

Cloud Services Terms

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this Contract.

Applications: any software, applications or other code owned by or licensed to the Customer Party that the Customer Party installs or loads onto, or creates using, any Cloud Services designed for such purposes.

Cloud Services: means each service hosting/making available the Software and described in the relevant Cloud Service Specification and made available to the Customer Party via the Internet or other network.

Cloud Service Specification: means each document describing the functionality and technical specification of each Cloud Service, as set out in the Proposal as the same may be updated from time to time.

Configuration Services: the configuration and related work set out in the Contract Details or the Proposal to be performed by the Locale Party to configure the Cloud Services so that the Cloud Services conforms with the relevant Configurations Specification.

Configuration Specification: the specifications for the configuration for and set up of the Cloud Services (including details of the User Categories, the Permissions for each User Category and the Authorised Users to be allocated to each User Category) set out in the relevant Configuration Form completed by the Customer Party.

Customer Content: the content (including text, information, images, audio or video materials) supplied by the Customer Party to the Locale Party to be included in the Portal or uploaded to the Portal by the Customer Party or the Authorised Users.

Customer Data: the data inputted by the Customer Party, Authorised Users, or the Locale Party on the Customer Party's behalf for the purpose of using the Cloud Services or facilitating the Customer Party's use of the Cloud Services.

Effective Date: the date of this Contract.

Extended Subscription Term: has the meaning given to it in clause 12.1.

General Terms: Locale's general terms which are available at <https://locale.co.uk/wp-content/uploads/2021/04/2021-04-13-General-Terms.pdf>, as varied from time to time.

Maintenance Services Description: means the part of the Proposal describing the maintenance and support services to be provided by the Locale Party for the Cloud Services.

Normal Business Hours: 24 hours a day, seven days a week.

Permissions: the access and other permissions granted to each User Category.

Property Subscriptions: the subscriptions purchased by the Customer Party which entitle Authorised Users to access and use the Cloud Services and the Documentation for each Property in accordance with this Contract.

Renewal Subscription Term: the period by which the Subscription Term can be extended as set out in the Contract Details.

Services Terms: Locale's services terms which are available at <https://locale.co.uk/wp-content/uploads/2021/04/2021-04-13-Service-Terms.pdf>, as varied from time to time.

Subscription Fees: the subscription fees payable by the Customer Party to the Locale Party for the Property Subscriptions, as set out in the Contract Details .

Subscription Term: has the meaning given in clause 12.1 (being the Initial Subscription Term together with any subsequent Renewal Subscription Term).

Support Services Policy: the Locale Party's policy for providing support in relation to the Cloud Services as set out in the Proposal or such other website address as may be notified to the Customer Party from time to time.

Training Services: the training on the use and operation of the Cloud Services further details of which are set out in the Order form.

User Account: an account through which an Authorised User accesses and uses the Services.

User Categories: the categories of Authorised Users set out in the Configuration Form or such other categories of Authorised Users as the parties agree in writing to implement in the Software for a Property from time to time.

2. Conflict

- 2.1 The General Terms and, to the extent that they are specifically identified as applying to Services to be provided by the Locale Party to the Customer Party under these cloud services terms, the Services Terms (other than clause 9 of the Services Terms) shall be incorporated into this Contract.
- 2.2 If there is any conflict or inconsistency between the terms of this Contract, the following order of priority shall apply such that a term contained in a higher document on the list shall take precedence over a term contained in a lower document on the list:
 - 2.2.1 the Contract Details ;
 - 2.2.2 the SLA;
 - 2.2.3 these cloud computing terms;
 - 2.2.4 the Services Terms; and
 - 2.2.5 the General Terms.

3. Cloud services

- 3.1 The Locale Party grants to the Customer Party a limited, non-exclusive, non-transferable, revocable right and licence, without the right to sublicense, to permit the Customer Party, via rights of access granted to the Customer Party's Authorised Users, to access and use the Cloud Services:
 - 3.1.1 from the Commencement Date to the Launch Date solely for the purposes of providing access to the Test Portal to those Authorised Users nominated by the Customer Party for the purposes of clause 4; and
 - 3.1.2 from the Launch Date until the end of the Subscription Term solely for the purposes of providing access to the Portal to the Authorised Users.

The grant of this right and licence is subject to the Customer Party's compliance with this Contract, the Cloud Services Specification and any other documents referenced in, or attached to, this Contract (all such documents together described as this Contract).

- 3.2 In relation to the Authorised Users, the Customer Party undertakes that:

- 3.2.1 it will not allow any User Account to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Cloud Services; and
- 3.2.2 each Authorised User shall keep a secure password for his use of the Cloud Services and Documentation and that each Authorised User shall keep his password confidential.
- 3.3 The Customer Party is responsible for all acts and omissions of each Authorised User and any and all use of the Cloud Services using each Authorised User's access credentials.
- 3.4 The Customer Party shall not, and shall procure that each Authorised User does not:
 - 3.4.1 except to the extent expressly permitted by this Contract or lawfully permitted pursuant to applicable law, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Cloud Services, Software or Documentation (as applicable) in any form or media or by any means;
 - 3.4.2 except to the extent expressly permitted by this Contract or lawfully permitted pursuant to applicable law, attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Cloud Services or the Software;
 - 3.4.3 store, access, publish, disseminate, distribute or transmit via the Cloud Services any material which:
 - 3.4.4 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 3.4.5 facilitates illegal activity;
 - 3.4.6 depicts sexually explicit images;
 - 3.4.7 promotes unlawful violence;
 - 3.4.8 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - 3.4.9 is otherwise illegal or causes damage or injury to any person or property;
 - 3.4.10 access all or any part of the Cloud Services and Documentation in order to build a product or service which competes with the Cloud Services or the Documentation;
 - 3.4.11 use the Cloud Services or the Documentation to provide services to third parties;
 - 3.4.12 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Cloud Services or Documentation available to any third party except the Authorised Users; or
 - 3.4.13 attempt to obtain, or assist third parties in obtaining, access to the Cloud Services or Documentation, other than as provided under this [clause 3](#).
- 3.5 To enable the Locale Party to provide the Cloud Services, the Customer Party grants to Locale and its Affiliates a non-exclusive right and licence to copy, exploit, process, store, transmit and use the Customer Data and Applications solely to the extent necessary to provide the Cloud Services.
- 3.6 The Customer Party shall procure at its cost, install and maintain all required enabling software and third-party software required to access and use the Cloud Services. The Customer Party acknowledges that a failure to do so may impact its use of the Cloud Services.

- 3.7 Unless otherwise specified in the Proposal or the Contract Details, the Cloud Services may be provided from any jurisdiction and from more than one jurisdiction at any one time.
- 3.8 The Locale Party warrants that the Cloud Services shall comply in all material respects with the Cloud Services Specification. The Locale Party, as the Customer Party's sole and exclusive remedy, shall promptly correct any event or circumstance resulting in a breach of this clause 3.8.
- 3.9 Unless otherwise expressly set out in this Contract, the Locale Party does not warrant that the Cloud Services are fit for the Customer Party's purposes, are error free or uninterrupted, or are compatible with any hardware or software not specified in the Cloud Services Specification. The Locale Party shall not be liable for the transfer of data over communications facilities, including the internet, and any limitations, delays, and other problems inherent in the use of such communications facilities.
- 3.10 The Customer Party acknowledges and agrees that the Locale Party and its licensors own all Intellectual Property Rights in the Cloud Services and the Documentation. Except as expressly stated in this Contract, this Contract does not grant the Customer Party any rights to, under or in, any Intellectual Property Rights in respect of the Cloud Services or the Documentation.

4. Configuration Services

The Locale Party shall perform the Configuration Services in accordance with clause 4 of the Services Terms.

5. Updates, upgrades, maintenance and support

- 5.1 The Locale Party may, from time to time and subject to notifying the Customer Party in writing in advance, make changes to the Cloud Services to:
 - 5.1.1 improve, update or upgrade existing functionality or services;
 - 5.1.2 introduce new functionality or services;
 - 5.1.3 reflect changes to technology or market practice; or
 - 5.1.4 ensure that the Cloud Services remain compliant with all applicable laws, legal obligations or regulations.
- 5.2 Any such changes shall not result in a material degradation in the Cloud Services for the duration of the Initial Term.
- 5.3 Helpdesk, maintenance and support services provided by the Locale Party for the Cloud Services are as set out in the Support Services Policy. The Locale Party may amend the Support Services Policy in its sole and absolute discretion from time to time.
- 5.4 The Locale Party shall provide the Training Services to such number of Authorised Users as are specified in the Contract Details or the Proposal in accordance with the Services Terms.

6. Availability of the Cloud Services

- 6.1 The Cloud Services are designed to be available during Normal Business Hours, subject to any emergency or scheduled maintenance. Scheduled maintenance shall be performed by the Locale Party during the times specified in the Cloud Services Specification. The Locale Party shall use reasonable endeavours to give the Customer Party advance notice of any emergency maintenance.
- 6.2 The Locale Party shall not be responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet. The

Customer Party acknowledges that the Cloud Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

- 6.3 The service level agreement applicable to the Cloud Services is set out at <https://locale.co.uk/wp-content/uploads/2021/04/2021-04-13-Service-Level-Agreement.pdf> (**SLA**) which shall apply with effect from the Launch Date. The SLA is subject to the exclusions and limitations set out in the relevant Cloud Services Specification, the SLA and this Contract.
- 6.4 The Locale Party shall use reasonable endeavours to meet the SLA.
- 6.5 The Locale Party shall, subject always to the terms of this Contract and the Cloud Services Specification, be liable for the service credits specified in the SLA for any failure of the Cloud Services to meet the SLA. Any service credits due to the Customer Party pursuant to this clause 6.5 shall be automatically credited to the Customer Party's account within a reasonable time after receipt from the Customer Party of a written and valid claim for service credits. The Customer Party acknowledges and agrees that service credits payable by the Locale Party pursuant to this clause 6.5 are its sole and exclusive remedy for the Locale Party's failure to meet the SLA.
- 6.6 Notwithstanding anything to the contrary in this Contract, or the SLA, the Locale Party is not obliged to pay service credits where the failure to meet the SLA arises in connection with any of the following, or attempts to do any of the following:
 - 6.6.1 denial of services attacks, hacking, malware, viruses; or
 - 6.6.2 errors or issues with the Customer Data, its information technology systems or its acts or omissions (including the acts or omissions of its Authorised Users).

7. Suspension

- 7.1 The Locale Party may, without prejudice to any other rights or remedies available to it, suspend the Customer Party's access to, or use of, the Cloud Services in whole or in part and on an Authorised User by Authorised User basis immediately on notice to the Customer Party if:
 - 7.1.1 the Customer Party has failed to pay any amounts due to the Locale Party in accordance with clause 8;
 - 7.1.2 the Customer Party is otherwise in breach of its obligations under this Contract;
 - 7.1.3 there is an attack on the Cloud Services used by Customer or if Customer Data is accessed or manipulated by a third party without the Customer Party's consent;
 - 7.1.4 the Locale Party is required by applicable law to suspend the Customer Party's access to, or use of, the Cloud Services; or
 - 7.1.5 the Locale Party reasonably believes that the suspension of the Cloud Services is necessary to protect its infrastructure, network or the use of the Cloud Services by other customers because of a threat to the security, integrity or use of the Cloud Services.
- 7.2 The Locale Party shall use reasonable endeavours to re-establish or permit access to the Cloud Services as soon as possible following the Locale Party's determination that the cause of the suspension has been resolved.
- 7.3 The Locale Party shall have no liability whether under this Contract or at law to the Customer Party for any exercise of its rights pursuant to this clause 7.

8. Fees

- 8.1 The Locale Party shall invoice the Customer Party for the fees and charges (including the Subscription Fees) set out in the Contract Details or a Proposal at the frequency specified in the relevant Contract Details or Proposal. The Customer acknowledges that the Locale Party may invoice for the Cloud Services each time the Customer Party:
- 8.1.1 purchases additional services; or
 - 8.1.2 otherwise alters its use of the Cloud Services such that additional amounts may be payable to the Locale Party.
- 8.2 The Locale Party may increase the Subscription Fees at the beginning of each Extended Subscription Term by an amount of up to 10% and the Contract Details and the Proposal shall be deemed to have been amended accordingly.

9. Cloud security

- 9.1 The Locale Party will maintain the following security arrangements for the Cloud Services (**Security Arrangements**):
- 9.1.1 all data centres in which the Locale Party hosts any part of the Cloud Services will be ISO27001, SOC2 and SOC3 accredited;
 - 9.1.2 replicate the application database for the Cloud Services in real time across not less than two geographically distributed data centres;
 - 9.1.3 take nightly snapshots of the Customer Data which are retained at weekly, monthly and annual intervals for not less than seven years and carry out such quarterly integrity checks that the Locale Party considers reasonably necessary to verify the integrity of the data that it holds from the nightly snapshots taken;
 - 9.1.4 only allow access to the Cloud Services via HTTPS traffic using SHA-256 with RSA encryption; and
 - 9.1.5 carry out such penetration testing and infrastructure scanning as the Locale Party considers reasonably necessary to test its security arrangements annually,
- or such other updated arrangements that the Locale Party makes available to the Customer Party from time to time.
- 9.2 The Customer acknowledges and agrees that it is responsible for assessing the applicability and suitability of the Security Arrangements and for check any updated arrangements that the Locale Party makes available to it.
- 9.3 The Locale Party shall, without undue delay, inform the Customer Party of any Virus or Vulnerability affecting the Cloud Services and shall promptly:
- 9.3.1 use reasonable endeavours to remedy the Virus or Vulnerability as soon as practicable; and
 - 9.3.2 respond to Customer's reasonable requests for information in relation to the Virus or Vulnerability.

10. Limitation of liability

- 10.1 Except as expressly and specifically provided in this Contract:
- 10.1.1 the Customer Party assumes sole responsibility for results obtained from the use of the Cloud Services and the Documentation by the Customer Party, and for conclusions drawn from such use.

The Locale Party shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Locale Party by the Customer Party in connection with the Cloud Services, or any actions taken by the Locale Party at the Customer Party's direction.

10.1.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the greatest extent permitted by applicable law, excluded from this Contract.

10.2 The Cloud Services and the Documentation are provided to the Customer Party on an "as is" basis.

10.3 Nothing in this Contract excludes the liability of the Locale Party:

10.3.1 for death or personal injury caused by the Locale Party's negligence; or

10.3.2 for fraud or fraudulent misrepresentation.

10.4 Subject to clause 10.1 and clause 10.3:

10.4.1 the Locale Party shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any (i) loss of profits; (ii) loss of business; (iii) depletion of goodwill or similar losses; (iv) loss or corruption of data or information (v) pure economic loss; or (vi) for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Contract; and

10.4.2 the Locale Party's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the total Subscription Fees paid for the Property Subscriptions during the 12 months immediately preceding the date on which the claim arose.

11. Confidentiality

The Customer acknowledges that details of the Cloud Services, and the results of any performance tests of the Cloud Services, constitute the Locale Party's Confidential Information.

12. Term and termination

12.1 This Contract shall, unless otherwise terminated as provided in clause 6 of the General Terms, commence on the Commencement Date and shall continue for the Initial Subscription Term when it shall terminate automatically without notice unless, no later than the Notice Period before the end of the Initial Subscription Term (or any Extended Subscription Term under this clause 12.1), the parties agree in writing that the term of this Contract shall be extended for the Renewal Subscription Term (**Extended Subscription Term**). Unless it is further extended under this clause 12.1 or terminated earlier in accordance with clause 6 of the General Terms, this Contract shall terminate automatically without notice at the end of an Extended Subscription Term. The Initial Subscription Term together with any subsequent Extended Subscription Term shall constitute the **Subscription Term**.

12.2 On expiry or termination of this Contract for any reason:

12.2.1 all licences granted under this Contract shall immediately terminate and the Customer Party shall immediately cease all use of the Cloud Services and the Documentation;

12.2.2 clause 1, clause 2 and clause 11 shall continue in force.

