

# Terms & Conditions

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# Terms & Conditions

## 1 Introduction

- 1.1 These Terms & Conditions (“Terms”) apply to CLIENT purchases from CloudpushUK Ltd (“MSP”) of services (“Services”), as well as licenses for software, hardware, support, and maintenance services, and/or subscription services. CLIENT hereby engages and retains MSP to render Services or provide Product, as specifically set forth and limited in the “Master Service Agreement” or “REQUESTED SERVICES”, or subsequent Statements of Work (SOW), or any work order as agreed among by the Parties COLLECTIVELY HEREAFTER REFERRED TO AS “REQUESTED SERVICES” Except as otherwise stated therein, subsequent REQUESTED SERVICES” shall be made a part of and subject to these Terms. No Product or Services will be provided under these Terms alone but will require the execution of a written or electronic “REQUESTED SERVICES” each of which is deemed incorporated in these Terms for all purposes. In the event of any conflict between the “REQUESTED SERVICES” and these Terms, the terms of the “REQUESTED SERVICES” will prevail over these Terms.
- 1.2 MSP may change these Terms at any time providing notification via e-mail 30 days before the changes are to become effective. Using the Services after the changes to these Terms become effective, means CLIENT agrees to the new terms. If CLIENT does not agree to the new Terms, CLIENT must notify MSP in writing of its objection to the new Terms, and MSP has the right to then terminate the Services.
- 1.3 These are published on the CloudPush website (<https://cloudpush.co.uk>) and will also be issued to the CLIENT as part of the “Master Service Agreement” or “REQUESTED SERVICES”, or subsequent Statements of Work (SOW).

## 2 PRICE AND CHARGES

- 2.1 The prices will be stated on the Proposal, Sales Order, MSA and Invoice.
- 2.2 Where Managed Services are changed during the course of the contract for whatever reason, and with the agreement, MSP will update the MSA and adjust the monthly price accordingly.
- 2.3 All sums referred to are exclusive of Value Added Tax (VAT) and will be payable by the CLIENT on the submitted invoice.

## 3 INVOICING AND PAYMENT

- 3.1 Payment for product will be on ship to site unless otherwise agreed.
- 3.2 Payment for projects will be set out in the Sales Order and any associated documents (e.g., Statement of Work) that reference it.
- 3.3 CLIENT will be invoiced either monthly in arrears or quarterly in advance and will pay any charges by Card, bank transfer or Direct Debit within thirty (30) days of the date of the invoice, unless otherwise expressly agreed and set out on the Order Form.
- 3.4 If MSP can’t, for whatever reason, recover any sum due within thirty (30) days following the due date for payment, MSP will send a reminder and reserve the right to suspend all or any of the Services.
- 3.5 If the account remains unpaid (in any part) MSP may require a security deposit of three times the average monthly invoice or payment in full for the next twelve months before MSP reinstate the Service.

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- 3.6 If CLIENT wants to dispute any charge on an invoice CLIENT must do so in writing within thirty (30) days of the date of the invoice and provide MSP with all relevant information in support of the disputed charge.

## 4 Site Access

- 4.1 MSP need to be able to access the site where the work will be carried out with reasonable notice. If MSP can't do this any work will be based on reasonable endeavours and not to the MSA terms.
- 4.2 MSP undertakes to ensure that there are adequate health and safety provisions in place and that CLIENT holds third party public liability insurance with a level of cover of at least the minimum required by Law.
- 4.3 CLIENT will provide all consents, licences, and permissions necessary from landlords or other third parties for any work undertaken at site.
- 4.4 CLIENT must identify contaminated areas at the Site prior to work. In the event that MSP discovers contaminated areas at the Site then MSP will cease work until it's removed, or the area is made safe for the works to resume. MSP will not be liable for any delay as a result of contamination.

## 5 LIMITATION OF LIABILITY

- 5.1 Unless otherwise stated in this Contract MSP make no warranty in respect of the supply of Equipment and/or Services and all other terms, conditions and warranties which may otherwise be implied into this Contract by law or course of dealings between MSP and CLIENT are hereby excluded to the fullest extent legally possible.
- 5.2 In no circumstances will our liability with this Contract (whether in contract, tort (including without limitation negligence) misrepresentation, breach of statutory duty or otherwise), in any Contract Year exceed 100% of the Price and/or Charges paid in the twelve months prior to the date.
- 5.3 Under no circumstances will either of MSP be liable for any:
- a) loss of revenue;
  - b) loss of business;
  - c) loss of contracts;
  - d) loss of, damage to, or corruption of data;
  - e) loss of anticipated savings;
  - f) loss of profits; or
  - g) indirect, consequential, or special losses; whether or not CLIENT knew or ought to have known that such losses or damages might be incurred.

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- 5.4 Neither MSP or CLIENT will be liable for any breach of contract, tort (including but not limited to negligence) misrepresentation, breach of statutory duty or otherwise caused by any reason outside the reasonable control or responsibility of that party for any act of God, terrorist attacks, inclement weather, accidental damage, vandalism, failure or shortage or power supplies, flood, drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance, any act or omission of Government, highways authorities, or other competent authorities.
- 5.5 Nothing in these Conditions excludes or restricts either MSP or CLIENT for liability for death or personal injury resulting from negligence; (a) any fraud, fraudulent misrepresentation, or fraudulent misstatement; (b) any indemnity given under the Contract; and/or (c) anything for which MSP cannot at law limit or exclude liability for.

## 6 Mutual Indemnity

- 6.1 MSP shall indemnify, keep indemnified and hold harmless each other against all costs (including without limitation legal costs and the cost of enforcement (on a full indemnity basis)) liabilities, claims, damages, direct, indirect or consequential losses (including without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss whether such losses are direct, indirect or consequential losses), expenses and/or judgments whatsoever, which it may suffer or incur, and arising from any:
- 6.2 a) breach of any warranties, undertakings and/or representations given under the Contract and/or any failure to comply with any obligations, responsibilities and/or liabilities set out in the Contract;
- a) b) injury and/or damage suffered or incurred by or to any employees and/or equipment whilst on the Site;
- b) infringement (including, its affiliates, directors, officers, agents, consultants, and employees) of any third party's Intellectual Property Rights.

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## 7 CYBER SECURITY.

- 7.1 CLIENT understands and agrees that data loss or network failures may occur, whether or not foreseeable. Therefore, CLIENT must maintain proper security for CLIENT System including but not limited to software and hardware updates that are made available by the manufacturer. CLIENT will adhere to software and hardware updates and maintain specific security standards, policies, procedures set forth by the National Cyber Security Centre (<https://www.ncsc.gov.uk/cyberessentials>) Cyber Essentials. CLIENT will also be responsible for ensuring the appropriate Cyber Security Insurance Policies are in place.
- 7.2 It is understood that within the Services provided, it is not the intent, nor does the MSP provide any type of internet security monitoring, cyber security monitoring, cyber terrorism monitoring, or other cyber threats for CLIENT unless otherwise specified in the "REQUESTED SERVICES". As cyber threats are always evolving it is strongly recommended that CLIENT engage the services of a cyber protection third-party vendor to independently monitor the cyber controls and cyber activities in CLIENT System.
- 7.3 Any software or service provided by MSP is not intended to bring CLIENT into full regulatory compliance with any rule, regulation, national standard, or requirement. The software, service, or solutions may aid CLIENT's efforts to achieve regulatory compliance, however, MSP does not provide comprehensive compliance solutions.
- 7.4 In no event, except for the wilful misconduct or gross negligence on its part, shall MSP or its subcontractors, whether under these Terms, a "REQUESTED SERVICES", be liable in contract, tort, third-party liability, breach of statutory duty or otherwise, in respect of any direct, indirect or consequential losses or expenses, including without limitation loss of anticipated profits, company shut-down, third-party loss or injury, any loss because of data breach or other form of cyberattack, any loss of personally identifiable or protected information, goodwill, use, market reputation, business receipts or contracts or commercial opportunities, whether or not foreseeable, if CLIENT's data or Systems are breached because of the distribution of and CLIENT's response to, unsolicited email, direct mail, facsimiles, unsolicited text messages, voice calls, telemarketing or because of the collection of information by means of any form of electronic malware, wiretapping, bugging, video cameras or identification tags.
- 7.5 In no event shall MSP or its subcontractors, whether under these Terms, "REQUESTED SERVICES" or subsequent SOW, other work order or otherwise in connection with any of them, be liable in contract, tort, third-party liability, breach of statutory duty or otherwise, in respect of any direct, indirect or consequential losses or expenses, including without limitation loss of anticipated profits, company shut-down, third-party loss or injury, any loss because of data breach, any loss of personally identifiable or protected information, goodwill, use, market reputation, business receipts or contracts or commercial opportunities, whether or not foreseeable, if such loss was the result of a cyberattack or any other event not contemplated by these Terms.

## 8 SUSPENSION, TERMINATION AND CONSEQUENCES

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- 8.1 MSP may suspend Services to CLIENT without liability having given reasonable notice either orally (confirming such notification in writing) or in writing if: (a) CLIENT are in breach of a material term of these Conditions and/or the Contract and/or any other contract between MSP and CLIENT from time to time including but not limited to CLIENT failure to pay the Price and/or the Charges (or any of them) to MSP or CLIENT on the due date; (b) an Emergency occurs and/or MSP are obliged to comply with an order, instruction or request of the Government, an emergency services organisation or other competent administrative or regulatory authority; (c) MSP have reasonable grounds to believe that any of the Services are being used fraudulently, unlawfully or by an unauthorised third party
- 8.2 CLIENT will indemnify MSP in full against all loss (including, but not limited to, all losses incurred as a result of CLIENT terminating the Contract before the end of the Minimum Term which will include a minimum payment to MSP of the amount of the outstanding Annual Support Charges.
- 8.3 A Contract may be terminated by either of MSP or CLIENT by notice in writing if the other materially breaches its obligations under this Contract (including without limitation non-payment of charges due) and in the case of breaches which are capable of remedy either of MSP or CLIENT fails to remedy such breach within fourteen days of written notice, such notice shall contain details of what the breach is and requesting that the breach is remedied.
- 8.4 Either MSP or CLIENT may terminate all Contracts in the event that a liquidator (other than for the purpose of solvent amalgamation or reconstruction) trustee in bankruptcy, administrator or receiver is appointed in respect of the whole or part of the assets and/or undertaking of the other or the other enters into an arrangement or composition with its creditors, or other circumstances arise which entitle a court or creditor to appoint a receiver or administrator or to make a winding up order (save as in respect of a solvent reconstruction).

## 9 Confidentiality

- 9.1 MSP will keep in confidence any information of the other; whether written or oral, of a confidential nature obtained under or in connection with the Contract except to the extent any disclosure is required by law. Neither MSP nor CLIENT will, without the consent of the other, disclose such information to any person other than:
- 9.2 If either MSP or CLIENT receives a request under the Freedom of Information Act 2000 which encompasses any information provided in connection with the Contract the party will notify immediately of the request and give the other at least ten Business Days to make representations before releasing the requested information (save to extent otherwise required by law).
- 9.3 MSP will not pass Personal Data obtained to any third parties for marketing purposes by those third parties but may send CLIENT information about our own products and services which MSP consider may be of interest to CLIENT, unless CLIENT ask MSP not to.
- 9.4 CLIENT will always remain the Data Controller and MSP will always only ever be a Data Processor.

## 10 Fraud and Security

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- 10.1 CLIENT will ensure that usernames and passwords are kept secure and confidential always and are only used by authorised users. CLIENT will inform MSP immediately if CLIENT know or suspect that a username or password has been disclosed to an unauthorised user, or is being used in an unauthorised way, or if there is any illegal, fraudulent, or unauthorised use of the Services or Equipment.
- 10.2 CLIENT accepts and acknowledge that the Services are not guaranteed to be secure, and that MSP do not guarantee the prevention or detection of any unauthorised attempts to access the Services.

## 11 Anti-Bribery

CLIENT will ensure that CLIENT officers, employees, agents, and any other persons who perform services for and on behalf of CLIENT in connection with a Contract:

- Comply with all applicable Anti-Bribery Laws
- Do not omit to do any act or thing which causes or may cause MSP to be in breach of and/or commit an offence under any Anti-Bribery Laws
- Provide MSP with such reasonable assistance as it may require from time to time to enable MSP to perform any activity required by any relevant government or agency in any relevant jurisdiction for compliance with any Anti-Bribery Laws.

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## 12 Data protection

- 12.1 MSP will both comply with our obligations under the Data Protection Legislation at all times.
- 12.2 Where MSP transfer personal data to the other (the “Data Receiver”) the Data Transferor warrants that the Data Transferor has obtained the necessary consents to transfer the personal data to the Data Receiver and for the Data Receiver to process the data.

## 13 Intellectual Property Rights (IPR)

- 13.1 Any Intellectual Property Rights in connection with this Contract, shall be the exclusive property of the IPR ‘Inventor’ or assigned owner. Neither MSP or CLIENT will disclose to any third party or use any such Intellectual Property Rights except to the extent that it is or becomes public knowledge through no fault of either, or as required for the performance of the obligations under this Contract. Any Intellectual Property Rights belonging to, licensed to, or supplied to either shall be used as expressly permitted under the terms of this Contract.

## 14 GENERAL

- 14.1 The Contract (and any non-contractual matters arising out of or in connection with it) will be governed by English law and to the exclusive jurisdiction of the English Courts.
- 14.2 The Contract is made for the benefit of MSP and (where applicable) our successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else and no third party shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 14.3 Any notice, invoice or other document which may be given under the Contract will be in writing sent for the attention of the relevant person and delivered personally, sent by fax, or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first-class post or recorded delivery, 48 hours from the date of posting or if earlier upon receipt and, if deemed receipt under this condition is not within Normal Working Hours, at 9.00 am on the first Business Day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted. E-mail shall not be a valid method of serving notices under this Contract.
- 14.4 Any director or representative who signs on behalf of CLIENT will be deemed an authorised signatory and will be entitled to rely on such signatory as binding CLIENT to the obligations in this Contract in all respects.
- 14.5 Nothing in the Contract is to be construed as establishing or implying any partnership or joint venture between the parties, or as appointing any party as the agent or employee of any other party. No party shall hold out any other party as its partner or joint venture. except, and to the extent, that the Contract expressly states otherwise, neither may incur any expenses or negotiate on behalf of any other party or commit any other party in any way to any person without those others prior written consent.



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- 14.6 The Contract constitutes the entire agreement between MSP and CLIENT and supersedes any prior agreement or arrangement in respect of its subject matter. Neither MSP and CLIENT have entered into the Contract in reliance upon and nor shall they have any remedy in respect of, any representation or statement (whether made by the other or any other person) which is not expressly set out in the Contract.
- 14.7 **System.** For the purposes of these Terms, "System" means, collectively, any computer network, computer system, peripheral or device that is tracked using MSP's Remote Monitoring and Management tool. To avoid a delay or negative impact on our provision of the Services, during the term of each "REQUESTED SERVICES" CLIENT agree to refrain from modifying or moving the System, or installing software on the System, unless MSP expressly authorizes such activity. MSP will not be held responsible or liable for changes made by CLIENT without authorization.
- 14.8 **Maintenance:** Updates. If patches and other software-related maintenance updates ("Update(s)") are provided under the "REQUESTED SERVICES", MSP will install the Updates only if MSP has determined, in its reasonable discretion, that the Updates will be compatible with the configuration of the System and materially beneficial to the features or functionality of the affected software or hardware. MSP will not be responsible for any downtime or losses arising from or related to the installation or use of any Update, provided that the Update was installed in accordance with the manufacturer or applicable vendor's instructions.
- 14.9 **Third-Party Service Providers:** "Third-Party Service Providers" means Services provided by an entity or a Party other than the MSP in fulfilment of the "REQUESTED SERVICES" requirements whose terms and conditions MSP and CLIENT may be legally bound.
- 14.10 CLIENT's right to use the Third-Party Services is subject to CLIENT's understanding of, compliance with and consent to these Terms and of any Third-Party agreements, which MSP does not have authority to vary, alter or amend.
- 14.11 Therefore, MSP may utilize a Third-Party Service Provider in its discretion to provide the Services in accordance with these Terms. The Third-Party Service Provider may require the MSP to sign a contract with the Third-Party Service Provider for its services ("Third-Party Contract") and the terms of the Third-Party Contract may impose conditions and requirements upon CLIENT. Access to the terms and conditions of any such Third-Party Contract(s) will be provided to CLIENT or appear on our website which identifies the Third-Party Service Provider and a link to its terms and. **CLIENT** hereby agrees to review all Third-Party Terms and Conditions, and consent to those Third-Party Terms and Conditions which CLIENT has consented MSP to contract upon its behalf.
- 14.12 The links are being provided as a courtesy, CLIENT should monitor the links for the 3rd Party Providers to determine if they have the most current Terms and Conditions.
- 14.13 **Third-Party Product Vendors** "Third-Party Product Vendors" means software, machinery, equipment and/or products inclusive of component parts purchased from vendors in fulfilment of the "REQUESTED SERVICES".

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- 14.14 MSP will use reasonable efforts to assign, transfer and facilitate all warranties (if any) for the Third-Party Product Vendor to CLIENT, but will have no liability whatsoever for the quality, functionality or operability of any Third-Party Products, and MSP will not be held liable as an insurer or guarantor of the performance, downtime, or usefulness of any Third-Party Product. Where applicable, a Third-Party Product Vendor may require the MSP to sign a contract with the Third-Party Product Vendor for its products (“Third-Party Contract”) and the terms of the Third-Party Contract may impose certain conditions and requirements upon CLIENT. CLIENT hereby agrees to review all Third-Party terms and conditions, and consent to those Third-Party terms and conditions which CLIENT has consented MSP to contract upon its behalf. Third-Party Product Vendor terms and conditions link can be found at our website and/or IN “REQUESTED SERVICES”.
- 14.15 **Third-Party Products:** Unless otherwise stated in “REQUESTED SERVICES”, all hardware, software, peripherals, or accessories purchased through MSP (“Third-Party Products”) are non-refundable once the applicable “REQUESTED SERVICES” is placed in our queue for delivery. Unless otherwise expressly stated in a “REQUESTED SERVICES”, all Third-Party Products are provided “as is” and without any warranty whatsoever as between MSP and CLIENT (including but not limited to implied warranties).
- 14.16 **Third-Party Support:** If, in MSP’s discretion, a hardware or software issue requires vendor or OEM support, MSP may contact the vendor or OEM (as applicable) on CLIENT’s behalf and pass through to CLIENT all fees and costs incurred in that process.
- 14.17 **Subcontractors:** “Subcontractors” means third-party to whom MSP contracts to provide specified services to complete the services indicated in the applicable “REQUESTED SERVICES”.
- 14.18 **Conditions of Service:** CLIENT System is eligible for provision of MSP’s Services as outlined in the “REQUESTED SERVICES”, provided the System is in good condition and MSP’s serviceability requirements and site environmental conditions are met:
- a) CLIENT shall provide adequate workspace, heat, light, air conditioning, ventilation, electric current and outlets, internet, remote access, and long-distance telephone access for use by MSP’s representatives.
  - b) MSP’s representatives shall have, and CLIENT shall provide full access to the System in order to affect the necessary monitoring and/or supplemental services.
  - c) MSP reserves the right to suspend or terminate these Terms or any “REQUESTED SERVICES” in its sole discretion, conditions at the service site pose a health or safety threat to any of MSP’s representatives.
  - d) It is the responsibility of CLIENT to promptly notify MSP of any events/incidents that may impact the services defined within these Terms and/or any supplemental service needs.
  - e) MSP shall provide services as defined in the “REQUESTED SERVICES” during MSP’s regular business hours, unless otherwise specified in any subsequent SOW, or other contract documents, and in accordance with MSP’s IT Service policies then in effect.

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- 14.19 CLIENT agrees that CLIENT will inform MSP, prior to, CLIENT making any modification, installation, or service performed on the System by individuals not employed or contracted by MSP in order to assist MSP in providing an efficient and effective System support response. CLIENT will be billed the full cost, at MSP's hourly rate, to remediate and restore the Systems and/or Services to a state prior to change.
- 14.20 Only Authorized Contacts will be eligible to access and service CLIENT System. Any unauthorized access or service conducted on the System without the explicit consent of MSP, which results in negative System performance, will not be covered by the monthly plan fee as documented in the "REQUESTED SERVICES" and will be billed according to MSP's labour rates as outlined in the "REQUESTED SERVICES" or subsequent SOW.
- 14.21 MSP shall be obligated to provide service only at (a) the Service Site(s) as identified in the "REQUESTED SERVICES"; and (b) CLIENT systems as identified which is defined as CLIENT covered devices in the Remote Monitoring Management ("RMM") platform. If CLIENT desires to relocate, add, or remove locations, CLIENT shall give appropriate notice to MSP of CLIENT's intention to relocate sixty (60) days in advance. MSP reserves the right to renegotiate service terms with respect to any relocation and/or addition of locations by CLIENT. Such right includes the right to refuse service at the relocation and/or new site.
- 14.22 **Service Limitations.** In addition to other limitations and conditions set forth in these Terms, the following service and support limitations are expressed:
- a) Cost of consumables, replacement parts, hardware, software, network upgrades and associated services are outside the scope of these Terms. MSP will provide consultative specification, sourcing guidance and/or Time and Material/Project offerings.
  - b) Any unauthorized changes made to the System without MSP's written consent which causes issues or failures to the System, are beyond the responsibility of MSP and CLIENT will be billed the full cost to restore the System to its original state.

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- 14.23 **Onboarding Process:** CLIENT acknowledges and agrees that MSP will have no responsibility for any deficiencies, including Cyber Security risks and issues, in respect of the current operating systems and infrastructure until the MSP has had a reasonable opportunity to conduct a review of the current system and to provide CLIENT with its recommendations, and CLIENT has accepted and implemented same.
- 14.24 **Offboarding Process:** In the event of termination of Services by either party, MSP will make reasonable accommodations to transfer CLIENT's account to CLIENT or CLIENT's new managed service provider or other authorized agent (the "Onboarding Provider"). CLIENT shall indemnify and hold harmless MSP, its Subcontractors and their respective directors, officers, employees, consultants and agents for any claims or losses resulting from the activities of CLIENT or the Onboarding Provider during the transition period from MSP to the Onboarding Provider, inclusive of when CLIENT obtains access to all super administrator accounts of their infrastructure. Transfer will require that CLIENT's account be fully paid at time of transfer inclusive of any offboarding charges. CLIENT shall indemnify and hold harmless MSP, its Subcontractors and their respective directors, officers, employees, consultants and agents for any claims or losses resulting from Cyber Security risks and issues, in respect of the current operating systems and infrastructure during the Off-boarding Process.
- 14.25 **Network Devices, Hardware, and Systems:** MSP shall only be responsible for providing services to network devices, hardware and systems identified by the CLIENT and MSP and set forth in the latest "REQUESTED SERVICES" and covered by Remote Management Monitoring (Hereafter referred to as RMM.) MSP may, in its sole discretion, deny requests to add devices, hardware or systems. The CLIENT shall bear the responsibility to isolate and protect the system by not allowing additional devices, hardware or system on the system unless approved by MSP. MSP shall have no responsibility for any devices, hardware or systems or damage resulting therefrom that are added to the System without MSP's approval. MSP shall have the right to cancel this contract if devices, hardware, or systems are added without their approval. If CLIENT obtains new devices, hardware or systems and wishes to request MSP's services to extend to new devices, hardware, or systems, said extension shall not take effect unless and until both Parties agree in writing to a new "REQUESTED SERVICES" and the device is added to the RMM. Said written, signed "REQUESTED SERVICES" shall then become an addendum to this contract and incorporated herein. MSP reserves the right to deny any requests for additional services and/or additional hardware/systems for any reason in their sole discretion.
- 14.26 **Authorized Contact(s).** CLIENT understands and agrees that MSP will be entitled to rely on any directions or consent provided to MSP by any of CLIENT Authorized Contacts, as indicated in an applicable "REQUESTED SERVICES". If no Authorized Contact is identified in an applicable, "REQUESTED SERVICES" then CLIENT Authorized Contact will be the person(s)
- a) who signed the Quote, OR "REQUESTED SERVICES", and/or
  - b) who signed the applicable "REQUESTED SERVICES"

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14.27 If CLIENT desires to change CLIENT Authorized Contact(s), please notify MSP of such changes in writing which, unless exigent circumstances are stated in the notice, will take effect three (3) business days thereafter.

14.28 **Shared Administrator Credentials:** If CLIENT shares server, network, or software application administrative credentials, MSP will not be held legally liable or responsible for any outages, errors, breaches, data loss and misconfiguration since multiple administrators from different companies jeopardizes the integrity of the support outlined in these Terms.

## 15 CONFIDENTIALITY AND NON-DISCLOSURE.

15.1 **Definition of Confidential Information:** As used herein, "Confidential Information" means all confidential information disclosed by a Party ("Disclosing Party") to the other Party ("Receiving Party"), in any format whether oral, written, electronic, or other, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure.

15.2 CLIENT Confidential Information shall include any personally identifiable information or protected health information of CLIENT employees, CLIENT customers, and CLIENT Data. proper handling of protected health information to the extent not caused by MSP's gross negligence and/or due to failing to notify MSP of the necessity of same.

15.3 Confidential Information of each Party shall include the terms and conditions of these Terms and all "REQUESTED SERVICES" as well as business and marketing plans, technology and technical information, products, services, product plans and designs, trade secrets, and business processes disclosed by such Party.

15.4 Confidential Information (other than CLIENT Data) shall not include any information that:

- a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party,
- b) is received from a third-party without breach of any obligation owed to the Disclosing Party,
- c) was independently developed by the Receiving Party.

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- 15.5 **Protection of Confidential Information:** The Receiving Party shall protect and safeguard the confidentiality of all Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care, not use any Confidential Information of the **Disclosing Party** for any purpose outside the scope of these Terms or otherwise in any manner to the Disclosing Party's detriment, and except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, subcontractors and agents who need such access for purposes consistent with these Terms.
- 15.6 **Non-disclosure:** Neither Party shall disclose these Terms or any "REQUESTED SERVICES" to any third-party other than its affiliates, legal counsel, and accountants without the other Party's prior written consent.
- 15.7 **Compelled Disclosure:** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.
- 15.8 If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a Party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.
- 15.9 **Return or Destruction of Confidential Information:** Upon request, each Party agrees to promptly return the other Party's Confidential Information in its possession, custody, or control, or to certify the deletion or destruction of Confidential Information; provided, however, that the Receiving Party may retain a copy of any Confidential Information to the extent (a) required by applicable law or (b) it would be unreasonably burdensome to destroy. In the event that return, or destruction of Confidential Information is unduly burdensome, or not feasible, the Parties shall extend the protections of these Terms to the retained Confidential Information.

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## 16 Appendix – Definitions

**Annual Support Charge** means the support charge for the Maintenance Services as set out on the Order Form;

**Applicable data protection law** means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;

**Commencement Date** means the commencement date of the applicable Services (excluding Fixed Network Services) as specified on the Order Form;

**Contract** means the agreement between the parties for the provision of the Equipment and/or Services (or any of them) incorporating these Conditions, the Order Form, and any other Service Specific Conditions and/or Promotional Terms incorporated into the Contract;

**Delivery** means the point at which the Equipment arrives at Site immediately prior to the unloading of such Equipment from the delivery vehicle and 'Delivered' shall be construed accordingly;

**Effective Date** shall mean the earlier of the date on which the relevant Order Form is signed or MSP commences performance of the Contract;

**Equipment** means the equipment and/or software related products to be supplied under the Contract as set out on the Order Form;

**Installation** means the physical installation of Equipment at the Site;

**Installation Services** means services for the Installation of Equipment as more particularly described in the Order Form;

**Intellectual Property Rights** means all intellectual and industrial property rights including patents, know-how, registered trade-marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade-marks, rights to prevent passing off for unfair competition, copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions;

**Requested Services** means the services that the CLIENT has requested from the MSP;

**Service Specific Conditions** means any additional terms and conditions which are to apply to the Contract as specified on the Order Form;

**CLIENT** means the person, firm or company specified on the Order Form and any other person appearing to act within that person, firm, or company authority;

**MSP** means Cloudpushuk Ltd Limited a company registered in England and Wales whose registered office is Suite 2069 6-8 Revenge Road, Lordswood, Kent, England, ME5 8DD.