (a) an order is made by a court of competent jurisdiction or a resolution is passed for the administration of a party (other than for the purpose of a bona fide amalgamation, merger or reconstruction); or (b) the presentation of a petition for winding up of a party, which petition is not dismissed within twenty (28) days; or (c) the appointment of a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of a party’s assets or business;

“**Intellectual Property Rights**” (a) patents and applications for patents, trademarks, service marks and domain names and applications for the same, unregistered trademarks and rights in trade names and business names, copyright and moral rights (including copyright in computer software), Know How, database rights, rights in designs and rights in inventions; and rights of the same or similar effect or nature as any of those in paragraph (a) of this definition

“**Law**” any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body;

“**Minimum Service Term**” the minimum period for a Service, as defined in an Quotation





commencing on the Service Commencement Date. In the event of the service term not being specified in the Quotation it shall be a minimum of 36 months from service commencement date. Unless expressly provided otherwise in an Quotation, where a Service is to be delivered to or comprises more than one Site or in respect of a Service there is a deployment of multiple Service elements, the Minimum Service Term shall run from the Service Commencement Date for the Service at the last Site ready for service or (as the case may be) the deployment of the final Service element.

“**Month**” a calendar month and “monthly” shall be interpreted accordingly;

“**Ofcom Regulated Service**” a Service, the provision of which is regulated by Ofcom, as set out in the General Conditions of Entitlement;

“**Open Source Software**” any software code that is made available to the public generally in source code form without any confidentiality restrictions, including any code that is derived in any manner (in whole or in part) from such code;

“**Quotation**” an Quotation which incorporates these General Terms and Conditions, which is signed by authorised representatives of both parties and under which the Customer agrees to purchase and etiCloud agrees to provide Services;

“**party**” either etiCloud or the Customer and “parties” shall means both of etiCloud and the Customer;

“**Policy Documents**” has the meaning given to it in clause 33.4;

“**Professional Service Plan**” a plan containing indicative timescales for provision of the relevant Professional Services as agreed under a Professional Service Schedule;

“**Professional Services**” the Services to be provided under a Professional Service Schedule including discreet technology consultancy services and projects for a Customer (including the provision of Bespoke Software and/or other Deliverables);

“**Professional Service Schedule**” a Service Schedule under which etiCloud agrees to provide Professional Services;

“**Professional Service Term**” the period during which Professional Services shall be provided pursuant to a Professional Service Schedule commencing on the relevant Service Commencement Date and continuing until the earliest of the following events to occur:

(i) expiry of any fixed term specified in the Professional Service Schedule;

(ii) fulfilment of both parties’ obligations under the Professional Service Schedule; or

(iii) termination of the Professional Service Schedule in accordance with any specific provisions of the Professional Service Schedule or otherwise in accordance with these Terms;

“**Service**” a service as described in the relevant Service Schedule or Quotation including hosted desktops, connectivity, numbering, voice, security, hosting and Professional Services, with the term “Service” being defined more particularly in the relevant Service Schedule or customer order and for the avoidance of doubt each service subsequently added shall be deemed a service in its own right (including the provision of any etiCloud Equipment which is incidental to the provision of a Service) as may be amended from time to time in accordance with the Change Management Process;

“**Service Commencement Date**” the date upon which etiCloud (i) first makes a Service available for use by the Customer; or (ii) in the case of a Professional Service Schedule, commences provision of the relevant Service(s).

“**Service Credit**” the sums credited against future invoices in respect of the failure by etiCloud to meet one or more Service Levels, as detailed in a Service Schedule;

“**Service Description/s**” the description of the Service as contained in the relevant Service Schedule or Quotation;

“**Service Level**” an agreed level of service applicable to a Service as set out the applicable Service Schedule or Quotation;

“**Service Schedule**” a schedule (including any appendices and/or annexes thereto) describing the Service to be provided to the Customer together with any applicable Service Levels which are incorporated into a Services Agreement by an Quotation;

“**Services Agreement**” these General Terms and Conditions, an Quotation and any Service Schedules which are referred to in an Quotation;

“**Site**” the premises at which etiCloud agrees to provide Services to the Customer as detailed in an Quotation;

“**Software**” etiCloud Software, Third Party Software and Bespoke Software;

“**Special Condition**” a provision described as such in an Quotation which either supplements, varies or disapplies a provision or provisions of the General Terms and Conditions and/or a Service Schedule;

“**Standard Security Policy**” the etiCloud standard data security policy which details



the security measures taken by etiCloud in the provision of the Services, the current version of which is available by request

**“Third Party Software”** Software which is proprietary to a third party and which is sub-licensed by etiCloud to the Customer under a Services Agreement and is (i) detailed in an Quotation; and/or (ii) on etiCloud Equipment;

**“Term”** the duration of a Services Agreement as defined in clause 2;

**“USC’s”** universal service credits purchased by the Customer and supplied to the Customer by etiCloud on and subject to etiCloud standard terms and conditions as notified to the Customer at the time of purchase;

**“USC Conditions”** etiCloud current terms and conditions for the use of USC’s (a copy of which are available on request from etiCloud);

**“User”** an individual who the Customer permits access to or use of a Service in accordance with a Services Agreement to use or access the Service purchased by the Customer; and

**“Warranty Period”** an agreed period of time (if any) detailed in a Professional Services Schedule, beginning on the date of the Professional Services passing the relevant Acceptance Criteria and during which the remedies in clause 3.3 are available for any Professional Services which are not provided materially in accordance with the relevant Professional Service Schedule.

### 33.2 In a Services Agreement:

33.2.1 words in the singular shall include the plural and words in the plural shall include the singular unless the context requires otherwise;

33.2.2 words denoting any gender include all genders;

33.2.3 the headings are for convenience only and shall not affect the construction of a Services Agreement.

33.2.4 references to each party herein include references to its successors in title and permitted assigns.

33.2.5 references to “includes” or “including” shall be read as being immediately followed by the words “without limitation”; and

33.2.6 any capitalised terms (and terms beginning with a capital letter) that are used but are not defined herein shall be given their generally accepted meaning in the telecommunications industry or, where there is no such generally accepted meaning, their ordinary meaning.

33.3 If there is a conflict or inconsistency between any constituent part of a Services Agreement the following order of precedence will be applied and the document higher in the order of precedence will prevail with respect to such conflict or inconsistency and represent the binding obligation on the parties:33.3.1 General Terms and Conditions;

33.3.2 Service Schedule;

33.3.3 Quotation save in respect of any Special Conditions referred to in an Quotation which expressly amend or disapply any provision within a Service Schedule and/or the General Terms and Conditions, in which case the Special Condition shall prevail.

33.4 Unless specifically stated otherwise in a Services Agreement or in a Service Schedule the following documents (if applicable) do not contractually form part of a Services Agreement:33.4.1 Standard Security Policy;

33.4.2 Network Standards; and

33.4.3 such other policy documents as may be notified by etiCloud from time to time (the “Policy Documents”).

33.5 etiCloud may refer to the documents in clause 33.4 in relation to etiCloud provision of the relevant Service but any such reference will be for guidance only

