



## CLLOUD SERVICES TERMS AND CONDITIONS

### 1. Scope

1.1 These Cloud Services Terms and Conditions (“CSTC”) apply to all subscriptions for the provision by the Supplier (as defined below) of Software that is hosted in the cloud (“Cloud Services”) or resold from already existing third party Software (“Third Party Software”), and which may include Software components that can be downloaded and installed by the Customer (“On Premise Components”) and are agreed to by the legal entity ordering the Software (“Customer”) by means of the applicable order form, incorporating by reference these CSTC (“Order”), and the member of the Acrelec group that is stated on the Order (“Supplier”) and shall take effect (following written acceptance of the Order by the Supplier (“Order Confirmation”)) on the Subscription Connection Date.

1.2 The Customer shall, during the Subscription Term, use:

1.2.1 the On Premise Components (if any) as Limited Term Programs in accordance with the Supplier’s On Premise Software Terms;

1.2.2 any Third Party Software on the terms and conditions of applicable third party licensing agreements enclosed with such software; and

1.2.3 the Cloud Services in accordance with these CSTC.

### 2. Prices

2.1 Subject to Section 11.4, the Supplier reserves the right to increase the price of Cloud Services at its sole discretion and without notice.

### 3. Subscription

3.1 In order to have access to the Cloud Services, the Customer must subscribe for the minimum number of Authorised Devices and Authorised Users described in the Order.

3.2 Subject to the Customer purchasing such Subscriptions in accordance with this Section 3 and Section 4 (Additional Subscriptions), and complying with Section 11 (Fees) of these CSTC, the restrictions set out in this Section 3 and the other applicable terms and conditions of the Agreement, the Supplier shall grant the Customer a non-exclusive, non-transferable right, without the right to grant sublicenses, for:

3.2.1 the Authorised Devices (that the Customer has subscribed for) to connect to the Cloud Services; and

3.2.2 the Authorised Users (that the Customer has subscribed for) to access and use the Cloud Services they are authorised to use and the associated Cloud Documentation,

during the Subscription Term and solely for the Customer's internal business purposes.

3.3 In relation to the Subscriptions, as applicable, the Customer undertakes that the maximum number of Authorised Devices that access and use the Cloud Services shall at no time exceed the number of Authorised Device Subscriptions it has purchased from time to time;

3.3.1 the number of Authorised Users that access and use the Cloud Services and the applicable Cloud Documentation shall at no time exceed the number of Authorised User Subscriptions the Customer has purchased for

- the applicable Cloud Services from time to time, if applicable;
- 3.3.2 it will not allow or permit any Subscription to be used by more than one Authorised Device or one Authorised User, as applicable, unless it has been reassigned in its entirety to another Authorised Device or Authorised User, as applicable, in accordance with Section 3.3.6, in which case the prior Authorised Device or prior Authorised User shall no longer have any right to access or use the Cloud Services and/or applicable Cloud Documentation;
- 3.3.3 each Authorised User shall keep a secure password for their use of the Cloud Services and applicable Cloud Documentation; such password shall be changed regularly in accordance with commonly accepted principles of good security practices and in accordance with the Customer's security and IT policies and each Authorised User shall keep their password confidential;
- 3.3.4 it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within five (5) Business Days (being days other than a Saturday, Sunday or public holiday) of the Supplier's written request at any time; and
- 3.3.5 where applicable, it shall manage and control access rights and permissions for each Authorised User (the process for which will be described in the Cloud Documentation) and the Customer acknowledges and agrees that it has the sole responsibility for granting such rights and permissions and ensuring that such rights and permissions match the level of access to the Customer's instance of the Cloud Services that the Customer intends.
- 3.4 The Customer shall not and shall not permit any Authorised User to access, store, distribute or transmit any Viruses, or any material during the course of its use of the Cloud Services that:
- 3.4.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- 3.4.2 facilitates illegal activity;
- 3.4.3 depicts sexually explicit images;
- 3.4.4 promotes unlawful violence;
- 3.4.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- 3.4.6 is otherwise illegal or causes damage or injury to any person or property;
- and the Supplier reserves the right, without liability and without prejudice to its other rights, to disable the Customer's access to the Cloud Services if the Supplier reasonably believes that the Customer is in breach of the provisions of this Section.
- 3.5 The Customer shall prevent any unauthorised access to or use of the Cloud Services and/or the applicable Cloud Documentation and, in the event of any such unauthorised access or use, shall promptly notify the Supplier and take all steps to assist the Supplier in rectifying the unauthorised use or access.
- 3.6 The Customer shall ensure that it has, at all times during the term of this Agreement, up to date anti-virus and security software and suitable policies and procedures in place to minimise the risk of any security or data breach through its use of the Cloud Services.
- 3.7 The rights provided under this Section 3 are granted to the Customer only and shall not

be considered granted to any subsidiary or holding company of the Customer.

#### **4. Additional Subscriptions**

- 4.1 Subject to Section 4.2 and Section 4.3, the Customer may, from time to time during the Subscription Term, purchase additional Subscriptions in excess of the number set out in the Order (“**Additional Subscriptions**”) and the Supplier shall grant access to the Cloud Services and the applicable Cloud Documentation to such additional Authorised Devices and/or Authorised Users, as applicable, in accordance with the provisions of this Agreement.
- 4.2 If the Customer wishes to purchase Additional Subscriptions, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for Additional Subscriptions and respond to the Customer with approval or rejection of the request, which the Supplier may decide at its absolute discretion. Where the Supplier approves the request, the Supplier shall activate the Additional Subscriptions within ten (10) days of its approval of the Customer's request.
- 4.3 If the Supplier approves the Customer's request to purchase Additional Subscriptions, each Additional Subscription shall be active from the date on which the relevant Authorised Device is connected to the Cloud Services or on which the Authorised User is granted access, as applicable, and all Cloud Services Fees shall be charged in accordance with Section 11 (Fees) of these CSTC.
- 4.4 The Supplier and the Customer agree that the grant of any Additional Subscriptions must be agreed by the Parties in writing and that such Additional Subscriptions shall be governed by the terms of this Agreement.

#### **5. Performance of the Cloud Services**

- 5.1 The Supplier shall, during the Subscription Term, provide the Cloud Services using commercially reasonable care and skill and make available the applicable Cloud Documentation to the Customer on and subject to the terms of this Agreement.
- 5.2 The Cloud Services shall be hosted from, and the Customer Data shall reside in, data centres retained by the Supplier in the geographic region specified in the Order. During the Subscription Term, the Supplier shall be entitled to migrate the Cloud Services from one data centre to another provided that the Cloud Services shall continue to be hosted from (and the Customer Data shall continue to reside in) a data centre within the same geographic region.

#### **6. Customer Data**

- 6.1 The Customer (or its licensors) shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.
- 6.2 The Customer may have access to Third Party Data through use of the Cloud Services. Unless otherwise agreed in writing between the Parties, all ownership and intellectual property rights in and to Third Party Data and the use of such content is governed by separate third party terms between the Customer and the third party.

#### **7. Restrictions**

- 7.1 Except as expressly permitted in this Agreement or to the extent permitted by any local law, the Customer agrees that it shall not:
  - 7.1.1 use, copy, modify, or transfer the right to use and shall not allow the

- use, copy or modification of, the Cloud Services or the Cloud Documentation or any copy thereof except as permitted by this Agreement or as otherwise agreed in writing by the Supplier; or
- 7.1.2 disassemble, decompile, reverse engineer or create derivative works based on the whole, or any part (including without limitation in source code form), of the Cloud Services or the Cloud Documentation, nor attempt to do any such things, except to the extent permitted by law for interoperability; or
- 7.1.3 (a) translate, localize, adapt, rent, lease, loan the Cloud Services, Cloud Documentation or any part thereof; (b) resell, provide, make available to or permit use of the Cloud Services (or associated access credentials) or Cloud Documentation, in whole or in part, by any third party; (c) use the Cloud Services or Cloud Documentation for any purpose, which is competitive to the Supplier; or (d) perform or fail to perform any other act which would result in a misappropriation or infringement of the Supplier's intellectual property rights.

## **8. Customer Obligations**

- 8.1 In addition to the obligations set out elsewhere in the Agreement, the Customer shall be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for:
- 8.1.1 procuring, maintaining and securing its network connections and telecommunications links for its systems;

- 8.1.2 all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links; and
- 8.1.3 complying with any additional Customer obligations set out elsewhere in the Agreement.

## **9. Intellectual Property Rights**

- 9.1 The Parties agree that all intellectual property rights in the Cloud Services and any Cloud Documentation:
- 9.1.1 belong to the Supplier,
- 9.1.2 that such rights are licensed (not sold) to the Customer; and
- 9.1.3 that Customer has no rights in, or to, the Cloud Services or the Cloud Documentation other than the right to use them in accordance with the terms of this Agreement.

## **10. Warranty**

- 10.1 The Supplier warrants that during the Subscription Term the Cloud Services will operate in all material respects as described in the applicable Cloud Documentation.
- 10.2 If the Cloud Services provided by the Supplier are not performed as warranted, the Customer must promptly provide the Supplier with a written notice that describes the deficiency in the Cloud Services (including, as applicable, the service request reference pursuant to which the Customer notified the Supplier of the deficiency in the Cloud Services).
- 10.3 For any breach of warranty given under this Section 10, the Customer's only remedy shall be the correction of the deficient Cloud Services that caused the breach of warranty, or, if the Supplier cannot substantially correct the deficiency in a commercially reasonable manner within a time agreed by

the Parties acting reasonable, the Customer may terminate the deficient parts of the Cloud Services and the Supplier will refund to the Customer the Cloud Services Fees for the terminated Cloud Services that the Customer pre-paid to the Supplier, pro-rated for the period following the effective date of such termination to the end of the Initial Subscription Period or current Subscription Renewal Period, as applicable.

10.4 This warranty shall not apply (without limitation) if the Customer: (a) does not provide the Supplier with all the information that may be necessary to assist in resolving a defect or fault, including a documented example of any defect or fault, or sufficient information to enable the Supplier to re-create the defect or fault; (b) modifies the Cloud Services without the Supplier's written permission; (c) misuses (or negligently uses) the Cloud Services, including use otherwise than as described in the Cloud Documentation; (d) fails to promptly install any patches, updates or releases for the Cloud Services made available by the Supplier; and (e) is in breach of this Agreement.

10.5 The Supplier is not responsible for any issues related to the performance, operation or security of the Cloud Services that arise from the Customer Data or Third Party Data or services provided by third parties other than from third parties authorised by the Supplier in writing.

10.6 FOR THE AVOIDANCE OF DOUBT, TO THE EXTENT PERMITTED BY LAW, THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY APPLICABLE TO ANY BREACH OF THE SUPPLIER'S WARRANTIES UNDER THIS CSTC ARE LIMITED TO THOSE PROVIDED IN THIS SECTION 10 AND, EXCEPT AS PROVIDED HEREIN, THE SUPPLIER DISCLAIMS ALL WARRANTIES,

EITHER EXPRESS OR IMPLIED. THE CLOUD SERVICES ARE PROVIDED "AS IS" AND THERE IS NO WARRANTY PROVIDED BY THE SUPPLIER OR ANY OTHER PERSON THAT THE FUNCTIONS CONTAINED IN THE CLOUD SERVICES WILL MEET THE CUSTOMER'S REQUIREMENTS OR EXPECTATIONS OR THAT THE OPERATION OF THE CLOUD SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.

10.7 The Customer shall be responsible for:

10.7.1 the suitability of its selection of the Cloud Services to achieve its intended results; and

10.7.2 the use and results (and the Customer's use of those results) obtained from the Cloud Services;

and the Supplier shall have no liability in that regard.

## 11. Fees

11.1 In consideration for rights granted under this CSTC and the delivery of the Cloud Services by the Supplier pursuant to this Agreement, the Customer agrees to pay to the Supplier all applicable fees for the Customer's Subscriptions to the Cloud Services for the duration of Subscription Period ("**Cloud Services Fees**").

11.2 Where an Authorised Device Subscription is connected or an Authorised User Subscription is granted access part-way through a Billing Period, the Supplier shall submit an invoice to the Customer for an additional pro-rated amount of the Cloud Services Fees for such Subscription from the date on which the Authorised Device is connected or the Authorised User is given access to the Cloud Services for the remainder of the applicable Billing Period and thereafter shall be billed for each subsequent Billing Period for the remainder of the Subscription Term.

11.3 The Cloud Services Fees shall be invoiced and are payable in advance for each Billing Period during the Subscription Term.

11.4 The Cloud Services Fees shall be fixed for the First Year at the amount specified in the Order. In the second and subsequent Years the Supplier may increase the Cloud Services Fees provided that any such increase shall be capped at the greater of a) 3%, and b) the percentage increase in the Retail Price Index published by the Office for National Statistics for the preceding Year, unless otherwise agreed in writing by the Parties.

## 12. Data Analysis

12.1 The Supplier may: (i) compile statistical and other information related to the performance, operation and use of the Cloud Services; and (ii) use and publish data compiled from the Cloud Services in aggregated form including, without limitation, to determine statistical analyses, reports, trends and other analytical information (paragraphs (i) and (ii) are collectively referred to as "**Analyses**"). The Supplier may make Analyses publicly available; however, Analyses will not incorporate any Customer Data, personal data or confidential information in a form that could serve to identify the Customer or any individual. The Supplier retains all intellectual property rights in the Analyses.

## 13. Term

13.1 This CSTC for the provision of Cloud Services shall, unless otherwise terminated in accordance with the provisions of this Agreement, commence on the date the applicable Authorised Device is connected to or the applicable Authorised User is given access to the Cloud Services (the "**Subscription Connection Date**") and shall

continue until the end of the Initial Subscription Term and, thereafter, the Cloud Services shall be automatically renewed for successive periods of twelve (12) months (each a "**Subscription Renewal Period**") unless either Party notifies the other Party of termination, in writing, at least sixty (60) days before the end of the Initial Subscription Term or any Subscription Renewal Period, in which case this CSTC shall terminate upon the expiry of the applicable Initial Subscription Term or Subscription Renewal Period and the Initial Subscription Term together with any subsequent Subscription Renewal Periods shall constitute the "**Subscription Term**".

13.2 Upon expiry or termination of this CSTC, for any reason:

13.2.1 any Subscription to the Cloud Services under this Agreement shall forthwith terminate;

13.2.2 the Customer shall discontinue all use of the Cloud Services;

13.2.3 the Supplier shall disable access and connection to the Cloud Services such that no communication is received from the Authorised Devices and no Authorised User can log in to the Portal;

13.2.4 the Supplier shall delete, destroy, dispose of or otherwise render inaccessible all of the Customer Data in its possession to the extent technically practicable;

13.2.5 the Supplier may require that the Customer return to the Supplier or destroy (at the Supplier's discretion) all material relating to the Cloud Services; and

13.2.6 each of the Parties shall deliver up to the other or, if requested by the other Party, destroy all property of whatever nature, including, but not

limited to, any confidential information which may be in its possession or under its control at the date of termination together with all copies and where destruction has been requested by the other Party, certify that such destruction has taken place.

#### **14. Audit**

14.1 The Customer acknowledges and agrees that the Supplier has the ability to and will remotely monitor the Customer's usage of the Cloud Services to ensure that the Customer's usage is in compliance with the Customer's Subscriptions and this Agreement. In addition to the remote monitoring, the Supplier (or its appointed third party auditor) may, not more frequently than annually and at the Supplier's own expense, audit the Customer's use of the Cloud Services. Any such audit shall be conducted during regular business hours at the Customer's facilities and the Supplier may take away copies of any documents related to the Customer's use of the Services for the purposes of such audit but shall not unreasonably interfere with the Customer's business activities in conducting the audit. If an audit reveals non-compliance with the terms of this Agreement, the Customer shall be required to remedy such non-compliance and the Customer shall pay any underpaid Cloud Services Fees at the Supplier's then-current list prices for the required number of Subscriptions to bring the Customer back into compliance, which shall be deemed Additional Subscriptions when the Customer has paid for such Subscriptions.

#### **Additional Definitions**

**"Acceptable Use Policy"** means the terms of use of the applicable Cloud Services as made available by the Supplier from time to time.

**"Additional Subscriptions"** has the meaning given to it in Section 4.1 of these CSTC.

**"Authorised Device"** means hardware, including without limitation kiosks, which are capable of accessing the Cloud Services via the Portal.

**"Authorised Users"** means: i) those named employees, agents and independent contractors which are authorised by the Customer via the Portal to access and use the Cloud Services and the Cloud Documentation, in accordance with the Acceptable Use Policy and up to a maximum number of users as specified in the Order; and ii) any Additional Subscriptions, as may be purchased in accordance with Section 4, and each shall be an **"Authorised User"**.

**"Billing Frequency"** means the frequency for payment of the Cloud Services Fees (e.g. per month, per quarter, per year) as indicated in the Order.

**"Billing Period"** means: (a) the First Billing Period; and (b) each subsequent period commencing on the day immediately following the end of the previous Billing Period to (and including) the last day of the month which falls at the end of the period of time covered by the applicable Billing Frequency.

**"Customer Data"** means the data used in the Cloud Services by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of facilitating the Customer's use of the Cloud Services, other than Third Party Data.

**"Cloud Documentation"** means: (a) the documents which set out a description of the Cloud Services (including network and security features); (b) the user instructions for the Cloud Services as provided by the Supplier to the

Customer from time to time; and (c) such other documentation as may be provided by the Supplier to the Customer from time to time.

**“Effective Date”** means the date of the commencement of the Cloud Services, as set out in the applicable Order (or the date of the actual commencement of the Cloud Services, if not included in the Order).

**“First Billing Period”** means the length of the Billing Frequency which runs from and including the date on which the first Authorised Device is connected to the Cloud Services to and including the last day of the month which falls at the end of the period of time covered by the applicable Billing Frequency.

**“First Year”** means, with respect to each Cloud Service, the period of twelve (12) calendar months commencing on the Effective Date.

**“Initial Subscription Term”** means the initial term for the provision of the Cloud Services, as set out in the Order.

**“Portal”** means an interface via which Authorised Users may access the Cloud Services.

**“Subscription”** means, with respect to the Cloud Services, each subscription for an Authorised Device or an Authorised User to connect to and access such Cloud Services.

**“Subscription Connection Date”** has the meaning given to it in Section 13.1

**“Subscription Renewal Period”** has the meaning given in Section 13.1.

**“Subscription Term”** has the meaning given in Section 13.1 (being the Initial Subscription Term together with any subsequent Subscription Renewal Periods).

**“Third Party Data”** means all software (including Third Party Software and open source software), data, text, images, audio, video, photographs and other content and material, in any format, that are obtained or derived from

third party sources outside of the Supplier that the Customer may access through, within, or in conjunction with the Customer’s use of, the Cloud Services. Third Party Data includes third party sourced materials accessed or obtained by the Customer’s use of the Cloud Services.

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

**“Year”** means a) the First Year, and/or b) any subsequent period of twelve (12) months during the Subscription Term commencing on the expiry of the First Year or any subsequent anniversary thereof.