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CLOUDSTREAM SERVICES TERMS AND CONDITIONS

These terms and conditions (which together comprise the **Agreement**) are the terms upon which Novosco Limited (a company registered in Northern Ireland with company number NIO28408 and registered address at Agar House, 31 Ballynahinch Road, Carrduff, Belfast BT8 8EH and referred to in this Agreement as **Novosco**) supplies the Cloudstream Services to its customers (each such a **Customer**). The Agreement covers the provision by Novosco of either of or both of the Cloudstream Network Service and the Cloudstream Ethernet Service, depending on which of these services is selected by a Customer.

The **first section** of the Agreement describes the various services provided by Novosco to its Customers.

The **second section** consists of the **General Terms**, which contain standard commercial and legal terms.

The **third section** contains **Definitions** which explain the meaning of the defined terms used in this Agreement.

Finally, the **fourth section** contains the **Service Level Agreement** which gives specific details of the support services provided by Novosco.

Specific commercial issues, such as prices, duration of contract or types of equipment and/or services to be supplied, are agreed by Novosco and each Customer on a transaction by transaction basis, and are detailed in a customer proposal (**Customer Proposal**). A specimen Customer Proposal form is detailed at the **fifth section** of this Agreement.



SECTION 1: THE CLOUDSTREAM SERVICES

1. The Cloudstream Services

- 1.1. The Customer engages with Novosco and Novosco agrees to supply the Cloudstream Services to the Customer on the terms and conditions of this Agreement.
- 1.2. The Cloudstream Services are the Cloudstream Network Service and/or the Cloudstream Ethernet Service, as detailed in the relevant Customer Proposal.

2. Pre-Requisites

- 2.1. Novosco's fulfilment of its obligations imposed by this Agreement is dependant at all times upon the Customer's proposed Site(s) for the Cloudstream Services meeting required technical standards for the provision of the Cloudstream Services.
- 2.2. In the case of CloudStream Network Service this includes the provision of remote access for Novosco, and the Site's achieving and maintaining operable asymmetric digital subscriber line status.
- 2.3. In the case of CloudStream Ethernet Service the supply shall be subject to satisfactory results of a site survey.
- 2.4. If following any survey Novosco incurs unusual additional costs in providing the Cloudstream Services, Novosco shall be entitled on providing written notice to the Customer and with the Customer's agreement, to increase the Fees by the amount of such costs.
- 2.5. Novosco may cancel the supply of the Cloudstream Services or any part of them without any liability if:
 - 2.5.1. the results of such survey are, in Novosco's reasonable opinion, unsatisfactory or it is not technically feasible to implement the Cloudstream Services or any part of them; or
 - 2.5.2. the Customer does not agree to vary the Fees in accordance with clause 2.4

in which case, Novosco shall be entitled to charge the Customer the reasonably incurred actual costs of carrying out and provisioning the surveys.

3. Access

- 3.1. The Customer gives permission to Novosco, its employees, agents or sub-contractors, on reasonable notice, to enter and access the Customer's Site to carry out the Cloudstream Services, including without limitation, to:
 - 3.1.1. execute any works in connection with the delivery, installation, inspection, maintenance, adjustment, repair, alteration, moving, replacement, renewal or removal of the Cloudstream Equipment; and



3.1.2. keep and operate the Cloudstream Equipment

and for the avoidance of doubt the Customer agrees to enter into any wayleave agreement as may be reasonably required by Novosco to allow Novosco's employees, agents or contractors to access the Customer's Site.

3.2. The Customer agrees that in cases of emergencies no notice shall be required. However, Novosco will use its reasonable endeavours to notify the Customer as soon as practicable of such emergency.

3.3. The Customer agrees not to do or allow anything to be done to or at the Customer's Site that may prevent reasonable access to the Customer's Site. If it is reasonably foreseeable that any limitation or restriction to reasonable access to the Cloudstream Equipment or Customer's Site will or may occur, the Customer will notify Novosco immediately.

3.4. The provisions of this clause 3.4 shall survive the termination of this Agreement or any part of it for a period of ninety (90) days following such termination or for such longer period as is reasonably required by Novosco for the removal of any Cloudstream Equipment from the Customer's Site.

3.5. Novosco shall not be liable for any delay or failure in the performance of any of the Cloudstream Services to the extent that such delay or failure is caused by limited, restricted or no access to the Customer's Site.

4. Preparation and Installation of the Site(s)

4.1. Novosco may supply the Customer with relevant information to enable the Customer to and the Customer shall, at its cost and expense, prepare the Customer's Site in accordance with such information for the delivery and installation of the Cloudstream Equipment.

4.2. The Customer will, at its cost and expense, provide Novosco with:

4.2.1. suitable accommodation, assistance, facilities and environmental conditions for the Cloudstream Equipment, including without limitation, a secure and constant electricity supply and the necessary power back-up supply; and

4.2.2. all necessary electrical and other installations and fittings.

4.3. Novosco will use its reasonable endeavours to comply with the Customer's requests in respect of the installation of the Cloudstream Equipment at the Customer's Site. However, Novosco's reasonable decision on this matter shall prevail.



5. Acceptance

- 5.1. Following installation of the Cloudstream Equipment, Novosco will submit the Cloudstream Services to the Acceptance Tests.
- 5.2. Upon the Cloudstream Services completing the Acceptance Tests successfully, Novosco will commence the provision of the Cloudstream Services. On successful completion of the Acceptance Tests, Novosco may require the Customer to (and the Customer shall) sign an acceptance form confirming satisfactory installation of the Cloudstream Equipment and its acceptance of the Cloudstream Services. If the Customer fails to sign the acceptance form within 7 days of the successful completion of the Acceptance Tests, the Customer shall be deemed to have confirmed its acceptance of the Cloudstream Services. The date of such deemed acceptance shall be the date the Acceptance Tests are successfully completed.

6. Extra Services

- 6.1. Where the Customer requires any extra services which fall outside the scope of Novosco's standard provision of the Cloudstream Services, such services will be Extra Services. For the avoidance of doubt, the Extra Services will include any services falling outside the scope of the services provided in accordance with clauses 1 to 5 of this Section, or the provision of any customization, release or upgrade of the Cloudstream Services, to the Customer, to the extent that the same is not provided to Novosco's other customers.
- 6.2. The Customer may from time to time specify certain Extra Services it requires Novosco to perform. As soon as reasonably practicable after such instruction (and in any case within 14 days), Novosco shall provide for the Customer's approval:
 - 6.2.1. a cost estimate (**Cost Estimate**), specifying in detail the estimated fees payable for the requested Extra Services;
 - 6.2.2. a project plan (**Project Plan**) for the fulfilment of the requested Extra Services.
- 6.3. Within 7 days of receipt of the Project Plan and the Cost Estimate the Customer shall either notify Novosco of its approval, refuse the required services, or query the Cost Estimate and/or require such amendments to the Project Plan as it may reasonably determine and Novosco will make any such amendment as soon as possible, and resubmit the Cost Estimate and/or the Project Plan (as the case may be) for the Customer's approval, whereupon the provisions of this clause 6.3.3 shall reapply.
- 6.4. Upon notification of the Customer's approval, Novosco shall commence the provision of the Extra Services in accordance with the Project Plan. The Customer shall pay Novosco in accordance with the Cost Estimate and the terms of this Agreement (or, where the Cost Estimate has not been approved but the Extra Services commenced, on a time and materials basis at Novosco's then standard rates).



SECTION 2: GENERAL TERMS

1. LICENCE TERMS

- 1.1. Novosco grants to the Customer on and subject to the terms and conditions of this Agreement a personal, non-exclusive, non-transferable and non-assignable licence from Acceptance for the Term to allow Users to access and to use the Cloudstream Services and the Cloudstream Equipment (such use, the **Use**).
- 1.2. The Customer shall be solely responsible for its actions and the actions of its Users while using the Cloudstream Services. The Customer shall (and shall procure that any and all Users shall):
 - 1.2.1. not duplicate, maintain, translate, reverse engineer, decompile, disassemble, adapt, modify or distribute any portion of or create any derivative work based on the Cloudstream Services or any documentation accompanying the Cloudstream Services (except as expressly permitted by applicable law), or
 - 1.2.2. not use the Cloudstream Services to provide software related services to third parties (including without limitation in the operation of a service bureau), or
 - 1.2.3. not attempt to obtain, or assist others in obtaining, unauthorised access to the Cloudstream Services; or
 - 1.2.4. not remove any proprietary notices from the Cloudstream Services; or
 - 1.2.5. abide by all local and international laws and regulations applicable to the Customer's Use of the Cloudstream Services, including without limitation all laws regarding the transmission of technical data exported from the United Kingdom through the Cloudstream Services;
 - 1.2.6. not upload or distribute in any way files that contain viruses, corrupted files, or any other similar software or programs that may damage the operation of the Cloudstream Services or another's computer;
 - 1.2.7. not transmit or post any material that encourages conduct that could constitute a criminal offense or give rise to civil liability; and,
 - 1.2.8. comply with all regulations, policies and procedures of networks connected to the Cloudstream Services. The Customer acknowledges and agrees that Novosco neither endorses the contents of any User communications nor assumes any responsibility for any threatening, libellous, obscene, harassing or offensive material contained therein, any infringement of third party intellectual property rights arising therefrom or any crime facilitated thereby.
- 1.3. Novosco shall have no liability for any loss or damage arising from Customer's failure to comply with the requirements detailed in clause 1.2.



- 1.4. The Customer and Novosco agree that the amount of Fees payable for, and the quality commitments given by Novosco in relation to, the provision of the Cloudstream Services have been calculated on the basis of the scope of the Cloudstream Services as envisaged by the parties at the Commencement Date. In the event that the Customer wishes to amend the scope of and/or upgrade the Cloudstream Services, including where Novosco has to procure additional hardware to meet the Customer's requirements, Novosco reserves the right to increase the Fees thereafter to take into account any such amendment or upgrade. The Customer acknowledges that Novosco's right to do so is reasonable and undertakes to pay such increased Fee. Novosco will monitor usage of the Cloudstream Services, and will discuss any scalability requirements of the Customer upon the Customer's reasonable request.
- 1.5. The Customer acknowledges and agrees that changes may be made to the URLs and IP addresses used by the Cloudstream Services. In each case Novosco will use reasonable endeavours to give reasonable advance notice and use reasonable endeavours to minimise the effect (if any) that such change will have on the provision of the Cloudstream Services.
- 1.6. The Customer shall (and shall procure that any and all Users shall):
 - 1.6.1. not store, send, knowingly receive, upload, download, use, distribute or transmit any material, images, data and/or information through the Cloudstream Services that:
 - 1.6.1.1. is abusive, indecent, in breach of any law, regulation, code of practice or acceptable use policy;
 - 1.6.1.2. is harmful, threatening, false, inaccurate, defamatory, obscene, or harassing;
 - 1.6.1.3. is in breach of confidence, copyright or other Intellectual Property Right, privacy or any other right of any third party;
 - 1.6.1.4. is menacing or offensive (including whether racially or ethnically); or
 - 1.6.1.5. facilitates illegal activity, or depicts sexually explicit images, or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;
 - 1.6.2. not send any "spam" or send or provide unsolicited advertising or promotional material or knowingly to receive responses to any spam, unsolicited advertising or promotional material sent or provided by any third party;
 - 1.6.3. not use the Cloudstream Services in any manner which in Novosco's opinion is or is likely to be detrimental to the provision of the Cloudstream Services to the Customer or any other customer of Novosco, or to the business and/or reputation of Novosco and/or any of Novosco's licensors;
 - 1.6.4. not transmit or post any material that encourages conduct that could constitute a criminal offense or give rise to civil liability; and/or



- 1.6.5. not use the Cloudstream Services to cause annoyance or inconvenience, or as a means of communication for a purpose other than that for which the Cloudstream Services are provided, or in a manner which is contrary to any law

and the Customer agrees and acknowledges as reasonable that Novosco may remove any content posted on the Cloudstream Services or transmitted through the Cloudstream Services which in Novosco's opinion breaches the provisions of clauses 1.2 or 1.6 of these General Terms, without notice to the Customer.

- 1.7. In relation to the Cloudstream Services Novosco will maintain the Cloudstream Services at a reputable third party ISP and hosting facility, to be subject to commercially reasonable security precautions to prevent unauthorised access to the Cloudstream Services. The Customer acknowledges that, notwithstanding such security precautions, use of or connection to the internet provides the opportunity for unauthorised third parties to circumvent such precautions and illegally gain access to the Cloudstream Services and Customer Data. Accordingly, to the maximum extent permitted by applicable law and notwithstanding any other provision of this Agreement, Novosco cannot and does not guarantee, and will not be liable in any way to the Customer or any other party for the privacy, security or authenticity of any information transmitted over the internet (including any Customer Data submitted through the Cloudstream Services).
- 1.8. Where the operation of any part of the Cloudstream Services is contingent upon the terms of a Third Party Licence, the Customer accepts and acknowledges as reasonable that the licence granted to the Customer by Novosco in accordance with clause 1.1. of these General Terms is subject to the terms and duration of each such Third Party Licence (and in the event that any Third Party requires the Customer to enter into a separate licence with it, the Customer agrees to do so as soon as reasonably practicable after the Customer's notification thereof).
- 1.9. The Cloudstream Services may include components licensed to Novosco by Third Parties. To the extent that the terms of any such license imposes any obligation on the Customer which is in addition to any obligation imposed on the Customer by this Agreement (each such additional obligation a **Third Party Obligation**) the Customer undertakes fully to comply and fulfil all requirements of any such Third Party Obligation. Novosco makes no representations or warranties on behalf of any Third Party.
- 1.10. The Customer acknowledges that Novosco's provision of the Cloudstream Services is contingent upon the Customer's continued compliance with all relevant acceptable use policies of Third Parties (each such an **AUP**). In order to enable Novosco's continued provision of the Cloudstream Services, and irrespective of any other provision of this Agreement, the Customer agrees and acknowledges as reasonable that:
 - 1.10.1. the Customer will comply both with any obligation imposed on Novosco by, and with the exercise of any right afforded the relevant Third Party by, the AUP, in each case as if the Customer were Novosco for the purposes of the AUP;



1.10.2. Novosco may suspend the provision of the Cloudstream Services without telling the Customer and without liability (provided that Novosco shall, where practicable, use reasonable endeavours to give the Customer prior notice) if:

1.10.2.1. Novosco determines (in its sole discretion) that the Cloudstream Services is being used in violation of the AUP, or in breach of the obligations imposed by clauses 1.2 and 1.6 of these General Terms, or if the Customer is (in Novosco's reasonable opinion) being used in a reckless or wasteful manner;

1.10.2.2. the Customer does not cooperate with the relevant Third Party's investigation of any suspected violation of the AUP;

1.10.2.3. there is an attack on servers or other event for which Novosco reasonably believes that the suspension of the Cloudstream Services is necessary to protect the Customer or the network;
or

1.10.2.4. if required by law or regulation or as compelled by a law enforcement or government agency;
and

1.10.3. the Customer will indemnify and keep indemnified Novosco against any and all loss, liability, cost or expense (including reasonable legal expenses) howsoever incurred by Novosco and whether directly or indirectly arising out of:

1.10.3.1. any breach of the AUP or a breach of a third party's rights by the Customer, any User or any User's content, data or equipment;

1.10.3.2. and/or the suspension and/or termination of this Agreement.

2. CLOUDSTREAM EQUIPMENT AND CUSTOMER APPARATUS

2.1. In relation to Cloudstream Equipment:

2.1.1. any managed hardware and/or routers provided by Novosco will be tested and configured to meet the Customer's basic network and internet specifications. The Customer acknowledges and accepts as reasonable that Novosco will not have to support any alteration by or on behalf of the Customer to the configuration of any such Cloudstream Equipment, and that any such alterations will invalidate Novosco's obligation to provide any services in relation to such Cloudstream Equipment;

2.1.2. where, in accordance with the Customer Proposal, the Customer agrees to pay for any Cloudstream Equipment, title to all Cloudstream Equipment provided by Novosco to the Customer will remain with Novosco until the proper payment therefor is received in cleared funds by Novosco;



- 2.1.3. where reasonably possible, Novosco will pass the benefit of any Third Party's warranty in relation to Cloudstream Equipment provided by Novosco;
- 2.1.4. the Customer undertakes to care for and operate the Cloudstream Equipment in accordance with the manufacturer Third Party's instructions, and only use it for the purpose for which it was designed;
- 2.1.5. the Customer undertakes to comply with all applicable health and safety legislation in relation to, and undertakes to take all reasonable precautions to protect the health and safety of, Novosco's personnel whilst on the Customer's Site and/or premises.
- 2.2. The Leased Cloudstream Equipment shall remain the property of Novosco and/or its licensors and the Customer shall, at all times, make clear to third parties that the Leased Cloudstream Equipment is the property of Novosco and/or its licensors.
- 2.3. Risk in the Cloudstream Equipment shall pass to the Customer upon delivery of the Cloudstream Equipment to the Customer's Site(s).
- 2.4. Novosco may, if it deems necessary, modify, substitute, renew or add to the Leased Cloudstream Equipment from time to time provided that such modification, substitution, renewal or addition shall not materially and adversely affect the Cloudstream Services.
- 2.5. The Customer shall, at all times, be responsible for ensuring the safekeeping and proper use of the Cloudstream Equipment at the Customer's Site(s). The Customer shall be liable to Novosco for any loss or damage to the Leased Cloudstream Equipment (except to the extent it can be shown that such loss or damage is attributable to the negligent act or omission of Novosco, its employees, agents or sub-contractors whilst providing the Cloudstream Services).
- 2.6. During the term of this Agreement and until the Leased Cloudstream Equipment has been removed by Novosco from the Customer's Site(s), the Customer undertakes:
 - 2.6.1. to keep the Cloudstream Equipment at the Customer's Site(s) and not to move it; and
 - 2.6.2. to comply with all reasonable instructions as Novosco may notify to the Customer and with the manufacturer's instructions in relation to the use of the Cloudstream Equipment; and
 - 2.6.3. to comply with all laws in relation to the use of the Cloudstream Equipment; and
 - 2.6.4. not to cause any attachments to the Cloudstream Equipment other than those approved for connection by Novosco in writing; and
 - 2.6.5. not to do anything nor to allow to subsist any circumstances, of which the Customer has, or is reasonably likely to have knowledge of, likely to damage the Cloudstream Equipment or detract from or impair its performance or operation; and



- 2.6.6. not to or attempt to repair, service, maintain or interfere with the Cloudstream Equipment except as otherwise approved by Novosco in writing; and
- 2.6.7. not to or attempt to sell, transfer, dispose of, let, mortgage or charge the Leased Cloudstream Equipment or suffer any distress, seizure or execution to be levied against or of the Leased Cloudstream Equipment, or otherwise do anything prejudicial to Novosco' rights in the Leased Cloudstream Equipment; and
- 2.6.8. not to remove, tamper with or obliterate any identification mark(s) affixed to the Leased Cloudstream Equipment showing that it is the property of Novosco; and
- 2.6.9. to notify Novosco (oral notice must be immediately followed by written notice) of any circumstances which may adversely affect the Cloudstream Equipment or its operation.
- 2.7. Notwithstanding clauses 2.6.1 and 2.6.6 of this Section, in the case of an emergency, the Customer agrees to take reasonably necessary steps to safeguard the Cloudstream Equipment and to notify Novosco as soon as possible of the circumstances of such emergency and the steps taken by the Customer to safeguard the Cloudstream Equipment.
- 2.8. The Customer agrees to effect and maintain suitable insurance in respect of the relevant risks in the Cloudstream Equipment at the Customer's Site(s).
- 2.9. The Customer must immediately notify Novosco of any loss of or damage to the Cloudstream Equipment.
- 2.10. The Customer agrees to indemnify Novosco against all losses, damages and claims Novosco may suffer or incur arising out of or in relation to any damage or loss caused to the Leased Cloudstream Equipment (except to the extent that such damage or loss is caused by Novosco's employees, agents or sub- contractors while carrying out the Cloudstream Services). This clause 2.10 shall survive the termination of this Agreement or any part of it.
- 2.11. Notwithstanding clause 2.6.1, the Customer may, by not less than thirty (30) business days' written notice, request Novosco to re-locate the Cloudstream Equipment at a Site. Novosco shall use its reasonable endeavours to comply with such request. The Customer shall pay Novosco' reasonable charges for any such re-location, and where required by Novosco, such charges shall be paid before Novosco carries out any such relocation works. If Novosco requires more than thirty (30) business days to carry out such relocation, Novosco will, following its receipt of such notice, notify the Customer when it will reasonably be able to do so.
- 2.12. Clauses 2.6.1, 2.6.2, 2.6.4, 2.6.6, 2.7, and 2.9 of this Section shall not apply to any Purchased Cloudstream Equipment that is not maintained by Novosco as part of the Cloudstream Services, save to the extent that non compliance with the provisions of the clauses listed herein shall affect or is likely to affect Novosco's ability to provide the Cloudstream Services under this Agreement.

- 2.13. In relation to Customer Apparatus:
- 2.13.1. on Novosco's request, the Customer shall provide any specifications or other information relating to the Customer Apparatus. The Customer agrees to make such modifications in relation to the Customer Apparatus as may be reasonably required by Novosco to enable Novosco to supply the Cloudstream Services, at the Customer's cost and expense;
 - 2.13.2. the Customer shall be responsible for ensuring that the Customer Apparatus is programmed, equipped, compatible and connected for use of the Cloudstream Services in accordance with Novosco's reasonable instructions and the specifications contained in the Service Level Agreement and the relevant manufacturer's operations and maintenance manuals;
 - 2.13.3. the Customer shall be responsible for the connection of the Customer Apparatus to the Cloudstream Equipment or any termination point of the Cloudstream Services;
 - 2.13.4. the Customer shall ensure that the Customer Apparatus and its use comply with all relevant laws. The Customer shall immediately disconnect any Customer Apparatus if the Customer Apparatus does not, or ceases to, conform to applicable standards (if any) for the time being in force;
 - 2.13.5. Novosco may disconnect or may advise the Customer to (and the Customer shall) disconnect any of the Customer Apparatus if:-
 - 2.13.5.1. the Customer is in breach of any provision in clauses 2.13.1 to 2.13.4; or
 - 2.13.5.2. in the opinion of Novosco, such Customer Apparatus may cause the death of or personal injury to any person or damage to any property or the continued connection of the Customer Apparatus will impair the quality of any telecommunication services provided by means of the Novosco System;
 - 2.13.6. if Novosco advises the Customer to disconnect any of the Customer Apparatus pursuant to clause 1.12.5 and the Customer refuses then Novosco shall be entitled to suspend the Cloudstream Services or any part of them;
 - 2.13.7. Novosco shall have no liability for any loss or damage arising from the use of the Customer Apparatus;
 - 2.13.8. Novosco is not responsible for the repair or maintenance of any Customer Apparatus;
 - 2.13.9. the Customer is responsible for ensuring that the Customer Apparatus is compatible with the Cloudstream Equipment to enable the Customer to use the Cloudstream Services; and
 - 2.13.10. without undertaking any obligations to do so, where Novosco agrees to assist the Customer in the preparation of the Customer Apparatus or its connection to the Novosco System, such



agreement shall be on such terms as the parties may conclude in writing which may include payment to Novosco of additional charges for such assistance.

- 2.14. Novosco shall not be liable for any delay or failure in the performance of its obligations under this Agreement to the extent that such delay or failure is caused by the delay or failure of the Customer in the performance of its obligations under this Agreement.

3. **PRICES, TAXES AND PAYMENT**

- 3.1. The Customer shall pay Novosco in accordance with the terms specified in the Customer Proposal which describe the Fees payable and the required payment timings (and in the absence of any such specification Novosco will provide the Cloudstream Services on a time and materials basis at its then current rates).
- 3.2. Prices are fixed for the Initial Contract Term, after which Novosco may increase the Fees by one month's notice to the Customer.
- 3.3. Unless otherwise agreed by Novosco and the Customer and recorded in the Customer Proposal, the Customer agrees to pay all invoiced Fees and additional charges (including all expenses and disbursements) within thirty days of Novosco's invoice date.
- 3.4. Novosco may suspend provision of the Cloudstream Services if the Customer fails to pay any sum due, or if after ten days written notice the Customer has not cured any other failure to perform under the Agreement. Any suspension of the Cloudstream Services in accordance with this Agreement will not constitute a termination of the Agreement and Novosco may require the Customer to pay a reconnection fee to recommence the Cloudstream Services, together with the relevant Fees.
- 3.5. All Fees and any additional charges shall be exclusive of value added tax or any other applicable tax or duty which shall be added to invoices at the rate applicable at the date of invoice.
- 3.6. Without prejudice to any other rights or remedies available to Novosco, Novosco shall be entitled to levy interest on any Fees or additional charge overdue at the rate of five per cent per annum above Northern Bank Limited's base rate ruling from time to time (both before and after judgment) and to recover all reasonable costs and expenses incurred by Novosco in collecting the amount unpaid.
- 3.7. All payment obligations in this Agreement shall be validly satisfied in pounds sterling for as long as such currency continues to have the status of legal tender. However, by mutual agreement during the transitional phase for the introduction of the European Union Euro (**Euro**) and on a mandatory basis, as of the date on which the pound sterling no longer has the status of legal tender, all payment obligations under this Agreement shall be satisfied in the Euro by applying the conversion rates and methods determined by the Council of the European Union.



4. INTELLECTUAL PROPERTY RIGHTS

4.1. The Customer acknowledges that it hereby acquires only the right to access and Use the Cloudstream Services in accordance with this Agreement, and that all Intellectual Property Rights in the Cloudstream Services (including the source code of any software comprising part thereof, and any Intellectual Property Rights created as part of the customisation and/or configuration of the Cloudstream Services and/or provision of any Extra Services) and the Cloudstream Equipment belong to and shall remain vested in Novosco or where relevant Novosco's licensors. Nothing in this Agreement shall confer on the Customer or any User any right, title or interest in the Cloudstream Services (except the rights of Use as set out in this Agreement), or to any source code within any software comprising part thereof.

4.2. In the event that the Customer's use of the Cloudstream Services and/or the Equipment and/or the Extra Services is held by a court of competent jurisdiction or is believed by Novosco to infringe the Intellectual Property Rights of any third party, Novosco shall have the option, acting at all times reasonably and in good faith and at its sole expense, as soon as reasonably practicable to:

4.2.1. modify or amend the Cloudstream Services or the infringing part(s) thereof in order to avoid any further infringement;

4.2.2. procure for the Customer the right to continue using the Cloudstream Services or infringing part(s) thereof;

4.2.3. substitute the Cloudstream Services or infringing part(s) thereof with other systems, software or documentation suitable for the provision of the Cloudstream Services in accordance with this Agreement

and this shall be Novosco's sole liability, and the Customer's sole remedy, for infringement of the Intellectual Property Rights of any third party. If Novosco in its reasonable judgment is not able to exercise any of the options set out in this clause 3.2 then Novosco shall be entitled to terminate this Agreement by giving 30 days' notice to the Customer.

4.3. The Customer warrants that it is able to grant to, and hereby grants to, Novosco for the Term a non-exclusive, world-wide, royalty-free licence to use the Customer's IPRs to the extent necessary for Novosco to perform its obligations under the Agreement. The Customer shall indemnify Novosco and keep Novosco at all times fully and effectively indemnified against any and all loss, liability, cost or expense (including reasonable legal expenses) howsoever incurred by Novosco and whether directly or indirectly arising out of any breach of this clause 4.3, including against any damages (including costs) awarded against Novosco or to be paid by Novosco in respect of any claims or proceedings arising in any jurisdiction from an infringement (or alleged infringement) of any Intellectual Property Right arising from:

4.3.1. work carried out by Novosco, its employees or sub-contractors in accordance with directions or specifications given by the Customer; or



- 4.3.2. the connection and/or use of any Customer Apparatus in conjunction with the Cloudstream Services.
- 4.4. Novosco has no obligation for any claim of infringement arising from:
 - 4.4.1. Novosco's compliance with the designs, specifications, instructions, or technical information of the Customer or any third party;
 - 4.4.2. modifications made by the Customer or a third party to the Cloudstream Services (or any part of them); or
 - 4.4.3. the Customer's negligence, wilful misconduct and/or non-compliance with this Agreement.

5. **WARRANTIES AND LIABILITY**

- 5.1. Novosco warrants to the Customer that the Cloudstream Services will materially function in accordance with the Functional Specification for the duration of this Agreement. However, the Customer accepts that it is technically impracticable to provide services of the same sort as the Cloudstream Services which are entirely free of faults and Novosco does not undertake to do so.
- 5.2. Novosco shall not be liable for any breach of this Agreement (including without limitation any breach of clause 5.1) or for any breach or loss suffered by the Customer or other third party if and to the extent that such breach and/or loss arises from the following: the incorrect use, abuse or corruption of the Cloudstream Services; any use of or access to the Cloudstream Services by any User which is not expressly permitted by this Agreement; any failure by the Customer to follow Novosco's reasonable instructions and/ or advice; or the act or omission of any third party provider of any product, service or solution.
- 5.3. In the event that Novosco receives written notification from the Customer of any breach of the warranty set out in clause 5.1, Novosco shall as soon as reasonably possible and in any event within 30 days of the date of such notification and at its own expense use reasonable endeavours to remedy the same. The Customer shall reasonably cooperate with Novosco, in remedying the alleged breach, including but not limited to providing reasonably sufficient information to Novosco to enable it to isolate and correct any claimed non-compliance of the Cloudstream Services with the Functional Specification. The Customer's cooperation shall be at no out of pocket expense to Novosco, save where the Customer can demonstrate to Novosco's reasonable satisfaction that no warranty has been breached (in which case the Customer will reimburse all such costs as are actually and reasonably incurred by Novosco).
- 5.4. Novosco makes no warranty or representation not expressly set forth in this Agreement. To the maximum extent permitted by law, and except for the warranties expressly set forth herein, Novosco disclaims any and all other warranties and conditions, whether express, implied, or statutory, including but not limited to implied warranties (if any) of merchantability, ownership of intellectual property rights, fitness for a particular purpose and



satisfactory quality, or warranties as to the quality, content or accuracy of information received through, or as a result of the use of, the Cloudstream Services.

5.5. Novosco's liability will be limited as follows:

5.5.1. nothing in this Agreement shall limit Novosco's liability for death or personal injury caused by the negligence of Novosco or its employees, or for any liability which may not be limited under governing law;

5.5.2. subject to clause 5.5.1 above, Novosco shall not be liable in contract, tort, or in relation to breach of statutory duty or any other right of action for the following losses:

5.5.2.1. loss of, damage to or corruption or destruction of, data or other information belonging to the Customer or any other third party (including any cost of the Customer's delays, non-deliverance, missed deliveries, or service controls occasioned thereby);

5.5.2.2. loss of or damage to software;

5.5.2.3. any economic losses, including loss of revenues, opportunity, profits, contracts, goodwill, reputation, business, use of money or anticipated savings;

5.5.2.4. loss of production, operation time, use or downtime;

5.5.2.5. damages relating to the procurement by the Customer of any substitute products or services; and

5.5.2.6. any special, incidental, indirect or consequential (direct or indirect) losses, damages, costs or expense (whether or not such loss or damage is of the type specified in clauses 5.5.2.1 to 5.5.2.5 above);

5.5.3. subject to clause 5.5.1 above, and excluding all indemnities under this Agreement, the aggregate liability of Novosco in any consecutive twelve month period in respect of any loss or damage suffered by the Customer and arising out of or in connection with this Agreement shall not exceed the greater of:

5.5.3.1. the total Fees paid by the Customer and received by Novosco during the previous 12 (twelve) months; or

5.5.3.2. the total recurring Fees which would have been (but for the early termination of the Agreement), or are, due and payable during the first year of the Initial Contract Term (and for the avoidance of doubt the Customer will act at all times to mitigate any such loss or damage).

5.6. The Customer acknowledges as reasonable that Novosco's provision of the Cloudstream Equipment and the CloudStream Services depends to a material extent on the provision of services and equipment to Novosco by third parties. Accordingly, subject to clause 5.5.1, and



in addition to the losses excluded by clause 5.5.2, Novosco excludes to the maximum extent permitted by law any liability (arising in contract, tort, or in relation to breach of statutory duty or any other right of action) for any loss whatsoever or howsoever suffered by the Customer and arising directly from the suspension, failure or termination of any supply of services and/or equipment by a third party to Novosco.

5.7. Each provision of this clause 5 shall be construed separately and shall continue and survive even if for any reason one or other of those provisions is held invalid or unenforceable in any circumstances.

5.8. The Customer agrees and acknowledges:

5.8.1. that it is in a better position than Novosco to foresee and evaluate any potential damage or loss which the Customer may suffer in connection with the Cloudstream Services, the Cloudstream Equipment and/or the Extra Services;

5.8.2. that Novosco cannot adequately insure its potential liability to the Customer;

5.8.3. that the Fees payable by the Customer have been calculated on the basis that Novosco shall exclude liability in accordance with the provisions of this clause 5; and

5.8.4. the Customer acknowledges that the Fees are determined on the basis of the exclusions from and limitations of liability contained in this Agreement. Each party expressly agrees that these exclusions and limitations are reasonable because of (amongst other matters) the likelihood that the amount of damages awardable to a party for a breach by the other party of this Agreement may be disproportionately greater than such Fees.

5.9. In relation to Third Parties, the Customer acknowledges and accepts as reasonable that:

5.9.1. Novosco excludes all liability to the maximum extent permitted by applicable law for any loss whatsoever incurred by the Customer as a result of any act or omission of any Third Party, or of the failure, suspension and/or termination of any facility or service provided by any Third Party, or the breach by any Third Party of any relevant Third Party Licence (each such act, omission, failure, suspension or termination a **Third Party Breach**); and

5.9.2. any Third Party Breach shall not constitute a breach by Novosco of the provisions of this Agreement.

6. **CONFIDENTIALITY AND DATA PROTECTION**

6.1. In relation to either Party, **Confidential Information** as used in this Agreement shall mean any and all information relating to that Party (or to any parent undertaking and/or subsidiary undertaking of that Party, as those terms are defined by section 1162 of the Companies Act 2006 (as amended)) which is disclosed before or after the date of this Agreement by that Party (**Discloser**) to the other Party (**Recipient**), and which is provided, either directly or indirectly, in



writing, orally or by inspection, and being any and all information which is specified as confidential or which a reasonably prudent person should know is expected to be treated as confidential (including without limitation financial information, customer lists, business forecasts, sales and merchandising, and marketing plans and information). For the avoidance of doubt Novosco's Intellectual Property Rights (to the extent disclosed to the Customer) constitute Confidential Information of Novosco.

6.2. Each Party agrees that:

6.2.1. it will not use any Confidential Information of the other Party for any purpose, nor disclose any such Confidential Information to any third party without the other Party's prior consent (and in the event that such consent is given Recipient will ensure, prior to such disclosure, that each such third party is made aware of the confidential nature of the Confidential Information and agrees in writing to be bound by conditions of secrecy no less strict than those set out in this Agreement);

6.2.2. it shall disclose Confidential Information of the other Party only to those of its employees who need to know such information, and that it will procure that such employees agree, either as a condition of employment or in order to obtain the Confidential Information, to be bound by terms and conditions substantially similar to those of this Agreement;

6.2.3. without affecting any rights or remedies that Discloser may have, that damages would not be an adequate remedy for any breach by Recipient of the provisions of this Agreement and Discloser shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of the provisions of this letter by Recipient and that no proof of special damages shall be necessary for the enforcement of this Agreement;

6.2.4. in the event that it is Recipient, it will give notice to Discloser of any unauthorized use or disclosure of the Confidential Information by it, and/or any employee of it and/or any third party to whom it has disclosed Confidential Information, as soon as reasonably practicable after becoming aware of the same, and that it will provide all reasonable assistance to Discloser in remedying any such unauthorized use or disclosure of the Confidential Information; and

6.2.5. that its obligations hereunder shall survive for a period of six years from the date of last disclosure of Confidential Information.

6.3. Information shall not be deemed to be Confidential Information to the extent that:

6.3.1. it was in the public domain at or subsequent to the time it was communicated to Recipient by Discloser through no fault of Recipient;

6.3.2. it was rightfully in Recipient's possession free of any obligation of confidence at or subsequent to the time it was communicated to Recipient by Discloser;



- 6.3.3. it was communicated by the Discloser to an unaffiliated third party free of any obligation of confidence; or
- 6.3.4. the communication was in response to a valid order by a court or other governmental body or was otherwise required by law.
- 6.4. Each of Novosco and the Customer shall in the performance of their obligations imposed by this Agreement at all times comply with any provision of the DPA which binds them (including in relation to the Customer Data).
- 6.5. As between the Customer and Novosco, the Customer shall own Customer Data. Except as permitted in this Agreement, Novosco will not edit, delete or disclose the contents of the Customer Data unless authorised by the Customer or unless Novosco is required to do so by law or in the good faith belief that such action is necessary to conform with applicable laws or comply with legal process served on Novosco.
- 6.6. The Customer acknowledges that certain personal information of its employees and contractors may be communicated to Novosco in the course of the execution and performance of the Agreement and hereby warrants that it has obtained the consent of its employees and contractors for the processing of such personal data by Novosco for the purposes of the performance of the Agreement, and for the purposes of contacting the Customer in relation to other goods and services which may be of interest to Customer. All such personal data will, at all times, be processed in accordance with Novosco's privacy policy in force from time to time (available at <http://www.novosco.com/legal/>).
- 6.7. Novosco may provide user statistical information such as usage or traffic patterns in aggregate form to third parties, but such information will not include personally identifying information. The Customer consents to, and warrants that it has obtained all consents necessary to allow, Novosco's accessing Customer Data to respond to service or technical problems with the Cloudstream Services. The Customer is solely responsible for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all Customer Data.
- 6.8. Novosco reserves the right to establish a maximum amount of Customer Data that the Customer may transmit on or through the Cloudstream Services.

7. **TERM AND TERMINATION**

- 7.1. This Agreement shall commence on the Commencement Date and continue, subject to earlier termination in accordance with this clause 7, for the Initial Contract Term (provided that in the event of any phased installation there may be more than one Commencement Date. In such circumstances, the Initial Contract Term shall commence on the first Commencement Date, but expire three years from the last Commencement Date). At the end of the Initial Contract Term, the Agreement shall continue in force for successive periods of one year.
- 7.2. This Agreement may be terminated forthwith:



- 7.2.1. by either Party giving written notice thereof to the other in the event that the other Party materially breaches or materially fails to observe (together **Breach**) any provision of this Agreement, the other Party having (if the Breach is capable of remedy) given notice of the Breach and the Party in breach having failed to remedy the Breach within 28 days from receipt of the notice; or
- 7.2.2. by either Party giving written notice thereof to the other in the event that either:
 - 7.2.2.1. an order is made or a resolution is passed for the winding up of the other Party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other Party, or
 - 7.2.2.2. an order is made for the appointment of an administrator to manage the affairs, business and property of the other Party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other Party, or notice of intention to appoint an administrator is given by the other Party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or
 - 7.2.2.3. a receiver is appointed of any of the other Party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other Party, or if any other person takes possession of or sells the other Party's assets, or
 - 7.2.2.4. the other Party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or
 - 7.2.2.5. the other Party ceases, or threatens to cease, to trade, or
 - 7.2.2.6. the other Party takes or suffers any similar or analogous action to any action detailed in this clause 7.2.2 in any jurisdiction;
- 7.2.3. by either Party giving one month's written notice thereof to the other, provided that no such notice can be given during the Initial Contract Term; and/or
- 7.2.4. in accordance with clause 9.1 of these General Terms.
- 7.3. Novosco may terminate this Agreement in accordance with clause 4.2, or forthwith on written notice where it believes (in its sole discretion) that the Customer is in breach of its obligations imposed by clause 1.2 and 1.6 of these General Terms.
- 7.4. Novosco may suspend the Cloudstream Services or any part of them:
 - 7.4.1. if the Customer is in material breach of this Agreement; or
 - 7.4.2. if Novosco is entitled to terminate this Agreement; or



- 7.4.3. if Novosco is obliged to comply with any law or request of any governmental department, emergency services organisations or other competent administrative authority, or forced to do so by any action of any supplier of Novosco.
- 7.5. Where the suspension occurs due to the Customer's default, Novosco will only reconnect the Cloudstream Services if the Customer has:-
 - 7.5.1. rectified its breach of this Agreement; and
 - 7.5.2. reimbursed Novosco for all reasonable costs and expenses incurred in relation to such suspension and the reconnection of the Cloudstream Services; and
 - 7.5.3. paid and Novosco has received all sums due and payable by the Customer to Novosco under this Agreement in cleared funds.
- 7.6. Upon expiration or the earlier termination of this Agreement:
 - 7.6.1. the licence granted in accordance with clause 1 of this Section will terminate, unless expressly otherwise agreed by Novosco in writing; and
 - 7.6.2. Novosco and/or its representatives and licensors may enter the Sites to remove any Leased Cloudstream Equipment.
- 7.7. Upon termination of this Agreement other than by reason of Novosco's default, the Customer shall immediately pay to Novosco:
 - 7.7.1. all Fees due and unpaid at the date of termination; and
 - 7.7.2. all Fees that would have been payable during the Initial Contract Term, but for the early termination of the Agreement, less any Fees already paid.
- 7.8. The provisions of clause 3.4 of the first Section of this Agreement (The Cloudstream Services), and clauses 1.10, 3, 4, 5, 6, 7 and 9.10 of the General Terms, will survive such expiration or termination.
- 7.9. On termination of this Agreement, the Customer shall immediately return all copies of any software provided by Novosco to Novosco, and expunge any copies of the software from any computer, word processor or other data storage device in the Customer's control.
- 8. **DISPUTE RESOLUTION**
 - 8.1. The Parties hereby agree that if either Party has any issue or concern which such Party in good faith reasonably believes may have an adverse impact on the Parties' fulfilment of obligations imposed by this Agreement, then such Party may contact the other Party to attempt to resolve such issue or concern in good faith, and such contact will be made as follows:



- 8.1.1. where the concerned Party is Novosco the relevant contact at the Customer will be the Customer's signatory to the Customer Proposal **provided that** if within 15 business days of such contact Novosco reasonably believes that the issue has not been satisfactorily resolved, Novosco may then contact the Customer's managing director (or nearest equivalent post);
- 8.1.2. where the concerned Party is the Customer the relevant contact at Novosco will be Novosco's Cloudstream Service Delivery Manager **provided that** if within 15 business days of such contact the Customer reasonably believes that the issue has not been satisfactorily resolved, the Customer may then contact Novosco's managing director;

provided further that if within 15 business days of such second level contact the concerned Party, acting reasonably, still believes that the issue is not satisfactorily resolved then such concerned Party may (acting reasonably and without delay) notify the other Party that it regards the issue as a dispute and the provisions of clause 8.2 shall apply.

- 8.2. If the dispute or claim cannot be resolved by the Parties pursuant to clause 8.1, Novosco and the Customer shall attempt in good faith to resolve the dispute or claim by mediation in accordance with the Centre for Dispute Resolution model mediation procedure. If such mediation is not commenced within one month, either Party may seek alternate remedy.

9. GENERAL

- 9.1. Except for a Party's payment obligations, neither Party shall be liable for delay in performing the obligations or for the failure to perform obligations if the delay or failure results from any cause beyond its reasonable control including without limitation acts of God, eruption of any volcano (including the dispersal of any material and/or gas therefrom), flood, fire, explosion, war, terrorism, insurrection or riots, embargo, shortage of supply of or failure of any relevant third party supplier to supply, materials required for the supply of the Cloudstream Services or any part of them, third party industrial action, act or omission of government or any other party for whom the Party claiming a Force Majeure Event is not responsible (**Force Majeure Event**). The Party claiming a Force Majeure Event shall take all action which is reasonable under the circumstances to overcome any such cause of prevention or delay and to proceed with the performance of its obligations hereunder. Notice of any Force Majeure Event and any abatement thereof shall forthwith be given to the other Party by the Party claiming the benefit of this clause 9.1. In the event that any Force Majeure Event continues for more than 60 days, either Party may terminate the Agreement by written notice to the other party.
- 9.2. This Agreement, and any documents referred to in it, constitute the whole agreement between the Parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 9.3. Each Party acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether Party to this Agreement or not) relating to the subject matter of this Agreement other than as expressly set out in this Agreement.

- 9.4. A person who is not a party to the Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 9.5. The Customer may not transfer, assign or novate the whole or any part of the Agreement or the benefit of it or any right under it without Novosco's prior written approval.
- 9.6. A failure at any time to enforce any provision of the Agreement shall in no way affect the right at a later date to require complete performance of the Agreement, nor shall the waiver of the breach of any provision be taken or held to be a waiver of any subsequent breach of the provision or be a waiver of the provision itself.
- 9.7. Nothing in this Agreement shall create or shall be deemed to create a partnership or the relationship of employer and employee between the parties.
- 9.8. Any variation of this Agreement shall be made in writing and executed by the Parties.
- 9.9. If any provision of Agreement or part thereof should be found to be invalid, ineffective or unenforceable under any applicable statute or regulation, the remainder of the provisions shall stand in full force and effect.
- 9.10. The Agreement is governed by Northern Irish law. All disputes, claims or proceedings between the parties relating to the validity construction or performance of this Agreement shall be subject to the jurisdiction of the courts of Northern Ireland to which the parties hereto irrevocably submit.



SECTION 3: DEFINITIONS

1 In this Agreement the following words shall have the following meanings:

Acceptance means the point in time at which the Cloudstream Services fulfils the Acceptance Tests, as detailed in clause 1 of the Service Level Agreement.

Acceptance Tests means the tests carried out by Novosco to demonstrate that the Cloudstream Services materially meets the requirements of the Functional Specification.

AUP shall have the meaning given in clause 1.10.1 of the General Terms.

Commencement Date means the date specified as such in the Customer Proposal.

Customer Apparatus means any apparatus, and any software embodied in such apparatus (including equipment, cabling, wiring, personal computers, network interface cards and network interface adapters) not forming part of (but which may be connected to) the Cloudstream Equipment and used by the Customer in conjunction with any Cloudstream Equipment in order to obtain or use the Cloudstream Services

Cloudstream Equipment means any and all hardware provided by Novosco to the Customer as part of the provision of the Cloudstream Services.

Cloudstream Ethernet Service means the service to be provided by Novosco to the Customer in accordance with this Agreement, as the same is described in the Functional Specification.

Cloudstream Network Service means the service to be provided by Novosco to the Customer in accordance with this Agreement, as the same is described in the Functional Specification.

Cloudstream Services means the Cloudstream Network Service and/or the Cloudstream Ethernet Service, to the extent that either or both of such services are recorded as required by a Customer in the Customer Proposal relating to such Customer.

Customer Data means any and all data, information and material entered by or on behalf of the Customer into the Cloudstream Services in accordance with this Agreement.

Customer IPRs means any Intellectual Property Rights belonging or licensed to the Customer and which are required for the provision of the Cloudstream Services in accordance with this Agreement (but excluding any Intellectual Property Rights licensed to the Customer by Novosco under the terms of this Agreement).

Customer Proposal means the contract information form agreed by Novosco and each Customer, and incorporating the terms of this Agreement (in the format as detailed in the



fourth section of this Agreement, as the same may be amended by Novosco from time to time).

DPA means the Data Protection Act 1998 and the Privacy and Electronic Communications Regulations 2003.

Extra Services means the services described at clause 6 of section 1 of this Agreement.

Fees means the fees payable by the Customer to Novosco in accordance with this Agreement, as stated in the Customer Proposal.

Functional Specification means Novosco's specification as detailed in the Customer Proposal.

Initial Contract Term means the period detailed as such in the Customer Proposal.

Intellectual Property Rights means patents, patent applications, and patent rights, copyrights, copyright applications, and copyright registrations, trademarks, trademark applications, trademark registrations, and trademark rights, trade secrets, and all other intellectual property and proprietary information rights as may exist now or hereafter come into existence, all modifications, continuations, renewals, and extensions of any of the foregoing, and all claims, actions, causes of action, damages, costs, expenses, profits, penalties, recoveries, and remedies relating to any past, present, or future infringement of any of the foregoing, arising under the laws of any country, state, or jurisdiction in the world.

ISP means a third party internet services provider selected to host the Use of the Cloudstream Services in accordance with this Agreement.

Leased Cloudstream Equipment means any Cloudstream Equipment, other than the Purchased Cloudstream Equipment.

Parties means the parties to this Agreement and **Party** shall mean either of them.

Purchased Cloudstream Equipment means any Cloudstream Equipment, the ownership of and title to which is purchased by the Customer.

Required Notice Period means the period of notice detailed in the Customer Proposal as is required to terminate the Agreement.

Service Availability shall have the meaning given in paragraph 2 of the Service Level Agreement.



Third Party means any third party licensing or providing directly or indirectly to Novosco any element of the Cloudstream Services (including any component service, software, hardware or facility).

Third Party Licence means any agreement between Novosco and a Third Party.

Use shall have the meaning given it in clause 1.1 of the General Terms.

User shall mean any user of the Cloudstream Services authorised by the Customer to use the Cloudstream Services.

Year means the period of a calendar year commencing either on the Commencement Date or any anniversary thereof.

- 2 In this Agreement (except where the context otherwise requires) reference to a clause or schedule means a reference to a clause or schedule of this Agreement; the clause headings are included for convenience only and shall not affect the interpretation of this Agreement; use of the singular includes the plural and vice versa; use of any gender includes the other genders; any reference to a statute, statutory provision or subordinate legislation (**legislation**) shall (except where the context otherwise requires) be construed as referring to such legislation as amended and enforced from time to time and to any legislation which (either with or without modification) re-enacts, consolidates or enacts in rewritten form any such legislation and any former legislation which it re-enacts, consolidates or enacts in rewritten form; any phrase introduced by the term **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.



SECTION 4: SERVICE LEVEL AGREEMENT

Definitions

1. Except as otherwise defined in this Section 4 or unless the context otherwise requires, all defined terms in this SLA shall have the same meanings as in the Agreement.
- 1.1 **“AUP (Acceptable Use Policy)”** means such instructions notified to the Customer in writing by Novosco from time to time.
- 1.2 **“Excused Outage”** means any Fault caused by:
 - 1.2.1 the Customer’s network or system, or any part of it; or
 - 1.2.2 a fault in, or any problem associated with, equipment connected on the Customer’s side of the Cloudstream Services network termination point; or
 - 1.2.3 the Customer’s acts or omissions; or
 - 1.2.4 the Customer’s breach of the Agreement; or
 - 1.2.5 the Customer’s failure or delay in complying with Novosco’s reasonable instructions; or
 - 1.2.6 any refusal to allow Novosco, its employees, agents or sub-contractors to enter into the relevant premises to diagnose or remedy any Fault; or
 - 1.2.7 a force majeure event as set out in the Agreement; or
 - 1.2.8 a Planned Outage; or
 - 1.2.9 an act or omission of any third party which is beyond Novosco’s reasonable control which shall include, without limitation, a fibre cut.

For the avoidance of doubt, “Customer” in this paragraph 1.1 shall include the Customer’s employees, sub-contractors and agents.
- 1.3 **“Fault”** means a fault, outage or downtime of the Cloudstream Services (other than a Planned Outage or an Excused Outage) which has been reported to Novosco in accordance with paragraph 3.1
- 1.4 **“Fault Report”** means the report of a Fault that has been recorded on the call record at Novosco’s Support Desk in accordance with paragraph 3.1
- 1.5 **“Internet”** means the global data network comprising interconnected networks using TCP/IP



("Transmission Control Protocol/Internet Protocol")

- 1.6 **"IP Address"** means an Internet protocol address.
- 1.7 **"Planned Outage"** means any Cloudstream Services downtime:
 - 1.7.1 scheduled by Novosco to carry out any preventative maintenance services; or
 - 1.7.2 caused by any upgrade services in relation to the Cloudstream Services: or
 - 1.7.3 caused by any services requested or authorised by the Customer including without limitation, network redesign or reconfiguration.
- 1.8 **"Registry"** means the relevant registry or naming authority responsible for the registration of domain names.
- 1.9 **"Service Level"** means the service level set out in this Section 4.
- 1.10 **"Service Credit"** is the amount paid to the Customer by Novosco for failing to meet target availability set out in paragraph 2.5 Service Credits are calculated and payable in accordance with the Fees actually paid or payable by the Customer for the Cloudstream Services.
- 1.11 If there are any inconsistencies between the provisions in this Section 4 and any other provisions in this Agreement, the provisions in this Section 4 shall prevail.

2. **Availability**

2.1 Definition of availability

A circuit is available when transmission of signals can occur in both directions. Novosco's Cloudstream Services are designed to comply with ITU-T recommendations on performance. They are available 24 hours a day, with an annual rolling target availability of 99.85%.

- 2.1.1 Where Novosco is providing the Cloudstream Services entirely "on-net" (i.e. without using third party circuit or fibre suppliers' services) the **Service Availability** target per Site is 99.85% under normal operating conditions. (The target availability across the core network is 99.99% per annum under normal operating conditions. Such target availability of 99.99% is for the Customer's information only and shall not in any manner represent Novosco's undertaking or warranty or obligation in respect of the performance of the Service.)
- 2.1.2 Where the Cloudstream Services provided by Novosco are not entirely "on-net" (i.e.



third party circuit or fibre suppliers' services are incorporated into the Cloudstream Services), Novosco shall use reasonable endeavours to meet the target availability figures set out in paragraph 2.1.1 above.

2.2 “**Service Availability**” is calculated as follows:

$$\frac{(24 \text{ hours} \times 365) - \text{Network Outage Time (defined below)} \times 100}{24 \text{ hours} \times 365}$$

“**Network Outage Time**” means the total of the Outage Duration (defined below) in the Twelve-month Review Period relating to the Cloudstream Services subject to paragraph 2.4 below.

“**Outage Duration**” means the time during which the Customer’s Site is unable to transmit or receive data to or from any other Site as identified in the Customer Proposal, subject to paragraph 2.4 below.

2.3 Planned Outage

Except in an emergency or in circumstances beyond Novosco’s control, Novosco will use all reasonable endeavours to give the Customer at least 5 days’ notice of any maintenance or upgrade work on the Novosco network which will affect the availability of the Cloudstream Services to the Customer’s Site. Such notice will include:

- 2.3.1 a brief description of the Planned Outage;
- 2.3.2 date and time of the Planned Outage;
- 2.3.3 estimated duration of the Planned Outage.

Such notice will be given by way of letter or via e-mail. However, in the case of an emergency, Novosco may give the Customer a shorter notice by way of a telephone call.

2.4 Exclusions:

Unavailability of the Cloudstream Services as a result of any of the following event shall not be deemed Network Outage Time:

- 2.4.1 an Excused Outage; or
- 2.4.2 a Planned Outage; or
- 2.4.3 a fault that incurs less than 3 minutes outage

2.5 Service Credits

The Customer may claim Service Credits if Novosco fails to achieve an annual rolling circuit availability of 99.85%, provided that this right only applies where the Cloudstream Services are provided to multiline Customer's Site(s). Notwithstanding the aforesaid, downtime as a result of Excused Outages, Planned Outages, a fault that incurs less than 3 minutes outage or any faults occurring on any third party provider's circuit incorporated into the service, shall not be included in any calculation of availability percentages. Availability is measured annually on a rolling 12 months basis and by reference solely to Novosco's records.

| Service Availability | Compensation (% of annual Fees) |
|----------------------|---------------------------------|
| 99.84 to 99.55% | 1% |
| 99.54 to 99.00% | 3% |
| 89.99 to 85.00% | 5% |
| < 84.99% | 10% |

3 **Fault Reporting**

3.1 The Customer must comply with any Fault reporting format as advised by Novosco from time to time for the reporting of any Faults. Such reporting format shall include, amongst other things:

- 3.1.1 the Customer's full company name;
- 3.1.2 the Customer's contact details – telephone and facsimile numbers;
- 3.1.3 the Customer's Novosco account number;
- 3.1.4 (the Customer's Novosco circuit 'A' & 'B' Ends reference number, if appropriate)
- 3.1.5 name of reporting individual;
- 3.1.6 details of fault Site;
- 3.1.7 call record number;
- 3.1.8 time of report;
- 3.1.9 impact of fault;
- 3.1.10 time of outage commencement;
- 3.1.11 confirmation that the Customer has checked its equipment and that it is in good working order
- 3.1.12 access details including Site access times and Site contact details.

For the avoidance of doubt, if there is a dispute on any outage commencement or duration, the records of the fault management system at Novosco's service desk shall be final.

3.2 Any faults or suspected faults on the services must be reported to Novosco's service desk on **028 9081 7171**.

- 3.3 The Customer shall identify to Novosco the individuals who shall have authority to report Faults. (“**Authorised Individuals**”). Any replacement Authorised Individuals shall be notified to Novosco in writing. The Customer warrants that such individuals shall have sufficient knowledge to understand the nature of any Faults to be able to assist Novosco in assessing such Faults. Novosco will not acknowledge or attend to any Fault reports made by any person other than those made by an Authorised Individual.
- 3.4 Where required by Novosco, the Customer must provide to Novosco a named contact and telephone number at the time the Fault is reported to enable Novosco to advise on progress being made to restore the Fault and to enable testing to take place. Novosco will only record, respond to and deal with a Fault if the details set out in paragraph 4.1 have been provided to Novosco by the Customer.
- 3.5 Following the Fault Report, the Customer will be required to quote the fault reference number given at the time the Fault was initially reported in all contact or correspondence.

4 **Fault Response, Restoration and Fault Escalation**

- 4.1 Following a Fault Report, Novosco’ Technical Support Centre will conduct preliminary 1st and 2nd line diagnostics to investigate and identify the nature and cause of the Fault. Following the completion of such investigation, Novosco will contact the Customer to give the Customer an update of the findings of such investigation which may result in one or more of the following actions:
- 4.1.1 Remote resolution. If Novosco is able to resolve the Fault remotely, it will confirm resolution with the Customer, and update and close the Fault Report.
- 4.1.2 Field engineering visit. If Novosco diagnoses that the Fault requires a field engineering visit, it will dispatch a field service engineer and update the Fault Report accordingly.
- 4.1.3 Incident updates. If the Fault is still outstanding, Novosco will keep the Fault Report updated and will use its reasonable endeavours to ensure that the Customer is regularly updated with the status of the Fault.
- 4.2 If, in Novosco’ reasonable opinion, a Fault requires the provision or pulling in of any new external cabling, whether as a temporary measure or as a permanent reinstallation, the response, restoration times and service credits set out in paragraphs 2.5 and 4.4 shall not apply. In such event, Novosco will restore the Fault in accordance with a bespoke action plan which will be notified to the Customer.
- 4.3 If an on-site visit reveals that if there is no fault with the Cloudstream Services or if the



Fault is an Excused Outage, Novosco may charge and the Customer shall pay Novosco an engineer call out fee at Novosco's standard charges at that time.

4.4 Subject to paragraph 4.2 of this Section, Novosco will use its reasonable endeavours to:

4.4.1 respond to a Fault remotely or by on-site attendance within 2 hours;

4.4.2 restore a Fault within 4 hours,

from the time a Fault has been recorded at Novosco's Support Desk or from the time Novosco is aware of a Fault ("**Fault Notice**").

5 **Service Credits payments**

5.1 To request Service Credits, the Customer must claim in writing via the Customer's account manager within 30 calendar days of each rolling 12 months period. If the Customer does not notify Novosco within such 30 day period, the Customer will be deemed to have waived the Service Credits for that Fault.

5.2 The Customer agrees that Novosco shall have no liability other than for Service Credits in relation to any failure to meet any Service Levels or to restore any Faults. The Service Credits shall represent the final and full settlement for Novosco's failure to meet any Service Levels or to restore any Faults. Notwithstanding any provisions in the Agreement to the contrary, in no event shall the total amount of Service Credits issued to the Customer (in any calendar year) for the affected service exceed the total of the Annual Fees .

5.3 If there is a dispute regarding the amount of Service Credits payable, the time recorded at Novosco's Support Desk for the time taken to restore the Fault shall prevail to determine such Service Credits.

5.4 Time spent on repairing a Fault as a result of any of the following events will not be deemed part of restoration time which would entitle the Customer to Service Credits:

5.4.1 the Customer's failure or delay in providing the necessary co-operation required by Novosco including, without limitation:

5.4.1.1 supply of the necessary information; or

5.4.1.2 access to the relevant Customer's Site(s); or

5.4.1.3 supply of the necessary power or facilities; or

5.4.2 the Customer's relevant personnel cannot be contacted to assist Novosco or to confirm



the Service is restored; or

5.4.3 a Planned Outage; or

5.4.4 an Excused Outage.

For the avoidance of doubt, "Customer" in this paragraph 5.4 shall include the Customers employees, sub-contractors and agents.

6 **Internet Access**

6.1 The Customer agrees that Novosco does not control and is not responsible for the content of material obtained or accessed using the Cloudstream Services other than those found in any web site owned or controlled by Novosco. The Customer is responsible, in all circumstances, for determining the suitability, quality, legality or lawfulness of accessing, viewing or downloading any material from the Internet.

6.2 Novosco does not control or endorse the content, views, messages or information found via or in any Communication Service, and therefore, specifically disclaims any liability whatsoever in relation to the content of such Communication Service and any losses or damages whatsoever incurred by the Customer as a result of the use of such service.

6.3 Due to the nature of the Internet, Novosco does not warrant that the Customer's use of the Cloudstream Services will be uninterrupted or that any messages or information transmitted via the Cloudstream Services will be transmitted accurately, reliably, in a timely manner or at all.

6.4 The Customer undertakes not to use or knowingly or unknowingly to permit anyone else to use the Cloudstream Services in breach of any Acceptable Use Policy (AUP). The Customer shall be bound by any changes to the AUP notified to it by Novosco.

6.5 The Customer shall not, in violation of any law or regulation enforceable in the United Kingdom, post, publish, upload, distribute, transmit, re-transmit or store material on or through the Cloudstream Services, services or products.

6.6 By posting, inputting, providing or submitting material to any website hosted by Novosco, the Customer warrants and represents that it owns or otherwise controls all of the rights to such material.

6.7 Without undertaking any obligation to do so Novosco reserves the right to monitor the Cloudstream Services and to block access to and/or to edit, refuse or remove any material from the Novosco System which in its reasonable opinion it determines may give rise to a breach of the Agreement and/or the AUP. For the avoidance of doubt where Novosco has



received a complaint relating to any material published or transmitted via the Cloudstream Services, Novosco shall be entitled (but not obliged) to act as aforesaid without investigating the merits of such complaint.

- 6.8 Without prejudice to the generality of clause 1.6 of section 2 of this Agreement the Customer agrees not to use and not to let any other person use the Cloudstream Services to store or reproduce any Offending Material. **Offending Material** means any material, data, images or information which is (a) in breach of any law, regulation, code of practice or acceptable use policy; or (b) defamatory, false, inaccurate, abusive, indecent, obscene or menacing or otherwise offensive; or (c) in breach of confidence, copyright or other intellectual property rights, privacy or any other right of any third party.
- 6.9 Novosco reserves the right to monitor and inspect any hosted Customer website. If Novosco believes that the Customer is in breach of paragraph 6.8 Novosco may without notice (but is not obliged to):
- 6.9.1 remove the Offending Material; and/or
 - 6.9.2 suspend and/or permanently disable the Cloudstream Services or any part of it; or
 - 6.9.3 terminate the Agreement.
- 6.10 The Customer shall not exceed any limits relating to the use of the bandwidth or capacity or the connection of Customer Apparatus or any other limitation imposed on it as set out in this Agreement or as part of any package or promotion under which the Cloudstream Services are provided.

7 **Limitation of Liability**

- 7.1 In addition to the provisions relating to the limitation of Novosco' liability for loss or damage elsewhere in this Agreement and in particular clause 5 of Section 2 of this Agreement:
- 7.2 Novosco excludes all liability for loss or damage to the Customer's business due to unauthorised access, breach of security or attack, via the Internet and/or the Cloudstream Services or otherwise to the Customer's business systems, data, information or other materials. It is the Customer's sole responsibility to protect itself in such manner as it thinks fit from such unauthorised access, security breach or attack.
- 7.3 Novosco excludes all liability in relation to, and does not warrant the accuracy, content, quality, completeness, fitness for purpose or legality of any information or services accessed using the Cloudstream Services. Novosco excludes all liability of any kind for the transmission or the reception of or the failure to transmit or to receive any material of whatever nature.



- 7.4 Novosco does not warrant the availability of any third party services and shall have no liability whatsoever in relation to such availability or otherwise. The accessing and provision of information and third party services via the Cloudstream Services shall be subject to such third parties' terms and conditions if any. The Customer shall be liable for compliance with those terms and conditions and Novosco shall have no liability whatsoever in relation to any third party service.
- 7.5 Novosco shall have no liability whatsoever for any threatening, defamatory, obscene, offensive or illegal content of a third party website or for the conduct of any third party or any infringement of a third party's rights. It is the Customer's responsibility in all circumstances to determine the suitability or legality of accessing, viewing or downloading any materials from the Internet and Novosco shall have no liability whatsoever for any content sent or received using the Cloudstream Services.
- 7.6 Any dealings, transactions or promotions (in this paragraph **Transaction**) whatsoever with third parties (including advertisers) included within or accessed via the Novosco website and/or Cloudstream Services and any terms, conditions, warranties or representations associated with such Transactions, are solely between the Customer and such third party. Novosco will in no circumstances be a party to such Transactions and will in no circumstances be liable whether in contract, tort (including liability for negligence), or otherwise for any loss, cost or damage incurred by the Customer arising out of or in relation to the Transaction or attempt to enter into a Transaction. The Customer shall be responsible in all circumstances for viewing and abiding by any acceptable use policy and/or terms and conditions relating to the use of any website.

8 **IP Addresses**

- 8.1 The following terms shall apply if the Customer is allocated an IP Address to enable the Customer to use the Cloudstream Services.
- 8.2 Any IP Address allocated by Novosco will, at all times, remain the sole property of the relevant authority. The Customer will not obtain any right, express or implied, under the Agreement in any IP Address and only have a non-transferable licence to use such address during the term of this Agreement. In the event of the termination of this Agreement, for whatever reason, the Customer's licence to use the IP Address shall automatically terminate, the Customer shall no longer be entitled to use such IP Address and the IP Address shall revert to Novosco.
- 8.3 Novosco reserves the right to change any fixed IP Address issued as part of the Cloudstream Services and shall use reasonable endeavours to provide 20 days' written notice of such change to the Customer, save that in the event Novosco needs to change any such fixed IP Address immediately without notice in order to maintain the network integrity of the Novosco System and / or safeguard the provision of services to Novosco' customers.

8.4 The Customer acknowledges that all Cloudstream Equipment and Customer Apparatus connected to any cable modem must be configured to obtain an IP Address automatically (such configuration being known as “**DHCP client configuration**”). The Customer agrees to maintain DHCP client configuration to all such Cloudstream Equipment and Customer Apparatus at all times. Novosco reserves the right without notice to disconnect the Cloudstream Services and suspend and / or terminate the Agreement where it reasonably believes that the Customer is in breach of this paragraph 8.4, including without limitation where Novosco believes the Customer is using any DHCP IP Address as a “static” IP Address.

9 Domain Names

9.1 The following terms shall apply if the Cloudstream Services include the registration of the Domain Name on the Customer’s behalf.

9.2 The Customer appoints Novosco as the Customer’s agent for the purposes of registering the Domain Name for use with the Cloudstream Services. The Customer authorises Novosco on the Customer’s behalf to enter into the relevant Registry’s terms and conditions for the registration of the Domain Name, and the Customer agrees to be bound by such terms as the applicant for registration. It is the Customer’s sole responsibility to obtain copies of such terms and conditions from the Registry.

9.3 Novosco does not represent that the Domain Name is capable of being registered or that it will be registered. Until Novosco confirms registration to the Customer, there is no guarantee that the Domain Name applied for will be registered. The Customer must not take any action in respect of the use or registration of the Domain Name before it becomes a full registration, including, without limitation, marketing or publicity action.

9.4 If the Customer has not paid or delayed in paying any amount due under this Agreement or if the information required for registration is inaccurate or late, Novosco has the right not to proceed with the application for registration or may cancel such registration.

9.5 Novosco shall have no liability if the Registry refuses to register the Domain Name or suspends or cancels it for any reason.

9.6 Novosco does not warrant that no other domain name will be registered which conflicts with or otherwise affects the Domain Name registered pursuant to this Agreement.

9.7 The Customer warrants that the Customer is the owner of or has the right to use any name to be used as the Domain Name or part of it. Registration of the Domain Name does not include or comprise any clearance of trade marks or any other Intellectual Property Rights.



Novosco cannot and does not guarantee that the Customer's registration or use of the Domain Name will not infringe a third party's trade mark or other Intellectual Property Rights.

- 9.8 Any registration certificate issued by the Registry is not evidence of ownership of the name used as the Domain Name or part of it. Any claim made by a third party by reason of registration or use of the Domain Name shall be the Customer's sole responsibility and the Customer shall indemnify Novosco against all loss and/or damage, costs and expenses (including without limitation legal expenses) it incurs in relation to such claim.
- 9.9 Novosco may require the Customer to select a replacement domain name. Novosco may also suspend the Cloudstream Services or any part of it if Novosco believes that the Domain Name is or is likely to constitute an Offending Material.
- 9.10 Novosco:
 - 9.10.1 may renew registration of the Domain Name; and
 - 9.10.2 on the Customer's request, will use reasonable endeavours to transfer the Domain Name, but shall not be liable in either case for failure to do so. Novosco shall charge the Customer at its current standard rate for processing any such renewal or transfer. The Customer shall co-operate fully with Novosco to effect any such renewal or transfer.
- 9.11 The Customer agrees to use the Domain Name solely in connection with the use of the Cloudstream Services. The Customer shall not assign, transfer or otherwise deal with the Domain Name without Novosco's prior written consent.



SECTION 5: CUSTOMER PROPOSAL

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|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|
| COMMENCEMENT DATE | <i>[insert required commencement date here]</i> |
| CLOUDSTREAM SERVICES | <i>[Cloudstream Network Services, or Cloudstream Ethernet Services, or both]</i> |
| INITIAL CONTRACT TERM | <i>[insert detail of term – year or three years]</i> |
| FEES | <i>[insert details of fees, and details of payment dates, here]</i> |
| EQUIPMENT | <i>[insert details of supplied hardware here]</i> |
| EXTRA SERVICES | <i>[are extra services required? If so, insert details here]</i> |
| SITE | <i>[insert details of the Customer's site(s) here]</i> |
| ANY OTHER PROVISIONS | <i>[insert any other specific required provisions here]</i> |
| <p>The contents of this Customer Proposal incorporate, and are subject to, Novosco Limited's standard Cloudstream Services Terms and Conditions, a copy of which is available upon request and can be found at http://www.novosco.com/whatwedo/cloudstream.</p> | |