



EQUINIX | TELECITY

Where Opportunity Connects

CLoud-IX TERMS AND CONDITIONS

Cloud-IX is a service that enables you to access multiple cloud service providers (CSP) from any Data Centre over private network connectivity utilizing TeleticityGroup's layer 3 MPLS network that connects all Data Centres. Cloud-IX allows you to create, maintain and modify virtual connections to, and between, different CSPs across TeleticityGroup's private network.

These Conditions govern the use by your organisation (or the organisation you represent) (referred to herein as "**Customer**" or "**you**") of Cloud-IX. By ticking the box below and clicking "Confirm Registration", you agree to these Conditions binding your use of Cloud-IX, and your attention is particularly drawn to the provisions of clauses 18, 5.12 and 15.3 relating to limitations of liability and indemnities.

TeleticityGroup shall not be obliged to provide Cloud-IX, and you shall not be obliged to pay any Fees, until an Order is submitted to and accepted by TeleticityGroup. The acceptance by TeleticityGroup of an Order for Cloud-IX in accordance with and subject to these Conditions creates a legal agreement between you and TeleticityGroup (as defined below) comprising such Order and these Conditions.

If you do not agree to be bound by these Conditions, you must not tick the box below and click "accept", nor use or access (or attempt to use or access) Cloud-IX.

SECTION A - INTERPRETATION

DEFINITIONS

1. Unless the context otherwise requires, the following expressions have the following meanings:

"Affiliate" means, in relation to a person, any other person or entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that person from time to time;

"Applicable Law" means: (a) any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time to which a party is subject including telecommunications laws and any data protection laws; and (b) the common law as applicable to the parties from time to time; and (c) any binding court order, judgment or decree; and (d) any applicable industry code, policy or standard enforceable by law; and (e) all other applicable rules, regulations, instruments and provisions in force from time to time, including the rules, codes of conduct, codes of practice, practice requirements, guidance and accreditation terms stipulated by any regulatory authority to which any member of your Group is subject from time to time;

"Bandwidth Reservation Fee" means the fee payable in respect of the reservation of bandwidth on a Virtual Connection;

"Bona Fide Dispute" shall have the meaning given in clause 9.5;

"Business Day" means Mondays through Fridays, inclusive, but does not include national, public, or bank holidays in the country or locality where the relevant action is to be taken. Where the day on or by which anything is to be done is not a Business Day, it must be done on or by the next Business Day;

"Change of Law" means any change in any Applicable Law which impacts on the performance of Cloud-IX and which comes into force after the Service Commencement Date;

"Cloud-IX" means the services described in clause 5 and provided pursuant to the terms of an Order;

"Cloud-IX Infrastructure" means the physical equipment and components upon which the Platform resides, and from which Cloud-IX is provided;

"Conditions" means these standard terms and conditions governing the provision and use of Cloud-IX;

"Confidential Information" means all information of a confidential nature excluding Data but including all information whether of a technical or business nature or otherwise relating in any manner to the business or affairs of the other party which either party or its Affiliates may receive or has received in connection with these Conditions or an Order whether in whole or in part and regardless of the medium by which such information is supplied;

"Connection Point" means (a) where you are a Physical Customer, the location of your Customer Equipment within a Data Centre, or (b) where you are a Virtual Customer, the location of the relevant Third Party Equipment within a Data Centre (for instance, where you access the data centre via a Third Party telecommunications carrier);

"Control" means that a person possesses directly or indirectly the power to direct or cause the direction of the management and policies of another person, whether through the ownership of voting shares, by contract or otherwise; and **"Controls"** and **"Controlled"** shall be construed accordingly;

"Cross-Connects" means any physical connection that does not exit a data centre and which, for the primary purpose of information transmission, connects the Cloud-IX Infrastructure to a Connection Point;

"CSP" means a cloud services provider, to which a Customer can connect via Cloud-IX and that is referenced on an Order from time to time;

"CSP Services" means those cloud services provided to a Customer by a CSP.

"CSP Perimeter" means the point within a Data Centre at which a physical connection encounters a CSP's IT equipment;

"Customer Equipment" means any and all IT equipment, hardware and other tangible items of the Customer and its Affiliates which is racked in a Data Centre in accordance with a Data Centre Contract;

"Data" means Customer and its Affiliates' data, information, video, graphics, sound, music, photographs, software and any other materials (in whatever form) stored on the Customer Equipment, processed on the Cloud-IX Infrastructure or published or otherwise made available (directly or indirectly) by or on behalf of the Customer or its Affiliates by using Cloud-IX from time to time;

"Data Centre" means a data centre operated by an Affiliate of TelecityGroup;

"Data Centre Contract" means an agreement between you (or a Customer's Affiliate) and an Affiliate of TelecityGroup for the provision of colocation, network (other than Cloud-IX) or managed IT services;

"Data Protection Regulations" means any laws or regulations giving effect to European Parliament and Council Directive 95/46/EC;

"Data Transfer Fee" means the fee payable in respect of actual traffic transmitted across a Virtual Connection;

"Emergency Maintenance" means any maintenance where preventative repair is needed urgently;

"Equipment" means Customer Equipment and the Cloud-IX Infrastructure;

"Event of Force Majeure" means any event beyond the reasonable control of a party:

- (a) including (to the extent it is beyond such party's reasonable control): acts of God; acts of civil or military authority; national emergencies; fire; flood; catastrophes; wars; insurrections; riots; any industrial disputes including ones affecting such party; and compliance with any law or governmental order, rule, regulation or direction; and
- (b) excluding: the act, omission or default of any contractor or agent of such party unless such contractor or agent is affected by a circumstance listed in paragraph (a) of this definition;

"Group" means, in relation to a person, that person and any subsidiary undertaking and/or parent undertaking of that person and/or any subsidiary undertaking of such parent undertaking;

"Intellectual Property Rights" means:

- (a) copyrights and neighbouring rights, rights in performances, patents, utility models, rights in inventions, database rights and rights in registered and unregistered trade and service marks, rights in business and trade names and get up, rights in domain names, registered designs, unregistered rights in designs, semi-conductor and topography rights, and rights in trade secrets, Confidential Information, know-how, inventions and business processes, methods and procedures; and
- (b) applications for registration, and the right to apply for registration, for any of these rights; and
- (c) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;

"Losses" means all losses, claims, costs, expenses, liabilities and damages of any nature whatsoever and whether or not reasonably foreseeable or avoidable;

"Order" means a written order submitted to TelecityGroup by the Customer, incorporating these Conditions and specifying the details of the set up and continuing provision of Cloud-IX to the Customer (including whether the scope of Cloud-IX is amended in accordance with clause 5.4);

"Personal Data" means all data and other information about or pertaining to natural persons which is either:

- (d) made available by you to TelecityGroup; or
- (e) processed by TelecityGroup on behalf of you,

in connection with these Conditions or an Order, whether that data or information is recorded in audible, visual, electronic or written form or is recorded in any other medium;

"Physical Customer" means a person that wishes to procure or has procured Cloud-IX and is party to a Data Centre Contract at the time that an Order is submitted by that person;

"Platform" means the secure, layer 3, multiprotocol label switching network and the software operated and maintained by TelecityGroup upon which Cloud-IX is provided;

"Portal" means the website found at the following link <http://cloud-ix.telecitygroup.com/> upon which you may register for Cloud-IX and where these Conditions can be reviewed, downloaded and accepted by you;

"process" has the meaning given to that term by European Parliament and Council Directive 95/46/EC, and **"processing"** and **"processed"** shall have a corresponding meaning;

"Recurring Fees" means the recurring fees accruing from the Service Commencement Date payable by you to TelecityGroup as set out in the applicable Order;

"Scheduled Maintenance" means any preventative work scheduled in advance that will cause Cloud-IX to be suspended;

"Service Commencement Date" means, in relation to an Order, the date upon which TelecityGroup has installed and provisioned both (a) the physical connection specified in clause 5.3(a), and (b) the first Virtual Connection;

"Service Credit" means an amount calculated in accordance with these Conditions in respect of a Service Level Failure;

"Service Fees" means any or all of the Set-Up Fees, Bandwidth Reservation Fees and Data Transfer Fees payable by you to TelecityGroup for the provision of Cloud-IX, as such charges are set out in the relevant Order;

"Service Level" means a service level set out in clause 19;

"Service Level Failure" means a failure by TelecityGroup to meet the Service Levels;

"Set-Up Fees" means the set-up fees payable by you to TelecityGroup as set out in the applicable Order;

"Suspend" means TelecityGroup suspending the provision of all, any or any part of Cloud-IX and "Suspension" shall be construed accordingly;

"TelecityGroup", "we" and "us" means TelecityGroup International Limited, registered in England under registration number 00153088 and whose registered company address is Masters House, 107 Hammersmith Road, London W14 0QH England;

"TelecityGroup Personnel" means all employees, agents, consultants and contractors of TelecityGroup or its Affiliates who are engaged in the provision of Cloud-IX;

"Third Party" means any person or entity which is neither a party to these Conditions or an Order, nor an Affiliate of a party;

"Third Party Equipment" means any and all Third Party IT equipment, hardware and other tangible items which is racked in a Data Centre;

"Third Party Information" means data, information, video, photographs, software and any other materials (in whatever form) not owned or generated by or on behalf of the Customer or its Affiliates, which is published or otherwise made available by the Customer using Cloud-IX;

"Variable Fees" means the variable fees payable by you to TelecityGroup either as set out in the applicable Order, or for the relevant additional Cloud-IX ordered by you which are not specified in an Order;

"VAT" means, in relation to any jurisdiction within the European Union, the tax imposed by the Council Directive of the European Union (2006/112/EC) and any national legislation implementing that directive or its predecessor directives, including the United Kingdom Value Added Tax Act 1994 together with legislation supplemental thereto and, in relation to any other jurisdiction, the equivalent tax (if any) in that jurisdiction including sales taxes and goods and service taxes;

"Virtual Connection" means a connection between two network end points which may be either (a) a Connection Point and a CSP Perimeter, or (b) a CSP Perimeter and a different CSP Perimeter; and

"Virtual Customer" means a person who is not a party to a Data Centre Contract at the time that person submits an Order.

2. In construing these Conditions, unless otherwise expressly specified:

- (a) headings and titles in the Conditions are for convenience only and shall not affect the interpretation or construction of the Conditions;
- (b) reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted;
- (c) reference to clauses are to clauses of these Conditions;
- (d) references to a "person" shall be construed so as to include any individual, firm, company or other body corporate, government, state or agency of a state, local or municipal authority or government body or any joint venture, association, partnership or limited partnership (whether or not having separate legal personality);
- (e) any reference to a "day" or Business Day shall mean a period of 24 hours running from midnight to midnight;
- (f) references to times are to London times, except where expressly stated to the contrary;
- (g) references to "indemnifying" any person against or with respect to any circumstance shall include indemnifying and keeping it (and each member of its Group) harmless, on an after tax basis, from all actions, claims and proceedings from time to time made against it and each member of its Group and all Losses, (including without limitation legal expenses and regulatory fines) suffered made or incurred by it and each member of its Group as a consequence of or in connection with that circumstance; and "indemnify" and "indemnity" shall be construed accordingly;
- (h) general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words and the expressions "including", "such as" and similar expressions are not words of limitation;
- (i) a reference to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be treated as a reference to any analogous term in that jurisdiction; and

(j) references to a "**party**" are to you or us (as applicable) and references to the "**parties**" are to both of us.

3. In the event of an inconsistency between any of the provisions of these Conditions and an Order, the documents will prevail in the following sequence:

- (a) the Order (save for those provisions of these Conditions incorporated therein);
- (b) these Conditions.

SECTION B - REGISTRATION AND SERVICE SUPPLY

4. Registration

4.1 You warrant that the information provided about your organisation when registering for Cloud-IX via the Portal:

- (a) is true, accurate and complete; and
- (b) will be kept up to date as necessary from time to time.

4.2 Once you have submitted the information on the initial registration page of the Portal and accepted these Conditions, we will email you using the contact details supplied on the registration page with further instructions on how to place an Order. TelecityGroup will not provide Cloud-IX until an Order has been submitted to and accepted by TelecityGroup.

4.3 By registering your organisation's details on the Portal and placing an Order, you warrant that you have the authority to enter into legally binding relationships on behalf of your organisation.

4.4 We reserve the right, at our sole discretion, to refuse to accept an initial Order after these Conditions have been accepted by you.

5. ORDER SUBMISSION, SERVICE PROVISION AND USE OF CLOUD-IX

5.1 In consideration of the payment of Service Fees, we agree to provide Cloud-IX with reasonable skill and care to you:

- (a) from the Service Commencement Date;
- (b) as specified in an Order (including, where applicable, when the scope of Cloud-IX under an Order is modified by you via the Portal or otherwise in writing from time to time) ; and
- (c) in accordance with, and subject to, these Conditions.

5.2 Cloud-IX is a service that consists of:

- (a) where specified in an Order, the provision of one or more physical connections between a Connection Point and the Cloud-IX Infrastructure;
- (b) set up and configuration of at least one Virtual Connection with a minimum bandwidth of 10Mbps;
- (c) enabling the transmission of Data between:
 - (i) a Connection Point and a CSP; or
 - (ii) two CSPs,across a Virtual Connection; and
- (d) subject to the minimum commitment in clause 5.2(b), the ability to add or remove a Virtual Connection and modify the bandwidth of any Virtual Connection

5.3 Upon submission of an Order, TelecityGroup shall:

- (a) check the details specified on the Order to ensure the information contained in it is accurate and viable (and if it is not, we will reject the Order and contact you to clarify the details on the Order within a reasonable amount of time);
- (b) where we deem that the Order is accurate and viable, confirm to you that the Order has been accepted (such date being the "**Effective Date**" of the Order) and confirm whether you are classified as a Physical Customer or a Virtual Customer. An Order shall be binding on and from the Effective Date and will incorporate all of the terms of these Conditions;
- (c) subject to the terms of the Order, install, within 10 Business Days (unless otherwise agreed in writing) of the Effective Date, a physical connection from a Connection Point to the Cloud-IX Infrastructure which may be either by way of (i) a single Cross-Connect or (ii) a diverse redundant pair of Cross-Connects (which shall be specified in an Order); and then
- (d) set up at the number of Virtual Connections specified in the Order (which must be at least one with a minimum bandwidth of 10Mbps); and
- (e) notify you of the Service Commencement Date of the Order.

5.4 During the term of an Order, you may modify the scope of the services provided under an Order by:

- (a) increasing or decreasing the number of Virtual Connections (as long as you do not reduce the number to less than one);
- (b) increasing or decreasing the bandwidth of any Virtual Connection (as long as you do not reduce the bandwidth of the Virtual Connection to less than 10Mbps); and
- (c) procuring Cloud-IX from a further Data Centre Location (if one is already being provided).

5.5 To request any of the modifications referred to in clause 5.4, please contact your local sales representative at a TelecityGroup Affiliate who will provide you with further information. Any modifications you make to the scope of Cloud-IX under an Order must be confirmed in writing (which may be by email) and will be binding when we notify you in writing that we have accepted such modifications. Once the modifications have become binding, the appropriate Order shall be construed and read as incorporating such amendments.

5.6 Each Virtual Connection generates:

- (a) a monthly Bandwidth Reservation Fee; and
- (b) Data Transfer Fees,

as such Service Fees are set out on and may change in accordance with an Order, and invoiced and paid in accordance with clause 9.

5.7 Subject to clause 5.8, a Bandwidth Reservation Fee is charged at the monthly rate specified in an Order in respect of each Virtual Connection.

5.8 Where, during a month:

- (a) the bandwidth of a Virtual Connection is modified in accordance with these Conditions; or
- (b) a Virtual Connection is discontinued (as long as it was not the last Virtual Connection active under an Order),

then the Bandwidth Reservation Fee for that Virtual Connection for that month shall be calculated on a pro rata basis, rounded up to the nearest full hour (for instance, if a 100Mbps Virtual Connection is provisioned for 100 hours and 20 minutes, you will be invoiced for 101 hours Bandwidth Reservation Fee on a 100Mbps Virtual Connection).

5.9 If you discontinue the last Virtual Connection under an Order, we will construe such action as a notice to terminate that Order and you will be charged for that Virtual Connection for a further thirty (30) days until the termination date of that Order (as provided for in clause 11).

5.10 Data Transfer Fees are charged per Gigabyte (GB) in respect of the actual Data transmitted into the Platform (but not egress), whether such ingress emanates from a Connection Point or a CSP.

- 5.11 The Service Fees for Physical Customers are different to the Service Fees for Virtual Customers. We will confirm which category you fall into following submission of an Order and the relevant fees shall be specified on the Order. In the event that, during the term of an Order, your circumstances change such that you fall into a different category, you may notify us and, once we have verified such change, your status will change and the Service Fees shall be automatically be varied to reflect such change on the next full billing period after such change is notified to us.
- 5.12 You are solely responsible for:
- (a) any obligation or liability arising out of transactions of any kind entered into between you and any Third Party accessing or acting in reliance on Cloud-IX, Data, or Third Party Information (and TelecitGroup will not be a party to or in any way responsible for, or under such transactions); and
 - (b) the creation, maintenance and design of all Data,
- and you shall indemnify and keep indemnified TelecitGroup in respect of any Losses arising from any breach by you of any of your obligations to Third Parties or to TelecitGroup referred to in this clause 5.12.
- 5.13 Where we elect to not charge you all or any part of the Service Fees for any period of time, such election does not constitute a waiver of our right to charge Service Fees at any later time.
- 5.14 You may not resell, repackage or reassign Cloud-IX or any Virtual Connection to any Third Party without our prior written consent. Cloud-IX is for your use (or your Affiliates) and should not be resold or assigned to a Third Party, whether as part of a suite of services or otherwise.

6. **Cloud-IX Infrastructure, Technical Information and Customer Equipment**

- 6.1 We will operate, maintain and be responsible for the Cloud-IX Infrastructure and the Platform. TelecitGroup is not responsible or liable for the transit of Data on or over any CSP equipment beyond the CSP Perimeter.
- 6.2 We have obtained and shall maintain all licences, powers and consents necessary to comply with and satisfy our obligations to you under these Conditions.
- 6.3 The technical specifications and connection protocols enabling you to connect to Cloud-IX shall be specified in the relevant Order or otherwise provided to you in writing by TelecitGroup. We shall not be responsible or liable for your inability to connect to a CSP using Cloud-IX in circumstances where you fail to comply with such technical specifications and connection protocols.
- 6.4 You shall not:
- (a) operate, change or in any way adversely affect Cloud-IX Infrastructure or the Platform; or
 - (b) disassemble, decompile, reverse engineer or create derivative works based on the whole or any part of Cloud-IX, the Platform or the Portal unless expressly authorised to do so in writing.
- 6.5 TelecitGroup is not responsible for the installation, maintenance, compatibility, or performance of any Customer Equipment, any Third Party Equipment or any equipment belonging to a CSP.
- 6.6 The provision of any services other than Cloud-IX shall be governed by the terms of the Data Centre Contract for the provision of those services and these Conditions are not intended to govern, or affect the terms applicable to, the provision of those services.

7. **Maintenance and Suspension of Cloud-IX**

- 7.1 TelecitGroup may carry out Scheduled Maintenance:
- (a) between the hours of midnight and 06:00 (local time) on Monday to Sunday where disruption to Cloud-IX is expected; or
 - (b) between 05:00 and 09:00 (local time) on Monday to Sunday where disruption to Cloud-IX is unlikely to occur,

and we will provide at least two (2) weeks' prior written notice by email in the case of 7.1(a).

7.2 TelecitGroup may Suspend :

- (a) immediately if you breach any provision of an Order or these Conditions which affects the Platform, the Portal, Cloud-IX or the services provided by TelecitGroup to its other customers;
- (b) without prejudice to clause 7.2(a) above, after 10 Business Days' notice of a breach of an Order by you and failure to remedy the breach within that time;
- (c) immediately if TelecitGroup is entitled to terminate an Order; or
- (d) immediately if TelecitGroup reasonably considers such Suspension is necessary:
 - (i) to carry out Emergency Maintenance; or
 - (ii) in accordance with any order, instruction or request concerning the Customer, issued by a government entity.

7.3 TelecitGroup will:

- (a) where reasonably practicable, give you reasonable prior notice and take reasonable account of any comments or representations from you before any Suspension; and
- (b) have no liability to you for any Suspension carried out in accordance with clause 7.2.

7.4 If a Suspension is:

- (a) due to non-payment or late payment of Service Fees by you, then TelecitGroup shall restore Cloud-IX upon you having paid all overdue sums plus interest to TelecitGroup;
- (b) due to your breach where such breach is not directly related to payment of Service Fees, and you request that Cloud-IX is restored, then TelecitGroup shall restore Cloud-IX upon you satisfying any conditions that TelecitGroup reasonably considers appropriate and which are relevant to the breach (such as but not limited to an obligation on you to remedy the breach, and/or a condition which is intended by TelecitGroup to help prevent future similar breaches); or
- (c) for any other reason not covered by clause 7.4(a) or 7.4(b), then:
 - (i) TelecitGroup will restore Cloud-IX as soon as reasonably practicable; and
 - (ii) if such Suspension is material, no Service Fees shall be payable by you in respect of that part of Cloud-IX that is suspended for the period of suspension only.

7.5 Any Suspension pursuant to this clause 7 shall not constitute a waiver of any right of termination.

SECTION C - CHARGES AND PAYMENT

8. Service Fees

8.1 You shall pay the Service Fees in accordance with these Conditions and the applicable Order.

8.2 All amounts payable to TelecitGroup under an Order are exclusive of any VAT chargeable on the supply or supplies for which such amounts (or any part of such amounts) are consideration for VAT purposes.

8.3 Where, under an Order, TelecitGroup makes or is deemed to make a supply to you for VAT purposes and VAT is or becomes chargeable on such supply, you shall pay to TelecitGroup an amount equal to such VAT provided that you shall first have received a VAT invoice from TelecitGroup containing the details prescribed in Regulation 14 of the VAT Regulations in respect of the supply.

FEE INCREASES

8.4 TelecitGroup may, during the term of an Order, vary the Service Fees by a reasonable amount by providing not less than sixty (60) days' notice to you.

9. Invoicing and Payment

- 9.1 TelecityGroup will invoice you for Service Fees on or around the beginning of the calendar month immediately following the end of the month during which such Service Fees are incurred, provided that if TelecityGroup invoices you after the date provided for under this clause 9.1, this shall not prejudice the obligation of you to pay the relevant amount.
- 9.2 All Service Fees will be invoiced and paid in either
- (a) pounds sterling; or
 - (b) Euros,
- as specified on an Order (and in the absence of a preference, Service Fees shall be invoiced and must be paid in pounds sterling). If you wish to change the currency in which you are invoiced, you must request such change in writing and we will give effect to such change as soon as reasonably practicable after receipt of the request. We will only entertain two requests to change the currency on an Order during the term of that Order.
- 9.3 Save where there is a Bona Fide Dispute in respect of an invoice and you notify TelecityGroup of such dispute in accordance with clause 9.5, you must pay all amounts due and owing under each of TelecityGroup's invoices within thirty (30) days of the date of issue of the invoice
- 9.4 Without prejudice to any other right or remedy that it may have, if you fail to pay TelecityGroup on the due date, TelecityGroup may charge interest on such sum from the date of the invoice at the annual rate from time to time in force pursuant to the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment, and you shall pay the interest immediately on demand.
- 9.5 If you have a bona fide dispute in relation to an invoice (a "**Bona Fide Dispute**"), you must immediately notify TelecityGroup in writing, and in any event within fourteen (14) days of the date of such invoice and, upon receipt of such notification, the parties shall resolve the dispute in accordance with the complaints and disputes procedure set out in clause 13.
- 9.6 All amounts payable to TelecityGroup under an Order must be paid free of and without any rights of counterclaim or set off, and without deduction or withholding on any ground whatsoever, save only as may be required by law or where TelecityGroup is obliged to account for Service Credits pursuant to clause 19.

SECTION D - TERM AND TERMINATION

10. Term

- 10.1 An Order will be effective from the Effective Date and will remain in effect until it is terminated by you giving TelecityGroup thirty (30) days' prior written notice at any time.
- 10.2 These Conditions will be effective from the date upon which they are accepted by you and will remain in effect until, following the expiry or termination of the last Order, either party gives not less than thirty (30) days' notice to terminate them.

11. Termination

- 11.1 Notwithstanding any provision of these Conditions or an Order to the contrary:
- (a) these Conditions and all Orders may be terminated:
 - (i) by TelecityGroup, on giving prior notice (i) in writing to you, forthwith (or on the date specified in the termination notice) if:
 - (1) you fail to pay any sum due under an Order (otherwise than as a direct consequence of any default on the part of TelecityGroup or if such sum is subject to a Bona Fide Dispute) and such sum remains unpaid for thirty (30) days; or
 - (2) as a result of a matter outside of TelecityGroup's control, TelecityGroup is no longer permitted by law to provide Cloud-IX to you;

- (ii) by either party forthwith on giving notice in writing to the other if any step or proceeding is taken, any application, order, resolution or appointment is made, or any notice given, by or in respect of the other party in relation to the whole or any part of its undertaking for a: distress; execution; the suspension of payments; a moratorium of any indebtedness, a composition; assignment or arrangement with creditors; winding-up; dissolution; administration; receivership (administrative or otherwise); or bankruptcy, in any jurisdiction to which it is subject (including the one in which it is incorporated) that has an effect similar or equivalent to any of the events mentioned in this clause 11.1(b),

but clause 11.1(a)(ii) shall not apply to:

- (iii) a solvent reconstruction or amalgamation the terms of which have previously been approved in writing by the other party; or
- (iv) any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 7 days of commencement, or if earlier, before the date on which it is advertised.

- (b) an Order may be terminated by either party, for any reason by providing not less than thirty (30) days' prior written notice to the other.

11.2 Notwithstanding any provision of these Conditions or an Order to the contrary, an Order may be terminated by either party forthwith on giving notice in writing to the other if the other party materially breaches a provision of an Order (a "**Material Breach**") that is either not capable of being remedied or (if it is capable of being remedied) has not been remedied within 20 Business Days of receipt of notification requiring it to do so (a "**Material Breach Notice**") provided that:

- (a) a Material Breach Notice is given within three months of a party becoming aware of a Material Breach by the other party; and
- (b) the termination right under this clause is exercised, such that termination occurs within nine months of the termination right arising.

11.3 Any expiry or termination of these Conditions or an Order shall not affect any accrued rights, remedies or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision of these Conditions or an Order which is expressly or by implication intended to come into or continue in force on or after such expiry or termination.

11.4 Save as expressly stated to the contrary in, but otherwise notwithstanding any provision of any Order to the contrary, termination of these Conditions will automatically terminate all Orders in effect under these Conditions.

12. **Consequences of Termination**

12.1 On termination of an Order for any reason, in respect of Cloud-IX services that have been terminated, you shall immediately pay to TelecityGroup all of TelecityGroup's outstanding unpaid invoices and interest and, in respect of Cloud-IX services supplied but for which no invoice has been submitted, TelecityGroup may submit an invoice, which shall be payable within 30 days of the invoice date.

12.2 On termination of these Conditions or an Order (however arising), clauses 12, 13.1, 13.2, 15 to 18 inclusive, and 29 shall survive and continue in full force and effect.

12.3 TelecityGroup shall have no obligation whatsoever to provide Cloud-IX services at any time after the date of termination, unless otherwise agreed between the parties in writing.

SECTION E - RELATIONSHIP MANAGEMENT

13. **Complaints and Disputes**

13.1 Any dispute or complaint arising out of or in connection with these Conditions or an Order (a "**Dispute**") shall be referred to mediation in accordance with the procedures of CEDR, the Centre for Effective Dispute Resolution or such other mediation organisation as the parties may agree. The mediation shall:

- (a) be conducted by a single mediator appointed by the parties or, if the parties are unable to agree on the identity of the mediator within 15 Business Days after the date of the request that the Dispute be resolved by mediation (or if the person appointed is unable or unwilling to act), the mediator shall be

appointed by the Centre for Effective Dispute Resolution or such other mediation organisation as the parties may agree, on the application of either party;

(b) be conducted in London in English.

13.2 Nothing in this clause 13 shall limit either party's right to obtain urgent interim relief in relation to a Dispute, or otherwise limit or prejudice the right of either party to commence legal proceedings in relation to a Dispute.

14. **Change Control**

14.1 TelecityGroup may change Cloud-IX to comply with any applicable safety or statutory requirements, any Change of Law or due to an Event of Force Majeure. In such circumstances, TelecityGroup must use reasonable endeavours to:

(a) minimise the impact of such changes; and

(b) give you prior notice of them.

14.2 Without prejudice to clause 14.1, TelecityGroup may change Cloud-IX for operational reasons in any manner which:

(a) does not materially affect the quality of Cloud-IX; or

(b) improves the quality of Cloud-IX in any way.

14.3 If you wish to amend the scope of Cloud-IX you will need to contact your local sales representative who will provide you with information about adding or removing Virtual Connections and/or increasing the bandwidth of any existing Virtual Connection(s).

SECTION G - INTELLECTUAL PROPERTY RIGHTS, DATA PROTECTION AND CONFIDENTIALITY

15. **Intellectual Property**

15.1 You acknowledge that all Intellectual Property Rights (whether registered or unregistered) in Cloud-IX, the Cloud-IX Infrastructure, the Platform and the Portal and all Intellectual Property Rights created or acquired by TelecityGroup in the course of providing Cloud-IX vest and shall remain vested in TelecityGroup and its licensors. TelecityGroup hereby grants you a non-exclusive licence to use the foregoing, but only to the extent necessary for you to receive Cloud-IX.

15.2 TelecityGroup acknowledges that all Intellectual Property Rights (whether registered or unregistered) in the Data shall remain vested in the Customer and its licensors. The Customer hereby grants TelecityGroup a non-exclusive licence to use the foregoing, but only to the extent necessary for us to provide Cloud-IX.

15.3 Subject to the provisions of clause 15.4,

(a) you shall indemnify and keep indemnified TelecityGroup against any claim by any third party for alleged infringement of any Intellectual Property Rights to the extent such claim arises as a result of storage or processing of any of the Data on the Cloud-IX Infrastructure or the operation of any Customer Equipment; and

(b) TelecityGroup shall indemnify and keep indemnified you against any claim by any third party for alleged infringement of any Intellectual Property Rights to the extent such claim arises as a result of the operation of Cloud-IX, the Portal or any Cloud-IX Infrastructure (other than to the extent it relates to the processing of Data on the Cloud-IX Infrastructure or the operation of any Customer Equipment), but excluding an claim arising as a result of the use or receipt of a CSP's services or products.

15.4 The indemnities at clause 15.3 above are subject to the following conditions:

(a) the party giving the indemnity (the "**IP Indemnifier**") is given complete control of any such claim promptly following the party receiving the indemnity (the "**IP Indemnified**") becoming aware of such claim or potential claim;

(b) the IP Indemnified does not prejudice the IP Indemnifier's defence of such claim or potential claim; and

(c) the IP Indemnified gives IP Indemnifier (at IP Indemnifier's expense) all reasonable assistance and information requested by IP Indemnifier in connection with such claim or potential claim.

15.5 Neither party shall settle any third party claim to which clause 15.3 applies in the name of the other party without the other party's prior written consent, provided that such consent is not unreasonably withheld or delayed.

16. Confidentiality

16.1 Each party will treat as confidential all Confidential Information of the other party, and will not:

(a) disclose such Confidential Information to any person (except only to those of its employees, agents, sub-contractors, suppliers and other representatives who need to know it in connection with these Conditions or an Order); or

(b) use such Confidential Information for purposes other than under or in connection with these Conditions or an Order.

16.2 Clause 16.1 will not extend to Confidential Information which:

(a) was in the possession of the recipient party (with full right to disclose) before receiving it under or in connection with these Conditions or an Order;

(b) is lawfully received from a Third Party (with full right to disclose);

(c) is already or becomes public knowledge (otherwise than as a result of a breach of this clause 16); or

(d) is or has already been independently developed by the recipient party without access to or use of such Confidential Information.

16.3 Each party will ensure that all persons to whom it discloses any Confidential Information of the other party are aware prior to disclosure of the confidential nature of such information and that they owe a duty of confidence to the other party in relation to it.

16.4 Nothing in this clause 16 shall prohibit or restrict either party disclosing any Confidential Information:

(a) to the extent to which the same is required to be disclosed by law, regulation or pursuant to an order of a competent authority provided that the disclosing party shall where reasonably practical notify the other party prior to any such disclosure; or

(b) to a professional adviser of that party who undertakes to treat the Confidential Information as confidential.

16.5 On termination of these Conditions for whatever reason, the recipient party shall return to the disclosing party (or, at the discretion of the disclosing party, destroy) all copies of Confidential Information of the other party which it has in its possession.

16.6 The provisions of this clause 16 shall survive the termination or expiry of these Conditions for a period of three years.

17. Data Protection

17.1 You shall comply with all provisions of any Data Protection Regulations which apply to you.

17.2 To the extent that TelecityGroup processes Personal Data on behalf of you under these Conditions or an Order, it shall:

(a) comply with its obligations under the relevant Data Protection Regulations;

(b) act only on the instructions of you in processing such Personal Data;

(c) take appropriate technical and organisational measures against unauthorised or unlawful processing of such Personal Data and against accidental loss or destruction of, or damage to, any such Personal Data;

- (d) keep all materials containing such Personal Data (if any) in a safe and secure place (or if processed electronically ensure that appropriate electronic security systems are in place) and shall return them to the owner on request (or if processed electronically, and if so requested by the owner, ensure all files containing data are deleted and provide written confirmation of this); and
- (e) not transfer any such Personal Data outside of the European Economic Area, without your prior written consent.

SECTION H - LIABILITY AND INSURANCE

18. **Liabilities**

- 18.1 Nothing in these Conditions or any Order excludes or limits either party's liability (a) for any death or personal injury resulting from a party's negligence, or (b) for any fraudulent acts or omissions or fraudulent misrepresentation by that party or its agents, officers, directors or employees, or (c) to the extent that it cannot be otherwise excluded or limited by law, or (d) under the indemnities set out in clauses 5.12 and 15.3.
- 18.2 Subject to clause 18.1, the express terms of these Conditions and any Orders entered into under these Conditions set out the entire agreement between the parties and any and all warranties, terms, representations or conditions implied by statute or otherwise, are excluded. Without limitation, no warranties or representations are given by TelecityGroup in relation to:
 - (a) any equipment and Cloud-IX being fit for purpose; or
 - (b) that the functions contained in any equipment or Cloud-IX will be uninterrupted or error free or that they will meet your requirements at the present time or subsequently.
- 18.3 Subject to clause 18.1 and without prejudice to TelecityGroup's obligation to account for Service Credits pursuant to clause 19, in no event shall either party be liable, whether such liability arises in tort (including for negligence or breach of statutory duty), contract, misrepresentation or from any other duty or cause of any nature, to the other for any:
 - (a) loss of profits;
 - (b) loss of business;
 - (c) depletion of goodwill or similar losses;
 - (d) loss of anticipated savings;
 - (e) loss of goods;
 - (f) loss of contract;
 - (g) loss of use;
 - (h) loss or corruption of data or information;
 - (i) special, indirect or consequential loss, costs, damages, charges or expenses, howsoever arising; or
 - (j) losses (including fines or penalties) incurred by the other party arising out of or in connection with any claim, demand, action, investigation or proceeding by any third party against that other party.
- 18.4 Subject to clause 18.1 and without prejudice to clause 18.3, the aggregate liability of either party to the other (whether arising in contract, negligence, tort or otherwise) under these Conditions or otherwise in connection with Cloud-IX, in any twelve month period, shall not exceed the lower of:
 - (a) £5,000; or
 - (b) the total Service Fees attributable to that twelve month period.
- 18.5 Neither your liability to pay the Service Fees nor our liability to pay Service Credits shall be taken into account in assessing the application of clauses 18.3 and 18.4.

19. **Service Level Agreement and Service Credits**

- 19.1 In the event of a Service Level Failure, a Service Credit may apply, which shall be accounted for to you in accordance with clause 19.6.
- 19.2 We will use reasonable endeavours to ensure that each Virtual Connection is available one hundred per cent of the time.
- 19.3 If at any time a Virtual Connection is unavailable other than due to a No Fault Fail, you will be entitled to a Service Credit equal to one hour's worth of Bandwidth Reservation Fee for each hour or part of an hour for which that Virtual Connection was unavailable. Multiple events of unavailability of the same Virtual Connection during any hour (commencing when the first such unavailability event occurs) will only entitle you to a Service Credit equal to one hour's worth of Bandwidth Reservation Fee.
- 19.4 A No Fault Fail is any period of time that a Virtual Connection is not available:
- (a) due to any request, act or omission of the Customer; or
 - (b) due to any incompatibility between (i) the Customer Equipment, and (ii) Cloud-IX, the Platform or a CSP; or
 - (c) during a Suspension; or
 - (d) due to Scheduled Maintenance or Emergency Maintenance; or
 - (e) due to any other problem for which TelecityGroup cannot reasonably be held to be culpable.
- 19.5 Service Credits prescribed in respect of any Service Level Failure pursuant to this clause 19 (if any) shall be your sole and exclusive remedy for a Service Level Failure, save to the extent stated otherwise in an Order.
- 19.6 We will notify you if a Service Credit is due, and the amount that is due by the end of the calendar month following the month in which the relevant Service Level Failure occurred. TelecityGroup shall either:
- (a) specify the Service Credit sum as a credit against the next invoice which is issued by TelecityGroup to you under these Conditions; or
 - (b) in the event that TelecityGroup has not or cannot comply with clause 19.6(a), TelecityGroup shall pay you the Service Credit sum upon demand.
- 19.7 TelecityGroup confirms that Service Credits have been taken into account in the setting of the Service Fees and both parties agree that the Service Credits are a reasonable method of price adjustment to reflect a Service Level Failure.
- 19.8 Neither party shall be in breach of these Conditions or an Order to the extent that a failure to perform any obligation under these Conditions or an Order, or its delay in doing so, is a result of either a failure by the other party to meet its obligations under these Conditions or an Order or a delay by the other party in doing so.

20. **Force Majeure**

- 20.1 Neither party (the "**Claiming Party**") shall be liable to the other for any delay or failure to perform any of its obligations hereunder to the extent such delay or failure is due to an Event of Force Majeure . If a delay or failure to perform any of the Claiming Party's obligations due to an Event of Force Majeure continues for more than 7 days, either party shall be entitled to terminate the applicable Order(s) immediately on written notice to the other party.

SECTION I - OTHER

21. **Compliance with laws**

- 21.1 Each party must, and must ensure that all of its personnel, comply with all applicable laws, rules, regulations and orders of any governmental authority having jurisdiction over the provision and use of Cloud-IX and the performance of obligations and exercise of rights under an Order and will hold and fully comply with all licenses,

permits, authorisations and approvals necessary for the activities required, contemplated or permitted under any Order. A party shall not be liable for any breach of these Conditions as a result of compliance with this clause.

21.2 Without prejudice to its obligation to comply with all applicable laws in clause 21.1 above, each party will:

- (a) comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010 ("**Anti-Corruption Laws**"); and
- (b) maintain and comply with its own policies and procedures (including but not limited to its own adequate procedures (as determined in accordance with section 7(2) of the Bribery Act 2010 and any guidance issued pursuant to section 9 of the Bribery Act 2010)) to ensure its compliance with Anti-Corruption Laws.

22. **Assignment**

22.1 You may not assign, transfer, delegate or sublicense any of your rights or obligations under these Conditions or an Order without our prior written consent which shall not be unreasonably withheld or delayed.

23. **Notices**

23.1 All notices served under these Conditions or an Order must be in writing and must be delivered personally, sent by prepaid first class or air mail post or by fax or email transmission to the following address, email address or fax number (as the case may be):

- (a) If to Equinix/Telecity, to:

Attn: Cloud-IX Team
Exchange Tower, 4th floor,
2 Harbour Exchange Sq,
London
E14 9GE, UK
Email: cloud-ix.orders@eu.equinix.com

- (b) if to the Customer, at the address, email address or fax number specified by you on the Portal.

23.2 Any notice that is served under clause 23.1 is deemed to be received:

- (a) upon receipt, in the case of deliveries by hand or by prepaid recorded post;
- (b) upon receipt of a transmission slip confirming receipt, when sent by fax; and
- (c) when sent, in the case of email.

24. **Third Parties**

A person who is not a party to these Conditions or any Order shall not have any rights under or in connection with them by virtue of the Contracts (Rights of Third Parties) Act 1999.

25. **No waiver**

No waiver by either party of any breach or default of the terms of these Conditions or any Order by the other party shall be effective unless given in writing, and no such waiver shall be construed as a waiver of any subsequent breach of the same or of any other covenant or condition.

26. **No Partnership or Agency**

The relationship between TelecityGroup and you created by these Conditions or any Order shall be that of independent contractors, and nothing contained in these Conditions or any Order shall be construed as constituting a partnership, joint venture or agency between TelecityGroup and you.

27. **Severability**

If any term, condition or provision of these Conditions or any Order shall be determined invalid, unlawful or unenforceable to any extent, then such term, condition or provision shall be severed from the remaining terms, conditions and provisions, which shall continue to remain valid to the fullest extent permitted by the law.

28. **Entire Agreement and Variation of Terms**

28.1 These Conditions and all Orders entered into under them contain the entire agreement and understanding of the parties and supersede all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter of these Conditions and any Orders.

28.2 Subject to clause 28.3, each of the Parties acknowledges and agrees that it does not enter into these Conditions or any Order on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made, given or agreed to by any person (whether a party to the Conditions or an Order or not) except those expressly repeated or referred to in these Conditions or such Order and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to that person will be a claim for breach of contract arising out of, in connection with or relating to these Conditions or such Order.

28.3 Nothing in these Conditions or any Order excludes or restricts a party's rights, remedies or liability under the law governing these Conditions or any Order in relation to any statement, representation or warranty made fraudulently or to any provision of these Conditions or an Order which was induced by fraud for which the remedies will be all those available under the law governing these Conditions or an Order.

28.4 We may change these Conditions at any time and will notify you of any such changes by notifying you in writing. Any modification to these Conditions shall be effective thirty (30) days after the date upon which we notify such changes to you.

29. **Governing Law and Jurisdiction**

29.1 These Conditions and any other documents (including all Orders) that the parties enter into pursuant to or in connection with it are governed by and must be interpreted and construed in accordance with the laws of England.

29.2 The courts of England have exclusive jurisdiction to settle any claim or arising out of or in connection with these Conditions including any claims for set-off or counterclaim, and including any claims arising out of or in connection with any legal relationships established by these Conditions (such as Orders).

Authorization

The Terms and Conditions are effective on the date of the Customer's signature immediately below.

Signed for and on behalf of:
Name:
Title: Authorised Signatory
Date:
Signature: