

# Silver Lining Convergence Limited

## ADDITIONAL TERMS AND CONDITIONS FOR THE SUPPLY OF HOSTING SERVICES

### 1 INTERPRETATION

1.1 In addition to those words and expressions defined in the General Conditions, the following additional definitions shall apply in these Hosting Conditions:-

1.1.1 **AUP or Acceptable Use Policy:** means the Supplier's Acceptable Use Policy as appended to the Order or to any applicable MSA or as otherwise published or made available by the Supplier from time to time.

1.1.2 **Cancellation** means:-

(a) in respect of Ancillary Services, the occurrence of any of the following at any time prior to the completion of the Ancillary Services:-

(i) the Customer cancels its requirement for the Ancillary Services; or

(ii) the Contract for the Ancillary Services is terminated for any reason other than by the Customer pursuant to clause 17.1 of the General Conditions; and:-

(b) in respect of Hosting Services, the occurrence of any of the following at any time prior to the end of the Initial Service Term or (if the Initial Service Term has already expired) the Subsequent Service Term:-

(i) the Customer cancels its requirement for the Hosting Services; or

(ii) the Contract for the Hosting Services is terminated for any reason other than :-

(A) by the Customer pursuant to clause 17.1 of the General Conditions; or

(B) by either party under clause 10.1.2 of the General Conditions; and 'Cancels' and 'Cancelled' shall be interpreted accordingly.

1.1.3 **Cancellation Charges:** means the cancellation charges payable in accordance with Clause 6.

1.1.4 **Hosting Conditions:** means these Additional Conditions which in addition to the General Conditions, shall apply to the provision by the Supplier of the Hosting Services.

1.1.5 **Hosting Services:** means the hosting Services described in the Order.

1.1.6 **Minimum Monthly Usage Charge:** means the minimum monthly usage charges which the Customer is obliged to pay under the Contract (if any) as set out in the Order or any applicable MSA or as otherwise agreed between the parties in writing.

1.1.7 **Periodic Charges:** means the Supplier's periodic charges for hosting facilities (such as capacity) to be provided pursuant to the Contract to be calculated at the rates set out or referred to in the Order or in any applicable MSA or if no rates are set out or referred to in the Order or any applicable MSA, calculated at the Supplier's standard rates for such Charges (in each case) as reviewed, amended or updated from time to time in accordance with the Contract.

1.1.8 **Site** means the site owned or controlled by the Customer at which installation, set-up or on-site Services take place, as referenced in the Order.

1.1.9 **Supplier's Average Monthly Net Usage Revenue** means a sum calculated as follows:-

Supplier's Average Monthly Net Usage Revenue = A – B

Where:-

(a) 'A' is the greater of:-

(i) Usage Charges (calculated at the Supplier's Standard Usage Charge Rates) for the average of the monthly usage made under the Contract over the period from the commencement of

the Hosting Services until the Cancellation of the Hosting Services; and

(ii) (if applicable) the Minimum Monthly Usage Charge; and

(b) 'B' is those usage charges and other charges and costs which the Supplier would have been liable to pay in connection with the provision of the Hosting Services if they had not been Cancelled and which the Supplier is no longer obliged to pay or which the Supplier is reasonably able to avoid or mitigate following the Cancellation of the Hosting Services;

in each case, net of any applicable VAT.

1.1.10 **"Supplier's Standard Usage Charge Rates"** means the Suppliers standard rates for the calculation of usage charges as set out on the Supplier's website (<http://www.everycloud.eu/standard-charges.html>) as amended or updated by the Supplier from time to time.

1.1.11 **Target Installation/Set Up Date** means the anticipated completion date for set-up and (where the Services include the installation of equipment at the Customer's premises or installation of Software on the Customer's equipment) installation.

1.1.12 **"Usage Charge Top Up"** means a lump sum being the difference between the Usage Charges for all usage made under the Contract over the period from the commencement of the Hosting Services until the Cancellation of the Hosting Services:-

(a) calculated at the usage charge rates set out in the Contract; and

(b) calculated at the Supplier's Standard Usage Charge Rates; provided that, if a Minimum Monthly Usage Charge applies under the Contract, the Usage Charge Top Up shall be zero;

1.2 A reference in these Hosting Conditions to the 'Services' shall (unless otherwise expressly indicated) be deemed to be a reference to the Hosting Services and/or the Ancillary Services (as appropriate).

## 2 APPLICABILITY OF THESE HOSTING CONDITIONS

2.1 In addition to the General Conditions, the following shall apply to the provision of Hosting Services and Ancillary Services by the Supplier pursuant to any Order and shall form part of the Contract:-

2.1.1 these Hosting Conditions;

2.1.2 the Acceptable Use Policy;

2.1.3 any applicable SLA referred to in the Order or in any applicable MSA.

## 3 SUPPLY OF SERVICES – GENERAL

3.1 The Supplier shall supply the Services in accordance with the Contract. .

3.2 The Customer agrees that during the Initial Service Term and any Subsequent Service Term, the Customer agrees to satisfy its requirements for all services which are the same as or substantially similar in nature to the Hosting Services by purchasing such services exclusively from the Supplier provided always that the provisions of this clause 3.2 shall not apply to any particular Service for a period of more than five (5) years.

3.3 The Supplier will use reasonable efforts to procure that its employees and sub-contractors will have due regard to the Customer's reasonable requirements with regard to health and safety whilst carrying out works at the Site.

3.4 The Supplier may give directions about the use of the Services to the Customer which the Supplier thinks are reasonably necessary in the interests of safety or the quality of the Services. The Customer shall comply with all such directions.

3.5 The Supplier may upgrade Customers to a different level of service or system capacity if, in the Supplier's opinion, existing Services become inappropriate or insufficient to meet the Customer's requirements, usage pattern or needs. The Supplier will consult the Customer and if the Customer agrees

to change the Services in accordance with the Supplier's recommendation, the Customer may be liable for higher Charges and costs associated with the upgrade and any cancellation fees associated with the terminated Services (which may include third party cancellation fees for which the Customer shall also be liable). If the Customer does not agree to the upgraded Services, the Supplier may terminate the existing Services upon 30 days' prior written notice to the Customer. If the Customer chooses not to upgrade and the Supplier allows the Customer to continue using the existing Services, any applicable service levels shall cease to apply. The Supplier reserves the right to pass on any third party costs associated with change to the Services.

3.6 If the use of the Services by the Customer is more than double the average across all of the Supplier's customers (or across all of the customers of the Supplier's service providers) in any 3 month period, the Supplier will notify the Customer by email to require the Customer to mitigate such excessive use. The Supplier shall provide reasonable guidance and assistance to the Customer in connection with the mitigation of such excessive use. If within 30 days of such notification such excessive use has not ceased, the Supplier reserves the right (without prejudice to any other rights the Supplier may have) to levy a supplementary fee for any continuing excessive use.

3.7 The Supplier may temporarily suspend a Service because of an emergency or for operational maintenance or improvements or for the purpose of ensuring network or information security.

#### 4 CUSTOMER'S OBLIGATIONS

4.1 The Customer shall:

4.1.1 provide the Supplier, its employees, agents, consultants and subcontractors (and those of the Supplier's service providers), with access to the Site, offices and other facilities as reasonably required by the Supplier, including any access to server rooms;

4.1.2 on not less than 24 hours prior notice, itself provide or in the case of third party sites, procure access to the Site. If the Customer fails to provide or procure such access and the Supplier incurs any third party costs as a result, the Supplier reserves the right to pass such costs on to the Customer;

4.1.3 observe and comply with the AUP in connection with the use of the Services and ensure that its end users do likewise;

4.1.4 use the Services only in the manner described in any instructions, manuals or any other reasonable requirements of the Supplier from time to time and ensure that its end users do likewise;

4.1.5 ensure that there is appropriate connectivity between each device in respect of which the Services are to be provided and the service platform run by the Supplier or its service providers for the purpose of providing the Services.

4.2 The Customer shall also provide access to all facilities, equipment, personnel and information as needed for the Supplier (or its sub-contractors or service providers) to undertake installation and set-up. The Customer shall also undertake any work for preparation of the Site, on the Supplier's reasonable instruction (or upon the reasonable instruction of the Supplier's service provider) in good time ahead of installation and set-up.

4.3 Subject to any other timescales as may be specified by the Supplier in writing, the Customer will have 7 Business Days from the Service Start Date to notify the Supplier of any Service defect. Unless the Customer so notifies, Services will be deemed set up correctly and to be accepted by the Customer and the Supplier may invoice Charges accordingly.

4.4 If the Customer notifies the Supplier of any such defect in accordance with clause 4.3, the Supplier will use its reasonable endeavours to fix such defect as soon as is reasonably practicable, taking account of the nature of the Service and the nature of the defect. The Customer shall provide the Supplier with reasonable assistance and Site access to allow the Supplier to remedy a defect.

4.5 Services shall be used solely for the Customer's internal business operations and shall not under any circumstances be used to provide services to third parties by way of resale, sub-licence or similar. Further, the Customer shall use all reasonable endeavours to prevent unauthorised access or use of the Services and promptly notify the Supplier of any unauthorised access or use as soon as the Customer becomes aware of it.

4.6 The provisions of this Clause 4 apply equally to any replacement Services and references to Service Start Date in this Clause 5 shall in such cases, mean the date on which replacement Services are available.

#### 5 PERIODIC CHARGES AND USAGE CHARGES

5.1 Unless otherwise set out in the Order or in any applicable MSA, Periodic Charges shall be payable monthly in advance.

5.2 All Usage Charges payable under this Contract shall be calculated and paid monthly in arrears by reference to data recorded or logged by the Supplier or its sub-contractors and subject to any Minimum Monthly Usage Charge which may apply under the Contract.

#### 6 CANCELLATION OF SERVICES BY THE CUSTOMER

6.1 In the event of a Cancellation, the Customer shall be liable to pay as an equitable pre estimate of the Supplier's losses and costs arising out of such Cancellation, the Cancellation Charges (together with any applicable VAT in addition) calculated in accordance with the following provisions of this clause 6. The receipt by the Supplier of such Cancellation Charges shall be without prejudice to any other rights the Supplier may have arising out of or in connection with the Cancellation. .

6.2 If the Customer Cancels its requirement for any Ancillary Services then:-

6.2.1 if the Cancellation occurs before the Supplier has commenced the provision of the Ancillary Services then the Customer shall pay to the Supplier (as ) a sum equal to fifty per cent (50%) of the Supplier's Charges for the Ancillary Services; or

6.2.2 if the Cancellation occurs after the Supplier has commenced the provision of the Ancillary Services then the Customer shall pay to the Supplier a sum equal to one hundred per cent (100%) of the Supplier's Charges for the Ancillary Services cancelled by the Customer.

6.3 If the Customer Cancels its requirement for any Hosting Services then (without prejudice to any other rights the Supplier may have) the Customer shall pay to the Supplier:-

6.3.1 the Usage Charge Top Up; and

6.3.2 the following sums for each month (and pro rata for each part of a month) from the date upon which the Hosting Services are cancelled by the Customer until the end of the Initial Service Term or (if the Initial Service Term has already expired) the Subsequent Service Term:-

(a) a sum equal to all Periodic Charges for the Hosting Services which would have been due under the Contract; and

(b) a sum equal to the Supplier's Average Monthly Net Usage Revenue.

6.4 The Cancellation Charges described above shall be due and payable immediately upon Cancellation of the applicable Service by the Customer.

#### 7 SECURITY CODES

7.1 Security codes issued in connection with the Services shall remain the responsibility of the Customer who shall keep the same secure and confidential including disclosing them to only those of its employees who need them.

7.2 If the Customer becomes aware of any loss or inappropriate use of security codes, the Customer shall immediately inform the Supplier and shall take such action as the Supplier may require to restrict the damage that may be caused by such breach.

- 7.3 The Customer shall indemnify the Supplier against any and all costs, claims, damages, liabilities and expenses incurred by the Supplier as a result of damage to, loss of, theft of or inappropriate use of security codes.
- 7.4 The Supplier shall not under any circumstances be liable to the Customer as a result of any failure by the Customer to maintain security codes as appropriate.
- 7.5 The Supplier may disable any security codes or other information if the Customer is in breach of this Agreement and may for operational reasons, change security codes or other security information at any time.

