

# Contracting Entity

Cloudfy is a global business working with customers worldwide. This sales agreement is contracted depending on our customer locations as follows.

<b>Country of Residence of Merchant Customer</b>	<b>Cloudfy Entity</b>	<b>Governing Law</b>
United States	Cloudfy Inc., a Delaware corporation in the United States	Delaware, USA
United Kingdom	Cloudfy Ltd., a United Kingdom limited company	England and Wales
European Union	Cloudfy Ltd., a United Kingdom limited company	England and Wales
Australia	Cloudfy Pty. Ltd, an Australian proprietary limited company	Victoria, Australia
Singapore and Asia Pacific	WCL Digital Pty. Ltd, a Singapore proprietary limited company.	Singapore
Any other jurisdiction	Cloudfy Ltd., a United Kingdom limited company	England and Wales

## CLOUDFY TERM AND CONDITIONS

### 1. DEFINITIONS AND INTERPRETATION

1.1. Words shall have the meanings given to them in this Agreement, including without limitation, as set out below:

**Acceptable Usage Policy** means the policy governing the acceptable usage of the Cloudfy Services by the Customer and its Users which is located at <http://support.cloudfy.com> as may be updated by the Supplier from time to time;

**Access Credentials** has the meaning set out in clause 5.1.2;

**Agreement** means this Cloudfy Services Agreement including the Order Form, these Cloudfy Terms, the Schedules, and Documentation and any document or webpage incorporated by reference;

**Authorised Contact** means each authorised representative appointed by each of the Parties as their respective account managers, whose details are set out in clause 18 (Authorised Contacts), or as otherwise notified to the other Party in writing;

**Available** has the meaning given to it in Schedule 2;

**Business Day** means a day, other than a Saturday, Sunday or public holiday on which clearing banks are open for non-automated commercial business in the City of London;

**Bribery Laws** means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption;

**Charges** means the charges for the Cloudfy Services paid and increased in accordance with clause 6 (Charges) and as further set out in on the Order Form.

**Cloudfy Services** means any of the software-as-a-service (SaaS) and Platform-as-a-Service (PaaS) online services provided by the Supplier to the Customer under this Agreement and as further described in the Documentation. Cloudfy Services do not include Third Party Services.

**Cloudfy Terms** means the terms and conditions set out in this document (entitled "Cloudfy Terms") and attached to the Order Form;

**Commencement Date** has the meaning set out in the Order Form.

**Confidential Information** means all information whether technical or commercial know-how (including all specifications, inventions, processes, initiatives, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the Parties) given by one Party to the other or otherwise obtained by one Party relating to the other Party's business, finance or technology, know-how, Intellectual Property Rights, assets, strategy, products and Customers, including information relating to management, financial, marketing, technical and other arrangements or operations of any person, firm, or organisation associated with that party where the information is:

- a) identified as confidential at the time of disclosure; or
- b) ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure;

**Control** means that a person owns directly or indirectly more than fifty percent of the shares or securities of the other person representing the right to vote on all or substantially all matters including the election of directors and Controls and Controlled shall be interpreted accordingly;

**Customer Data** means all information, data, and software of whatever form that is provided by or on behalf of the Customer and Users to the Supplier in connection with the Cloudfy Services and/or used by or on behalf of the Customer in their access to and/or use of the Cloudfy Services;

**Customer Indemnified Party** has the meaning set out in clause 10 (Customer Intellectual Property Rights);

**Customer Website** means the website that is, or has been, developed and hosted by the Supplier as part of the Services;

**Data Subject** has the meaning given to it in Schedule 1;

**Documentation** means (i) the online documents, user guides and specifications that described the permitted usage and functionality of the individual Cloudfy Services which are located at <http://support.cloudfy.com> as may be updated by the Supplier from time to time; and (ii) the Acceptable Usage Policy;

**Domain Name** means the unique name that identifies the Customer Website;

**Force Majeure Event** means an event or sequence of events beyond a party's reasonable control (which could not reasonably have been

anticipated and avoided by a party) preventing or delaying it from performing its obligations hereunder, including without limitation war, revolution, terrorism, riot or civil commotion, or reasonable precautions against any such; denial of service attack (whether distributed or not); strikes, lock outs or other industrial action, whether of the affected party's own employees or others; blockage or embargo; acts of or restrictions imposed by government or public authority; non-performance by the Supplier's third party subcontractors, explosion, fire, corrosion, flood, natural disaster, or adverse weather conditions. A Force Majeure Event does not include, without limitation, inability to pay, mechanical difficulties, shortage or increase of price of raw materials, over-commitment or market or other circumstances which may make the terms of this Agreement unattractive to a Party;

**Go Live** means the date the Customer Website or a substantial part of it is first used in a live environment or in commercial use;

**Implementation Services** means the implementation services provided by the Supplier to the Customer under this Agreement, and as further described in the proposal provided by Cloudfy to the Customer under the heading 'Implementation services';

**Infringing Data** has the meaning set out in clause 10 (Customer Intellectual Property Rights);

**Insolvency Event** means an event where a Party is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the other (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the assets of the other or the other enters into or proposes any composition or arrangement with its creditors generally or any analogous event occurs in any applicable jurisdiction;

**Intellectual Property Rights** means any and all copyright, know-how, rights in inventions, patents, know-how, trade secrets, trademarks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, semiconductor chip topography rights, utility models, domain names and all similar rights and, in each case:

- a) whether registered or not;
- b) including any applications to protect or register such rights;
- c) including all renewals and extensions of such rights or applications;
- d) whether vested, contingent or future; and
- e) wherever existing;

**Late Payment of Commercial Debts** means the Late Payment of Commercial Debts (Interest) Act 1998, including any amendments hereto;

**Losses** means all incurred losses, liabilities, damages, costs, claims, demands, actions, proceedings, orders and expenses (including reasonable legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties;

**Maintenance Windows** has the meaning given to it in Schedule 2;

**Other Exclusions** has the meaning given to it in Schedule 2;

**Order Form** has the meaning set out in clause 2.1.

**Personal Data** has the meaning given to it in Schedule 1, and shall include, where applicable, personal data contained within the Customer Data;

**Schedule** means a schedule under this Agreement describing the Services;

**Scheduled Maintenance** has the meaning given to it in Schedule 2;

**Service Credit** has the meaning given to it in Schedule 2;

**Services** means the Implementation Services and/or Cloudfy Services (as appropriate and indicated in the Order Form) provided by the Supplier to the Customer in accordance with this Agreement.

**Sub-Processor** has the meaning given to it in Schedule 1;

**Third Party Services** means any online or offline product, service, software provided by the Customer or a third party on the Customer's behalf, which interoperates with the Cloudfy Services;

**Uptime Minimum** has the meaning given to it in Schedule 2;

**Uptime Percentage** has the meaning given to it in Schedule 2;

**User(s)** means any individual users that are authorised by or on behalf of the Customer (including those users authorised by the Supplier at the Customer's request) to use the Cloudfy Services through the use of a unique username and password as required by the Documentation;

**VAT** means United Kingdom value added tax any other tax imposed in substitution for it;

**Virus** means anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the User experience, including worms, trojan horses, viruses and other similar things or devices;

**Website IPR** means the Customer's Intellectual Property Rights in the Customer Website.

1.2. in this Agreement, unless the context otherwise requires:

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 references to paragraph 1, subclauses, clauses, Schedules or Appendices (if any) are to paragraph 1, subclauses, clauses, Schedules or Appendices of this Agreement;
- 1.2.3 references to persons include individuals, trusts, partnerships, unincorporated bodies, government entities, companies and/or corporations (in each case whether or not having separate legal personality);
- 1.2.4 references to including and include(s) shall be deemed to mean respectively including without limitation and include(s) without limitation;
- 1.2.5 in the event (and to the extent only) of any conflict between the terms of this Agreement the following order of precedence shall apply in descending order:
  - a) Cloudfy Terms;
  - b) the Order Form;
  - c) the Schedules; and
  - d) the Documentation;
- 1.2.6 clause and schedule headings do not affect the interpretation of this Agreement; and
- 1.2.7 references to legislation (including any subsidiary legislation) include any modification or re-enactment thereof.

## 2. STRUCTURE

2.1 These Cloudfy Terms form part of, are made pursuant to and are governed by the order form entered into by the Supplier and the Customer identified in that order form as attached to these Cloudfy Terms ("**Order Form**").

## 3. SERVICES

3.1 In consideration of the mutual undertakings agreed between the Parties under this Agreement, the Supplier shall provide the Services with reasonable care and skill on an 'as is' basis to the level indicated in the Order Form and further described in the Documentation.

## 4. IMPLEMENTATION SERVICES

4.1 The scope of the Implementation Services and the location they are to be provided from shall be agreed prior to commencing the provision of the Implementation Services by the Supplier. Implementation Services shall not commence until the Customer has paid 50% of the total anticipated cost of the Implementation Services for the Customer Website being provided. All Implementation Services shall be calculated on a time and material basis plus expenses.

## 5. USAGE OF THE CLOUDFY SERVICES

5.1 The Customer shall on behalf of itself and all Users:

- 5.1.1 use the Cloudfy Services in accordance with the Acceptable Usage Policy and the terms of this Agreement;
- 5.1.2 keep confidential and, except as provided for in this Agreement, not share with any third party any login details, password or other form of access credentials ("Access Credentials") that it is provided with to facilitate Users' access to the Cloudfy Services;
- 5.1.3 not allow Access Credentials to be shared between multiple Users, and take steps to monitor and prevent the same where Access Credentials are provided on a per User basis;
- 5.1.4 maintain all necessary security measures to prevent unauthorised access to the Cloudfy Services via the Access Credentials and the IT systems of the Customer and its Users;

5.1.5 maintain records of all Users the Customer has permitted to access the Cloudfy Services; and

5.1.6 notify the Supplier immediately in the event the Customer is aware of or suspects any unauthorised access to the Cloudfy Services.

5.2 The Customer is responsible for ensuring that all Users are aware of the Customer's obligations under this Agreement, and the Customer shall be responsible for all acts and omissions of Users during their usage of the Cloudfy Services, and any such act or omission that would breach the terms of this Agreement had the same been undertaken by the Customer, shall be deemed to be a breach by the Customer of the relevant provision(s) of this Agreement.

5.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Cloudfy Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; promotes unlawful violence; is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or in a manner that is otherwise illegal or causes damage or injury to any person or property. The Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

5.4 Without prejudice to the Supplier's rights pursuant to clauses 15.2 and 15.4, the Supplier may (without any liability whatsoever) immediately suspend the Customer and its Users with any or all access to the Cloudfy Services if the Supplier, acting reasonably, determines:

5.4.1 the Customer and/or its Users are in breach of the Acceptable Usage Policy; or

5.4.2 the Customer is in breach of its obligations set out in this Agreement and such breach has had (or is reasonably likely to have) a serious adverse impact on:

a) the performance of the Supplier's IT systems; and/or

b) the security of the Supplier's IT systems and the security of the Supplier's other customers and their data.

5.5 The Supplier shall notify the Customer of such suspension and the same shall continue until the Customer has remedied its breach. Such suspension shall not place the Supplier in breach of its obligations to provide the Cloudfy Services in accordance with this Agreement and shall not relieve the Customer from paying the Charges in accordance with the terms of this Agreement. The Supplier shall use reasonable endeavours to provide the Customer with such information it is aware of to expedite the Customer's remedy of such breach.

5.6 The Supplier reserves the right to monitor usage by all Users (in terms of audits) during the term of this Agreement for the purpose of (among others) ensuring compliance with the terms of this Agreement. If any such monitoring reveals that any Access Credentials have been provided to an individual that is not a User (including the sharing of Access Credentials between multiple Users where this is not permitted), the Supplier may in its discretion immediately disable access to such Users.

5.7 The Supplier hereby grants a non-transferable, non-exclusive licence for the term of this Agreement to the Customer (for the benefit of itself and the Users) to use the Cloudfy Services for the Customer's internal business purposes.

5.8 Except to the extent such activities are either expressly agreed by the Parties to this Agreement, or otherwise prohibited from being restricted by law, the Customer's rights to use the Cloudfy Services do not permit it:

5.8.1 (or its Users) to copy, cut and paste, email, reproduce, publish, distribute, redistribute, broadcast, transmit, modify, adapt, edit, abstract, create derivative works of, store, archive, publicly display, sell or in any way commercially exploit any part of the Cloudfy Services;

5.8.2 to use the Cloudfy Services to provide outsourced services to third parties or make it available to any third party or allow or permit a third party to do so;

5.8.3 to combine, merge or otherwise permit the Cloudfy Services (or any part of them) to become incorporated in any other program, nor arrange or create derivative works based on it;

5.8.4 to attempt to decompile (the underlying software (or any part of it) that is used to provide the Cloudfy Services; and

5.8.5 to observe, study or test the functioning of the underlying software (or any part of it) that is used to provide the Cloudfy Services.

## 6. CHARGES

6.1 In consideration for the Charges the Supplier shall provide the Services. Charges for Cloudfy Services shall be payable monthly in advance. Implementation Service Charges are as detailed in Clause 4.

6.2 All amounts due under this Agreement are:

- 6.2.1 exclusive of VAT, sales or other tax applicable which shall be paid in addition by the Customer at the rate and in the manner for the time being prescribed by law; and
- 6.2.2 invoices for the Cloudfy Services shall be raised 10 Business Days in advance of the month to which the Charges relate and shall be payable within 10 Business Days of the date of the Supplier's invoice by BACS or CHAPS transfer or Direct Debit to the Supplier's bank account specified in the relevant invoice.
- 6.2.3 If the Customer fails to make any payment that is properly due to the Supplier under this Agreement by the due date for payment, then at the Supplier's option:
- 6.2.4 the Customer shall pay interest on the overdue amount at the greater of: (i) annual rate of the Late Payment of Commercial Debts rate; or (ii) 4% a year above the base rate of Barclays Bank PLC, but in any event, interest payable by the Customer shall not exceed the maximum rate permitted by law. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and/or
- 6.2.5 the Supplier may immediately suspend the Customer's and its Users' access to the Services until such overdue amounts are paid.
- 6.2.6 This clause 6.2.3 shall not apply to payment of Charges that the Customer disputes in good faith, provided that the Customer notifies the Supplier of such Charges within seven days of the date of the Supplier's invoice.
- 6.2.7 The Parties agree that any fees or expenses comprising the Charges shall be reviewed annually by the Supplier and may be increased by the Supplier with effect from 1 January in each year following the first anniversary of this Agreement and the Supplier shall notify the Customer of such increase at least 30 (thirty) days prior to the effective date of such increase.

## 7. WARRANTIES

7.1 Each of the Parties warrants to the other that it has full power and authority to enter into and perform its obligations under this Agreement.

7.2 The Customer warrants to the Supplier that:

- 7.2.1 it has the right, power and authority to grant to the Supplier the rights (if any) in the Customer Data as required for the Supplier to supply the Cloudfy Services;
- 7.2.2 it has the necessary licensing rights and/or title in the Domain Name and Website IPR; and
- 7.2.3 it will comply with all laws and regulations applicable to the Customer's use (and the use by its Users) of the Cloudfy Services.

7.3 The Supplier warrants to the Customer that:

- 7.3.1 the Supplier has the right, power and authority to grant to the Customer the rights (if any) contemplated herein and supply the Cloudfy Services;
- 7.3.2 the Cloudfy Services will comply with their description and specification set out in the Documentation;
- 7.3.3 the receipt of the Cloudfy Services does not infringe the Intellectual Property Rights of any third party; and
- 7.3.4 it will comply with all laws and regulations applicable to the Supplier's provision of the Cloudfy Services.

7.4 Upon the Customer notifying the Supplier in writing of any alleged breach of clause 7.3, the Supplier shall use reasonable endeavours to remedy any such alleged breach within 90 (ninety) days after notification. If the Supplier remedies such alleged breach within such time then it will have no other liability of any kind in respect of the alleged breach. Such remedy shall be free of charge to the Customer unless the Supplier determines there has been no breach of clause 7.3, at which point the Customer shall pay all reasonable and demonstrable costs and expenses incurred by the Supplier in investigating the alleged breach.

7.5 The Customer acknowledges and agrees that:

7.5.1 the Cloudfy Services have not been prepared to meet the Customer's individual requirements and that they cannot be tested in every operating environment so as to produce software which is error free or operates without interruption; and

7.5.2 it is the Customer's responsibility to ensure the facilities and functions of the Cloudfy Services meet the Customer's requirements.

7.6 The Supplier does not warrant or represent that the Cloudfy Services shall be:

7.6.1 uninterrupted or error free; or

7.6.2 interoperable with third party software or equipment, including Third Party Services.

7.7 Save to the extent set out in this clause 7 (Warranties) or to the extent that any exclusion is prohibited by law, no other representations, warranties or conditions, express or implied, statutory or otherwise (including as to condition, satisfactory quality, performance or fitness for purpose), are given or assumed by the Supplier in respect of the Cloudfy Services and any such representations, warranties or conditions are hereby excluded.

7.8 Any warranties given by the Supplier shall be subject to the Customer using the Cloudfy Services in compliance with this Agreement, and the Supplier shall not be liable under this clause for, or required to remedy, any problem arising from any defect or error wholly caused by any software, systems, services or other equipment used in connection with the Cloudfy Services that are provided by the Customer or any third party.

## 8. THIRD PARTY SERVICES

8.1 The Cloudfy Services do not contain any functionality to process online payments and in order to facilitate payments on the Customer Website (which for the avoidance of doubt shall be treated as a Third Party Service) then the Customer shall enter into a contract with a payment services provider.

8.2 The Supplier shall inform the Customer of the payment service providers that the Cloudfy Services can interoperate with on request although supply of this information shall in no way be construed as any kind of endorsement or recommendation as to suitability.

8.3 The Supplier may from time to time enable functionality within the Cloudfy Services to enable the Customer to use the Cloudfy Services to interoperate with Third Party Services. The Customer acknowledges and agrees that:

8.3.1 the Supplier is not the provider of the Third Party Services and the same are not part of the Cloudfy Services being provided by the Supplier to the Customer pursuant to the terms of this Agreement;

8.3.2 the Supplier makes no warranties or representations as to which Third Party Services the Cloudfy Services integrate or operate with;

8.3.3 all integration or interoperation work carried out by the Supplier shall be performed on a time and materials 'as is' basis;

8.3.4 any terms and conditions governing the use of the Third Party Services are between the Customer and the applicable provider of the Third Party Services and the Customer warrants that it has obtained all necessary rights and consents required to use the Cloudfy Services with the Third Party Services;

8.3.5 where the Customer is granting the provider of the Third Party Services access to the Customer Data stored on the Cloudfy Services, the Supplier is not controlling the provider of the Third Party Services access to the Customer Data and the Supplier is not liable to the Customer pursuant to the terms of this Agreement for any loss, damage or corruption relating to the same; and

8.3.6 the Supplier is relieved from any breach of the terms of this Agreement (including any failure to achieve the Service Levels), to the extent such breach is caused by the Customer's usage of the Cloudfy Services with Third Party Services.

## 9. SUPPLIER INTELLECTUAL PROPERTY RIGHTS

9.1 All Intellectual Property Rights in and to the Implementation Services and Cloudfy Services shall vest and remain vested in the Supplier and its licensors. To the extent that the Customer acquires any Intellectual Property Rights in the Cloudfy Services, the Customer shall assign or procure the assignment of such Intellectual Property Rights with full title

guarantee (including by way of present assignment of future Intellectual Property Rights) to Supplier or its licensor (as applicable).

## 10. CUSTOMER INTELLECTUAL PROPERTY RIGHTS

10.1 All Intellectual Property Rights in and to the Customer Data shall vest and remain vested in the Customer or its licensors (as applicable). To the extent that the Supplier acquires any Intellectual Property Rights in the Customer Data, the Supplier shall assign or procure the assignment of such Intellectual Property Rights with full title guarantee (including by way of present assignment of future Intellectual Property Rights) to the Customer or its licensor (as applicable).

10.2 The Customer hereby grants (and shall procure the grant of) a royalty-free, non-transferable (save to the extent set out in this clause 10), non-exclusive licence to the Supplier (together with a right for the Supplier to sub-licence the same to and any third party suppliers for use on the Supplier's behalf) to use and modify the Customer Data to the extent necessary to perform the Services.

10.3 The Customer acknowledges that save as expressly set out in this Agreement, the Supplier has limited control over any Customer Data hosted as part of the provision of the Services and does not purport to monitor the content of the Customer Data. The Customer is solely responsible for the accuracy, quality and legality of the Customer Data and the means by which the Customer acquired the Customer Data.

10.4 Subject to the foregoing, the Supplier shall be entitled to use in any way it deems fit any skills, techniques or know-how acquired or developed or used in connection with the provision of the Services.

10.5 The Supplier shall back up Customer Data every night and store the previous day's Customer Data on a rolling daily basis.

10.6 This clause 10.6 sets out the Customer's sole and exclusive remedy for any loss of or corruption of the Customer Data.

10.7 The Customer shall, and shall procure that, the Customer Data does not:

- 10.7.1 breach applicable law;
- 10.7.2 infringe any third party Intellectual Property Rights;
- 10.7.3 contain any material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous; or
- 10.7.4 contain any Viruses or other harmful or intrusive programmes or other code;

(together "Infringing Data").

10.8 The Supplier shall notify the Customer immediately if it becomes aware of any allegation that any Customer Data may be Infringing Data and the Supplier shall have the right to remove the Customer Data from the Cloudfy Services without the need to consult the Customer.

10.9 The Customer shall indemnify, and keep the Supplier and its Affiliates, officers, directors, employees, agents, successors, and assignees (the Customer Indemnified Party) indemnified at all times from and against any and all Losses, which are suffered by, and defend, against any Losses which are brought or threatened against, the Customer Indemnified Party, in respect of any Infringing Data.

## 11. DATA PROTECTION

Each Party agrees that, in the performance of their respective obligations under this Agreement and to the extent applicable, it shall comply with the provisions of Schedule 1 with regard to the processing of Personal Data.

## 12. SERVICE LEVELS

12.1 Schedule 2 shall apply with effect from Go Live in respect of the service commitment provided by the Supplier to the Customer relating to the Cloudfy Services.

## 13. CONFIDENTIAL INFORMATION

13.1 Each Party shall maintain the confidentiality of the other party's Confidential Information and shall not without the prior written consent of the other use, disclose, copy or modify the other Party's Confidential Information (or permit others to do so) other than as necessary for the performance of its rights and obligations under this Agreement.

13.2 Each party undertakes to:

- 13.2.1 disclose the other Party's Confidential Information only to those of its officers, employees, agents, professional advisers and contractors (including the Supplier personnel) to whom and to the extent to which such disclosure is necessary for the purposes contemplated under this Agreement;
- 13.2.2 to procure that such persons are made aware of and agree in writing to observe the obligations in this clause.

13.3 Each Party shall give notice to the other of any unauthorised misuse, disclosure, theft or loss of the other Party's Confidential Information immediately upon becoming aware of the same.

13.4 The provisions of this clause shall not apply to information which:

- 13.4.1 is or comes into the public domain through no fault of the recipient, its officers, employees, agents or contractors;
- 13.4.2 is lawfully received by the recipient from a third party free of any obligation of confidence at the time of its disclosure;
- 13.4.3 is independently developed by the recipient, without access to or use of such information;
- 13.4.4 is required by law, by court or governmental or regulatory order to be disclosed provided that the relevant party, where possible, notifies the other Party at the earliest opportunity before making any disclosure; or
- 13.4.5 in the case of the Customer's Confidential Information hosted by the Supplier as part of the Customer Data, where the Customer has configured or otherwise used the Cloudfy Services so that the Customer's Confidential Information is accessible to third parties through no fault of the Supplier, its officers, employees, agents or contractors.

13.5 The obligations under this clause shall survive the variation, expiry suspension or termination of this Agreement for a period of three years thereafter.

13.6 Except as required by law, by any court or by any governmental, regulatory or supervisory authority or body of competent jurisdiction or except as expressly agreed by the Parties no announcement or disclosure relating to or in connection with this Agreement or any matters contained in it shall be issued by or on behalf of a Party without the prior written consent of the other Party (such consent not to be unreasonably withheld, or delayed) during the term of this Agreement.

## 14. LIMITS ON LIABILITY

14.1 Notwithstanding the other provisions of this clause 14 or other limitations and exclusions of liability set out in this Agreement, neither Party excludes or limits any liability for:

- 14.1.1 personal injury (including sickness and death) to the extent that such injury results from the negligence or wilful default of a Party or its employees;
- 14.1.2 fraud or fraudulent misrepresentation;
- 14.1.3 any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 14.1.4 any other liability to the extent the same cannot be excluded or limited by law.

14.2 Subject to clause 14.1, each Party's liability to the other in contract, tort (including negligence), misrepresentation (whether innocent or negligent), breach of statutory duty or otherwise arising out of or in connection with this Agreement shall not extend to any:

- 14.2.1 loss of revenue or profits;
- 14.2.2 loss of business opportunity;
- 14.2.3 loss of goodwill or injury to reputation;
- 14.2.4 loss of or corruption to data;
- 14.2.5 loss of anticipated savings; or
- 14.2.6 any special, indirect or consequential loss or damage whatsoever.

14.3 In no event shall the aggregate liability of any Party to the other Party (or their Affiliates), including liability for breach of contract (including under any indemnity), misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty, warranty, strict liability or any other legal theory howsoever arising, in respect of all Losses arising under this Agreement, exceed (a) an overall limit of one hundred percent of the total amounts payable under this Agreement in the immediately preceding 12 month period in respect of any and all claims, losses and damages arising under or in connection with this Agreement.

14.4 The Parties agree that the limitations on liability in this Agreement are reasonable given their respective commercial positions and ability to purchase relevant insurance in respect of risks under this Agreement.

14.5 The limitations contained in this clause 14 shall not apply to the indemnity provided by the Customer at paragraph 2.4 of Schedule 1 which shall not be limited.

## 15. TERM AND TERMINATION

15.1 This Agreement shall commence on the Commencement Date and shall (subject to earlier termination pursuant to this clause 15) continue

- for an initial period of twelve months ("Initial Term"). It shall thereafter continue automatically until terminated in accordance with the terms of this Agreement.
- 15.2 The Supplier may terminate this Agreement without liability to the Customer on the provision of two months' prior written notice to the Customer.
- 15.3 After the Initial Term, the Customer may terminate this Agreement on the provision of 3 (three) months' prior written notice to the Supplier, such notice to expire on an anniversary of the Commencement Date.
- 15.4 Either Party may, without prejudice to its other rights and remedies, by notice in writing to the other Party immediately terminate this Agreement if the other:
- 15.4.1 is in material or persistent breach of any of its obligations under this Agreement and if that breach is capable of remedy and the other has failed to remedy that breach within thirty days after receiving written notice requiring it to remedy that breach; or
- 15.4.2 is the subject of an Insolvency Event.
- 15.5 The Supplier may terminate this Agreement for cause in the event that the Customer has failed to pay any Supplier's invoice within sixty (60) Business Days of the date of the Supplier's Invoice.
- 16. EFFECT OF TERMINATION**
- 16.1 In the event of termination of this Agreement for any reason:
- 16.1.1 save as provided for in clause 16.2, the right of the Customer and its Users to access the Cloudfy Services provided under this Agreement shall terminate immediately;
- 16.1.2 the Customer shall within 7 (*seven*) days return or destroy (at the Supplier's option) all Supplier's Confidential Information in its possession or under its control and all copies of such information; and
- 16.1.3 all provisions except clause 10.9 (Customer Indemnity), clause 14 (Limits of Liability) and clause 35 (Governing Law and Jurisdiction) of this Agreement shall cease to have effect, except that any provision which can reasonably be inferred as continuing or is expressly stated to continue shall continue in full force and effect.
- 16.2 On the termination or expiry of this Agreement, the Supplier shall for a period not exceeding 5 (five) days, allow limited access to the Cloudfy Services for the sole purpose of allowing the Customer to retrieve such Customer Data required by the Customer, and the terms of this Agreement shall continue to apply only to facilitate to such limited access. Upon expiry of such period, unless otherwise agreed between the Parties, the Supplier may delete such Customer Data or grant an extension to such period at the Customer's cost.
- 16.3 Termination of this Agreement for whatever reason shall not operate to affect any provisions that expressly survive termination.
- 17. FORCE MAJEURE**
- 17.1 A Party will not be liable if delayed in or prevented from performing its obligations hereunder due to a Force Majeure Event, provided that it:
- 17.1.1 promptly notifies the other of the Force Majeure Event and its expected duration, and
- 17.1.2 uses reasonable endeavours to minimise the effects of the Force Majeure Event.
- 17.2 If, due to a Force Majeure Event, a Party:
- 17.2.1 is unable to perform a material obligation, or
- 17.2.2 is delayed in or prevented from performing its obligations for a continuous period of more than ninety days,
- 17.3 the other Party may, within a further fifteen Business Days terminate this Agreement on notice, otherwise this Agreement shall continue in full force and effect.
- 18. AUTHORISED CONTACTS**
- 18.1 For the purposes of this Agreement, the Authorised Contacts are as detailed on the Order Form.
- 19. NOTICES**
- 19.1 Notices under this Agreement must be in writing and sent to the other Party's Authorised Contact at the address specified in clause 18 (Authorised Contacts) or agreed by the Parties from time to time in writing). Notices may be given, and will be deemed received if correctly addressed:
- 19.1.1 by first-class post: two Business Days after posting;
- 19.1.2 by airmail: seven Business Days after posting;
- 19.1.3 by hand: on delivery;
- 19.1.4 by facsimile: on receipt of a successful transmission report from the correct number; and
- 19.1.5 by e-mail: within 24 (twenty-four) hours from delivery to the correct address if no notice of delivery failure is received.
- 19.2 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 20. ANTI-BRIBERY**
- 20.1 Each Party shall comply with applicable Bribery Laws with which each Party is required to comply relating to prevention of bribery and corruption, and each shall use all reasonable endeavours to ensure that:
- 20.1.1 all of that Party's personnel;
- 20.1.2 all of that Party's subcontractors; and
- 20.1.3 all others associated with that Party,
- 20.1.4 involved in performing the Services for or on behalf of that Party or otherwise involved with this Agreement so comply.
- 20.2 Without limitation to the above sub-clause:
- 20.2.1 neither Party shall (directly or indirectly) offer or give or request, agree to receive or accept any bribe, other improper payment or advantage or bribe any foreign public official in breach of applicable Bribery Laws; and
- 20.2.2 each Party shall implement, maintain and enforce adequate procedures designed to prevent persons associated with that party engaging in conduct which contravenes the Bribery Act 2010.
- 20.3 Each Party shall immediately notify the other as soon as it becomes aware of a breach of any of the requirements in the foregoing sub-clauses.
- 20.4 The expressions 'adequate procedures', 'associated with' and 'foreign public official' shall be construed in accordance with the Bribery Act 2010 and associated guidance published under that Act.
- 21. RELATIONSHIP**
- 21.1 The Parties are independent businesses and not partners, principal and agent, or employer and employee, or in any other relationship of trust to each other.
- 22. SEVERABILITY**
- 22.1 Each clause of this Agreement is severable and distinct from the others. If any clause in this Agreement (or part thereof) is or becomes illegal, invalid or unenforceable under applicable law, but would be legal, valid and enforceable if the clause or some part of it was deleted or modified (or the duration of the relevant clause reduced):
- 22.1.1 the relevant clause (or part thereof) will apply with such deletion or modification as may be required to make it legal, valid and enforceable; and
- 22.1.2 without limiting the foregoing, in such circumstances the parties will promptly and in good faith seek to negotiate a replacement provision consistent with the original intent of this Agreement as soon as possible.
- 23. ASSIGNMENT AND SUBCONTRACTING**
- 23.1 Each Party may assign, novate, transfer, subcontract or encumber any right or obligation under this Agreement, in whole or in part, provided that such Party obtains the other Party's prior written consent.
- 24. SUCCESSION**
- 24.1 This Agreement shall be binding upon, and ensure to the benefit of, each of the Parties, their respective personal representatives and their respective successors in title.
- 25. VARIATION**
- 25.1 No variation of this Agreement shall be valid or effective unless it is in writing, refers to this Agreement and duly signed or executed (as the case may be) by, or on behalf of, each Party.
- 25.2 The Supplier may however make changes to the functionality of the Services and the content of the Documentation from time to time without requiring the written agreement of the Customer, provided the same do not materially reduce the functionality of the Services made available to the Customer as at the Commencement Date.
- 26. WAIVER**
- 26.1 Any rights, powers or remedies conferred upon a Party by this Agreement shall be in addition to and without prejudice to all other rights, powers and remedies available to the party under general law (except expressly excluded in this Agreement).

- 26.2 Unless otherwise expressly agreed, no delay, act or omission by either Party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.
27. **EQUITABLE RELIEF**
- 27.1 Each Party recognises that its breach or threatened breach of this Agreement may cause the other irreparable harm, and that the other may therefore be entitled to seek injunctive or other equitable relief.
28. **SET-OFF**
- 28.1 Neither Party may set off any amount the other owes it against any amount it owes the other Party in relation to this Agreement unless otherwise agreed.
- 28.2 All payments under this Agreement will be made without set-off or counterclaim, free and clear of and without deduction of any taxes, levies, duties, charges and withholdings of any kind now or in future imposed in any jurisdiction. If a Party is compelled by law to deduct or withhold any taxes, levies, duties, charges and withholdings of any kind, it will pay to the other such additional amount as will ensure that the other is paid the full amount it would have received but for such deduction or withholding.
29. **RIGHTS OF THIRD PARTIES**
- 29.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Agreement is not intended to and does not give any person who is not a Party to it any right to enforce any of its provisions. However, this does not affect any right or remedy of such a person that exists or is available apart from that Act.
30. **FURTHER ASSURANCE**
- 30.1 Each Party will, at its own cost, do all further acts and execute all further documents necessary to give effect to this Agreement.
31. **COUNTERPARTS**
- 31.1 This Agreement may be signed in any number of counterparts and by the parties on separate counterparts, each of which when signed and dated shall be an original, and such counterparts taken together shall constitute one and the same agreement. This Agreement shall not be effective until each Party has signed one counterpart.
32. **ENTIRE AGREEMENT**
- 32.1 This Agreement contains the whole agreement between the Parties relating to its subject matter and supersedes any prior agreements, representations or understandings between them unless expressly

incorporated by reference in this Agreement. Each Party acknowledges that it has not relied on, and shall have no remedy in respect of, any representation (whether innocent or negligent) made but not expressly embodied in this Agreement. Nothing in this clause limits or excludes any liability for fraud or fraudulent misrepresentation.

33. **DISPUTE RESOLUTION**

33.1 If there is a dispute between the Parties in relation to any matter under this Agreement, the Parties' respective managing directors (or equivalent officers) shall meet within 10 (ten) Business Days to try to resolve any such dispute and if the Parties fail to do so within 30 (thirty) Business Days then the provisions of clause 35 (Governing Law and Jurisdiction) shall apply.

33.2 Nothing in this clause shall prejudice the right of either Party to:

33.2.1 apply to Court for interim relief to prevent the violation by the other Party of any proprietary interest, or any breach of the other Party's obligations which could cause irreparable harm to the first Party; or

33.2.2 bring proceedings intended to result in the enforcement of a settlement agreement entered into between the Parties in accordance with the foregoing provisions of this clause 33 or otherwise.

34. **LANGUAGE**

34.1 The language of this Agreement is English. All documents, notices, waivers and other written communications between the Parties in relation hereto will be in English. If this Agreement is translated, the English version will prevail.

35. **GOVERNING LAW AND JURISDICTION**

35.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter is governed by and shall be construed in accordance with the laws of England and Wales. Subject to any disputes which the parties agree to resolve using an alternative dispute resolution process permitted in accordance with this Agreement, the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales to settle any disputes and claims which may arise out of, or in connection with, this Agreement.

# SCHEDULE 1 – DATA PROCESSING

## Part A Operative provisions

### 1 Definitions

#### 1.1 In this Schedule:

- 1.1.1 **Appropriate Safeguards** means such legally enforceable mechanism(s) for transfers of Personal Data as may be permitted under Data Protection Laws from time to time;
- 1.1.2 **Controller, Data Subject, Personal Data, Processor and processing** shall have the respective meanings given to them in applicable Data Protection Laws from time to time (and related expressions, including **process, processed, processing, and processes** shall be construed accordingly) and **international organisation** and **Personal Data Breach** shall have the respective meanings given to them in the GDPR;
- 1.1.3 **Data Protection Laws** means, as binding on either party or the Services:
- (a) the Directive 95/46/EC (Data Protection Directive) and/or Data Protection Act 1998 or the GDPR;
  - (b) any laws which implement any such laws; and
  - (c) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;
- 1.1.4 **GDPR** means the General Data Protection Regulation (EU) 2016/679;
- 1.1.5 **Protected Data** means Personal Data received from or on behalf of the Customer in connection with the performance of the Supplier's obligations under this Agreement;
- 1.1.6 **Sub-Processor** means any agent, subcontractor or other third party (excluding its employees) engaged by the Supplier for carrying out any processing activities on behalf of the Customer in respect of the Protected Data;
- 1.1.7 **Supplier Personnel** means all employees, officers, staff, other workers, agents and consultants of the Supplier and any of its subcontractors who are engaged in the performance of the Services from time to time; and
- 1.1.8 **Technical and Organisational Measures** means, in accordance with the Data Protection Laws and taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of the Protected Data to be carried out under or in connection with this Agreement, as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons and the risks that are presented by the processing, especially from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Protected Data transmitted, stored or otherwise processed, such appropriate technical and organisational security measures appropriate to the risk, including as appropriate those matters mentioned in Articles 32(1)(a) to 32(1)(d) (inclusive) of the GDPR.

### 2 Compliance with data protection laws

- 2.1 The Parties agree that, to the extent that the Customer Data contains any Personal Data, the Customer is a Controller and the Supplier is a Processor for the purposes of processing Protected Data pursuant to this Agreement.
- 2.2 The Customer shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data. The Customer shall ensure all instructions given by it to the Supplier in respect of Protected Data (including the terms of this Agreement) shall at all times be in accordance with Data Protection Laws.
- 2.3 The Supplier shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of this Agreement.
- 2.4 The Customer shall indemnify and keep indemnified the Supplier against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects, demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a supervisory authority) arising out of or in connection with any breach by the Customer of its obligations under this Schedule 1.
- 2.5 The Customer shall not withhold, delay or condition its agreement to any action required by the Supplier to be carried out by the Customer (including the application of any software security patch or fix) to ensure the Services and the Supplier (and each Sub-Processor) can comply with Data Protection Laws.
- 2.6 The Supplier shall have no liability to the Customer under this Schedule 1 or otherwise in relation to any breach of the Data Protection Laws by any provider of Third Party Services engaged by the Customer.

### 3 Instructions

- 3.1 The Supplier shall only process (and shall ensure Supplier Personnel only process) the Protected Data in accordance with Part B of this Schedule 1 and this Agreement (and not otherwise unless alternative processing instructions are agreed between the Parties in writing) except where otherwise required by applicable law (and shall inform the Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest).
- 3.2 Without prejudice to paragraph 2 of this Part A, if the Supplier believes that any instruction received by it from the Customer is likely to infringe the Data Protection Laws it shall promptly inform the Customer and be entitled to cease to provide the relevant Services until the Parties have agreed appropriate amended instructions which are not infringing.

### 4 Security

The Supplier shall implement and maintain Technical and Organisational Measures to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.

### 5 Sub-processing and personnel

#### 5.1 The Supplier shall:

- 5.1.1 not permit any processing of Protected Data by any agent, subcontractor or other third party (except (a) its or its Sub-Processors' own employees in the course of their employment that are subject to an enforceable obligation of confidence with

## SCHEDULE 1 – DATA PROCESSING

regards to the Protected Data or (b) by any provider of Third Party Services engaged by the Customer) without the written authorisation of Customer;

- 5.1.2 prior to the relevant Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each Sub-Processor under a written contract containing materially the same obligations as under this Schedule that is enforceable by the Supplier and ensure each such Sub-Processor complies with all such obligations;
- 5.1.3 save as set out in paragraph 2.6 above, remain fully liable to the Customer under this Agreement for all the acts and omissions of each Sub-Processor as if they were its own; and
- 5.1.4 ensure that all persons authorised by the Supplier or any Sub-Processor to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential.

### 6 List of authorised sub-processors

The Customer authorises the appointment of the Sub-Processors listed in the Cloudfy Order Form.

### 7 Assistance

- 7.1 The Supplier shall (at the Customer's cost) assist the Customer in ensuring compliance with the Customer's obligations pursuant to Articles 32 to 36 of the GDPR (and any similar obligations under applicable Data Protection Laws) taking into account the nature of the processing and the information available to the Supplier.
- 7.2 The Supplier shall (at the Customer's cost) taking into account the nature of the processing, assist the Customer (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of the Customer's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws) in respect of any Protected Data.

### 8 International transfers

The Customer agrees that the Supplier may, to facilitate the provision of the Services under this Agreement, transfer Protected Data that is Personal Data relating to:

- 8.1 clients or customers of the Customer; and/or
- 8.2 members of any Customer database(s); and/or
- 8.3 business contact details of employees of the Customer,

to countries outside the European Economic Area (EEA) or to any international organisation(s) (an **International Recipient**), provided all transfers by the Supplier of Protected Data to an International Recipient shall (to the extent required under Data Protection Laws) be effected by way of Appropriate Safeguards and in accordance with Data Protection Laws. The provisions of this Agreement shall constitute the Customer's instructions with respect to transfers in accordance with paragraph 3.1.

### 9 Audits and processing

The Supplier shall, in accordance with Data Protection Laws, make available to the Customer such information that is in its possession or control as is necessary to demonstrate the Supplier's compliance with the obligations placed on it under this Schedule and to demonstrate compliance with the obligations on each Party imposed by Article 28 of the GDPR (and under any equivalent Data Protection Laws equivalent to that Article 28), and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose (subject to a maximum of *one* audit request in any 12 month period under this paragraph 9).

### 10 Breach

The Supplier shall notify the Customer without undue delay and in writing on becoming aware of any Personal Data Breach in respect of any Protected Data.

### 11 Deletion or return of Protected Data and copies

- 11.1 The Supplier shall, at the Customer's written request and at the Customer's cost, either delete or return all the Protected Data to the Customer in such form as the Customer reasonably requests within a reasonable time after the earlier of:
  - 11.1.1 the end of the provision of the relevant Services related to processing; or
  - 11.1.2 once processing by the Supplier of any Protected Data is no longer required for the purpose of the Supplier's performance of its relevant obligations under this Agreement,

and delete existing copies (unless storage of any data is required by Applicable Law and, if so, the Supplier shall inform the Customer of any such requirement).

## Part B

### Data processing details

- 1 Processing of the Protected Data by the Supplier under this Agreement shall be for the purposes of enabling the Supplier to deliver the Services pursuant to this Agreement and shall (unless otherwise agreed between the Parties in writing) continue for the term of this Agreement (as set out in clause 14.1 of the Cloudfy Terms).
- 2 The nature of processing, types of Personal Data, categories of Data Subjects and specific processing instructions (if any) are set out in the Cloudfy Order Form.

## SCHEDULE 2 – SERVICE LEVELS

### 1. Service Commitment

The Supplier will use commercially reasonable efforts to make the Cloudfy Services Available with an Uptime Percentage of at least 99.5% (the **Uptime Minimum**). If the Uptime Percentage is below the Uptime Minimum during any calendar month (as measured in Greenwich Meantime), the Customer will be eligible to receive a Service Credit as described in paragraph 4 below. **Uptime Percentage** means the proportion of scheduled Availability time (that is, any time on a 24 hour per day, 7 days per week basis, excluding Scheduled Maintenance and Other Exclusions (each as defined below)) during any one calendar month when the Cloudfy Services are Available. **Available** means a period when all or the material majority of the Cloudfy Services are operational; the Cloudfy Services are unavailable if they are unable to load outside of Scheduled Maintenance and Other Exclusions.

Service Levels outlined in this schedule is about the suppliers current deployed SAAS products and product(s) produced by the Supplier and not third-party software, equipment, or services. (Cloudfy retainer service is outside of this schedule 2, except for support on finished retainer work. Please refer to schedule 3 Agreement).

### 2. Notifications

The Supplier will inform the Customer of any business interruptions via its site status page, currently available at <https://www.cloudfy.com/servicestatus>, to which the Customer can subscribe via e-mail.

### 3. Scheduled Maintenance

3.1. Generally: The Supplier will schedule non-emergency, service-affecting maintenance (**Scheduled Maintenance**) during the Maintenance Windows and with advance notice as set out below:

Maintenance Duration	Advance Notification	Maintenance Window	Schedule
Less than 1 hr	3 days advance	Anytime	(Local Time Zones*)
1 to 3 hrs	7 days advance	Anytime	(Local Time Zones*)
Over 3 hrs	7 days advance	12:00 am – 6:00 am	(Local Time Zones*)

\*Local Time Zones = follows world time clocks (UTC) Europe & UK – GMT, USA - EST Standard Eastern Time, APAC - India IST

3.2. The Supplier will give advance notice of scheduled maintenance being carried out (Outlined in the table above) via its SAAS supplied software or its service management interface available to clients. Details of the contents of each Scheduled Maintenance will be available to view within the Cloudfy platform.

Upon completion of released software work, the Customer acknowledges that the Supplier will, follow its change management and then its bimonthly, quarterly, or yearly deployments/maintenance schedules.

Emergency Scheduled Maintenance: If the Supplier reasonably believes that an emergency necessitates immediate attention, then the Supplier may perform emergency scheduled maintenance with notice, if possible, and will provide status updates as soon as reasonably practicable.

### 4. Remedies

4.1. If the Uptime Percentage in a calendar month falls below the Uptime Minimum, the Customer will be entitled to a credit against future Cloudfy Services fees (**Service Credit**) as set forth here:

Monthly Uptime Percentage	Service Credit Percentage
Less than 99.5% but equal to or greater than 99.4%	10% of the monthly subscription fee credited back to the Customer's account.
Less than 99.4% but equal to or greater than 99.3%	30% of the monthly subscription fee credited back to the Customer's account.
Less than 99.3%	100% of the monthly subscription fee credited back to the Customer's account.

4.2. Service Credits: The Supplier will apply any Service Credits only against future Cloudfy Services. Service Credits may not be transferred or applied to any other account. If Customer has multiple stores, then the Monthly Uptime Percentage for each store will be calculated separately for the purposes of determining eligibility for a Service Credit, and the Service Credit for each store will be calculated as a proportion of the Cloudfy Services Charges applicable to that store.

## SCHEDULE 2 – SERVICE LEVELS

### 5. Procedures

- 5.1. Submission: For the Customer to be eligible for a Service Credit, the Supplier's Authorised Contact must receive an e-mail by the end of the second billing cycle after the incident occurred that:
- a) includes the words "**SLA Credit Request**" in the subject line.
  - b) identifies the Customer's affected store.
  - c) identifies the dates and times of each unavailability incident that the Customer is claiming; and
  - d) includes any logs and other material that document the errors and corroborate the Customer's claimed outage (any Confidential Information in these logs should be removed or replaced with asterisks).
- 5.2. Issue of Service Credits: The Supplier will issue the applicable Service Credit to the Customer's account following its confirmation of the Uptime Percentage of such request.
- 5.3. Miscellaneous: If the Customer requests a Service Credit pursuant to this Schedule 2, then the Customer may not also request any other credit from the Supplier with respect to the same period of time under any contract or applicable policy that may be in effect from time to time if any. This Schedule 2 sets out the Customer's sole and exclusive remedy for the Supplier's failure to meet its obligations under Schedule 2. If Availability is impacted by factors other than those used in the Supplier's Uptime Percentage calculation, then the Supplier may issue a Service Credit considering such factors at the Supplier's sole discretion.

### 6. Other Exclusions

The Uptime Minimum does not apply to any unavailability, suspension or termination of Cloudfy Services, or performance issues that result from any of the following (collectively, the **Other Exclusions**):

- 6.1. factors outside the Supplier's reasonable control, including any force majeure event or internet access or related problems beyond the demarcation point of the Cloudfy Platform.
- 6.2. any actions or inactions of the Customer or any third party.
- 6.3. the Customer's software or other technology and third-party equipment, software, applications or other technology (other than third party equipment within the Supplier's direct control); or
- 6.4. the Supplier's suspension and termination of the Customer's right to use the Cloudfy Services in accordance with this Agreement and the Cloudfy Terms.

## SCHEDULE 2 – SERVICE LEVELS

### 7. Technical Support

**Commitment:** The Supplier will provide the Customer with technical support by following business days as outlined in our Terms & Conditions and during working Hours of 8:30-17:00 (Local Time Zones as outline in 7.1). Out of Hours, Premium 24/7 support is available for P1 & P2; an additional cost will be incurred.

7.1. The following table outline Incident Response, Escalation, response time reference and Notification SLA levels:

Incident Level*	Contact Time Service Levels	Status Update Notification**	Workaround / Patch	Fix Time *** (June 2021)	Region Time Zone
P1 – Urgent	<ul style="list-style-type: none"> <li>Initial Contact: &lt; 1 hour</li> <li>Senior Management Escalation: Immediate</li> </ul>	<ul style="list-style-type: none"> <li>Hourly</li> </ul>	<ul style="list-style-type: none"> <li>Work continuously until a workaround is available</li> </ul>	Next Scheduled release or up to 8 weeks	<ul style="list-style-type: none"> <li>Europe &amp; UK - GMT</li> <li>USA - EST Standard Eastern Time</li> <li>APAC - India IST</li> </ul>
P2 – High	<ul style="list-style-type: none"> <li>Initial Contact: &lt; 3 hours</li> <li>Technical Escalation</li> <li>Senior Management Escalation: Same Business Day</li> </ul>	<ul style="list-style-type: none"> <li>3 hours</li> </ul>	<ul style="list-style-type: none"> <li>Two Business Days</li> </ul>	Within the next scheduled two releases or up to 13 weeks	
P3 - Medium	<ul style="list-style-type: none"> <li>Initial Contact: &lt; 3 hours</li> <li>Management Escalation: &gt; 2 Business Day</li> </ul>	<ul style="list-style-type: none"> <li>Daily</li> </ul>	<ul style="list-style-type: none"> <li>Not provided</li> </ul>	<ul style="list-style-type: none"> <li>Not provided</li> </ul>	
P4 – Low	<ul style="list-style-type: none"> <li>Initial Contact: &gt; 3 hours</li> <li>Management Escalation: 6 Business Days</li> </ul>	<ul style="list-style-type: none"> <li>Weekly</li> </ul>	<ul style="list-style-type: none"> <li>Not provided</li> </ul>	<ul style="list-style-type: none"> <li>Not provided</li> </ul>	

\*Examples of Incident types are available in section 7.2

\*\*Times starts once logged in the Suppliers support web portal.

\*\*\* Available from June 2021

7.2. The following definitions are used to give examples of the Suppliers classification:

Example Incidents	Service Priority Level			
	Urgent	High	Medium	Low
Site Emergency Security threat /incident	P1			
System/Service Down (Web / App's / API)	P1			
Data Interface Issue - All Customer affecting Pricing) Only	P1			
Core Business Manager unavailable		P2		
Orders cannot be placed (multi-customer)		P2		
Data Interface Issue - a small group of customers, affected		P2		
Website function affecting usability (including the App's )		P2		
Site Speed is running slow across an essential page(s)			P3	
Data Interface Issue – One Customer, affected			P3	
Website function affecting non-essential usability			P3	
Images or content not loading			P3	
Banner or visual issues			P3	
How-to Requests				P4
Browser Issues (Layout)				P4
Site Speed - Non-Essential Page(s)				P4

## SCHEDULE 2 – SERVICE LEVELS

### 7.3. Procedures:

We request that all issues are logged in the following way:

- a) **P1 and P2 Incidents** - The Customer will initiate Contact with the Supplier via the Supplier's support portal with a web case providing the full details of the issue and indicate the probable category, backed up with a telephone call.  
[Cloudfy Support Desk](#)
- b) **P3 & P4 Incidents** - The Customer may contact the Supplier's Support team by submitting a web case via the Supplier's support portal with full details of the issue and indicate the probable category of the incident.  
[Cloudfy Support Desk](#)
- c) The Supplier reserves the right of reclassification, and Customers will get notification of any reclassification.
- d) Once a workaround is supplied to Customer's satisfaction, the Supplier reserves the right to send incidence into its Software development program for approval and resolution. If approved (software bugs get auto approval) incidence will be released in accordance with the Supplier's roadmap and deployment schedules.
- e) An incident will be considered closed three Business Days after a final e-mail has been sent to the Customer's e-mail address after any one of the following:
  - i. the Customer receives a workaround or Information that resolves the issue and agrees the issue is resolved.
  - ii. the Customer has not responded to the Supplier after a workaround or Information was provided to the Customer, or
  - iii. the Customer has not responded to the Supplier after the Supplier has requested additional Information.

- 7.4. Contacts: The Customer's Contact for support purposes is the Customer's Authorised Contact as listed on the Order Form. Customer may change its support contact person(s) upon notice to the Supplier. The Supplier may from time to time update the Supplier's Authorised Contact information online and may introduce additional escalation layers as appropriate based on changes in the Supplier's support organisation, online or in notice to the Customer (e-mail is acceptable).