

Master Services Agreement

This **Master Services Agreement** (“**MSA**”) contains the terms and conditions under which a Client can use our Services and is made on the date the Client first enters into an SOW (the “**Effective Date**”).

Parties:

1. The Calligo entity named in the SOW (“**Calligo**”); and
2. The client as described in the SOW (“**Client**”).

BACKGROUND:

- A. Calligo and its Affiliates provide a range of cloud-based and professional services including: infrastructure as a service, platform as a service, desktop as a service, software as a service, and IT consultancy services (particularly in the specialisations of cloud and related technologies).
- B. The Client wishes to enter into a framework agreement to procure cloud-based and professional services from Calligo.

IT IS AGREED:

1 Terms of Service

- 1.1 The terms and conditions of this document (the “**Master Services Agreement**” or “**MSA**”); any additional terms; and any Statement of Work (“**SOW**”) entered into by Client and Calligo; are collectively referred to as the “**Agreement**.”
- 1.2 This MSA forms a framework under which a Client may order Services from Calligo by entering into an SOW for those Services.
- 1.3 Each SOW shall be deemed to incorporate the terms (including the Schedules) of this MSA, except this Clause 1.
- 1.4 This document sets out the terms and conditions applicable to any Services provided by Calligo. It does not oblige Client or Client Affiliates to order Services from Calligo, nor does it oblige Calligo to accept orders from Client or Client Affiliates.
- 1.5 No obligation to provide Services, or to pay any Charges, shall arise unless and until an SOW has been executed by or on behalf of both the Client and Calligo.
- 1.6 The obligations arising under an SOW shall remain with the contracting parties to it, and shall not impose any obligation on any Affiliate of such contracting parties.

2 Descriptions

2.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with another entity;

"Applicable Laws" has the meaning given to it in clause 9;

"Associated Tools" means tools, object libraries and methodologies owned by Calligo or in which Calligo has rights to sub-licence that relate to the Developed Software;

"Acceptable Use Policy or AUP" means the acceptable use Policy published at www.calligo.cloud/services-and-policies/ and as up-dated by Calligo from time to time;

"Back-Up Policy" means the Policy (if any) for backing up and, if applicable to the Service, archiving the Client Data included in the Service Description;

"Business Day" means Monday to Friday, 08:00 to 18:00 (all times given refer to UK local time), except where the day is a National Holiday;

"Business Hour" means an hour within the Business Day;

"Calligo Properties" has the meaning given to it in Clause 11.3;

"Charges" means all sums payable by the Client in consideration of Calligo's obligation to provide the Services, as calculated in accordance with the SOW and this MSA;

"Client" means the Client Affiliate contracting with Calligo for the supply of the Services (if Client contracts directly for Services then it shall for that purpose be construed as the Client);

"Client's Applications" means the software applications (if any) which have been acquired by or are licensed to the Client and which are used by the Client on the Virtual Machine(s) provided by Calligo as part of the Services;

"Client Data" means the data (if any) which the Client stores on any equipment used in the provision of the Services, or which Calligo inputs into the Software on behalf of the Client for the purpose of facilitating the Client's use of the Services; this may include Personal Data; but shall not be deemed to include Client Information;

"Client Exit"

Assistance Services Policy

means the assistance Calligo offers to a Client that wishes to exit the Services, as published at www.calligo.cloud/services-and-policies/ as up-dated by Calligo from time to time;

"Client Information" means any information about the Client collected, stored and processed by Calligo in connection with the creation or administration of the Services;

"Client Procedures" means the procedures for requesting a service or a change to a service, notifying Calligo of the unavailability of a service or claiming a Service Credit that are specified in the SLA;

"Client Properties" Means the hardware or software owned by the Client, the software rented or licensed by the Client and any communications networks managed by the Client;

"Cloud Resources" means resources such as processor, memory, disk, data transfer (also referred to as bandwidth), virtualisation software, operating system and network or software elements that comprise a cloud based infrastructure;

"Compatibility Matrix" means the Policy set out at <https://calligo.cloud/compatibility> as amended from time to time;

"Confidential Information" has the meaning given to it in Clause 12;

"Court Order" has the meaning given to it in clause 12.7;

"Data Controller" has the meaning given to that expression in the Data Protection Legislation;

"Data Processor" has the meaning given to that expression in the Data Protection Legislation;

"Data Protection Legislation"

(a) prior to 25 May 2018, Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data together with any transposition of that Directive into member state law to which the Data Controller is subject

(b) (i) on or after 25 May 2018, and unless and until the General Data Protection Regulation ((EU) 2016/679) ("GDPR") is no longer directly applicable in the UK, the GDPR Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

- "Data Subject"** has the meaning given to that expression in the Data Protection Legislation;
- "Defect"** means a failure of the Services to comply in any material respect with the description of that service in the Service Description, and **"Defective"** is to be construed accordingly;
- "Denial of Service Attack"** means an attack which is intended to cause or actually causes any information technology resource, network, website or service to be disrupted, disabled, reduced or rendered unavailable, including (without limitation) a distributed denial of service attack;
- "Developed Software"** means the software (including the source code) created by Calligo under this Agreement;
- "Documentation"** means documentation which is owned by Calligo or in which Calligo has rights to sub-licence and is associated with the Software or Service as it describes the characteristics of the Software or Service (including but not limited to technical, functional and performance characteristics) and/or it allows the Client to make full use of the Software or Service; and as may be published from time to time by Calligo at <https://viaje.cloud/support>;
- "Effective Date"** has the meaning given to it at the beginning of this agreement;
- "Intellectual Property Rights"** means any patent, copyright, trade mark, trade name, service mark, registered design, design right (registered or unregistered), know-how, right of confidence, trade secret, right to extract or exploit data, database rights, any similar rights protected in any jurisdiction, whether now existing or coming into existence at some future date, any application for any of the above, and any accrued rights of action in respect of any of the above;
- "Harmful Element"** means any virus, worm, time bomb or anything else which might disrupt, disable, harm or impede the operation of any information system, or which might corrupt, damage, destroy or render inaccessible any software, data or file on, or that may allow any unauthorised person to gain access to, any information system or any software, data or file on it;
- "National Holiday"** means bank and public holidays in the UK;
- "Notice Period"** means the period of time that the Client must provide if it wishes to give notice not to renew the Service;

"Personal Data"	has the meaning given to that expression in the Data Protection Legislation;
"Policy" and/or Policies"	means those policies of Calligo as amended by notification to the Client from time to time, including, but not limited to, the Acceptable Use Policy; Client Notification Policy and Compatibility Matrix Policy;
"Primary Contact"	means the person or persons appointed as the Client's primary contact as described in clause 14.4.1;
"Security Incident"	means any (i) unlawful access to systems or data, (ii) accidental or unlawful loss, alteration, or destruction of data, or (iii) any other breach of security;
"Scheduled Maintenance"	means any planned or preventative repair, maintenance, upgrade, update, support, testing or implementation of any system about which the Client is notified at least 48 hours in advance and that is performed during a standard maintenance window between 22:00 and 04:00 local time of the data centre or at another time outside of Business Hours with not less than 5 days' notice to the Client, OR as published at www.calligo.cloud/services-and-policies/ and as updated from time to time;
"Service(s)"	means those service or services to be provided by Calligo to the Client as listed in Schedule 1 and/or the SOW and as more particularly defined in the applicable Service Description;
"Service Credits"	means a credit (or rebate) to the Client as remedy for a failure to comply with the Service Level Agreement, as calculated and applied in accordance with the SLA;
"Service Commencement Date"	means the date defined in the SOW or in the absence of any such definition means the date that Calligo commenced the provision of Services;
"Service Description"	is the description of the Service(s) published at www.calligo.cloud/services-and-policies/ and as up-dated by Calligo from time to time;
"Service Level"	

- Agreement or SLA**” means the target metrics for the Services published at www.calligo.cloud/services-and-policies/ and as up-dated by Calligo from time to time;
- “Software**” Software is the software, including without limitation, application packages, operating systems, databases and portals, provided for use by the Client as part of the Services, including any associated user Documentation;
- “Software Terms”** means the terms and conditions imposed by Calligo or any third party provider of the Software made available to the Client from time to time online at the web address www.calligo.cloud/services-and-policies/ (or such other web address as may be notified to the Client from time to time), as amended from time to time by the relevant software supplier;
- “Staff”** means employees, contractors or consultants of Calligo;
- “Statement of Work or SOW”** means a statement supplied by Client to Calligo requesting Services in the format detailed at Schedule 2 and which format may be amended by Calligo from time to time;
- “Storage Period”** has the meaning given to it in clause 8.9;
- “Subscription Term”** means thirty-six (36) months from the Effective Date;
- “Tax”** means any applicable sales, use, excise, value added, withholding, or similar taxes, duties, or assessments imposed upon the Services rendered or products provided hereunder by any national, state, local, or foreign government authority;
- “User”** means an employee, customer, agent, contractor, business partner or service provider of the Client that has a User Account;
- “User Account”** means logon information (such as user name and password) enabling a User to access the Services on behalf of the Client; and
- “Virtual Machine”** is a guest operating system such as Windows or Linux that runs as an isolated entity on a host and is separated from the physical resources it uses such that the host environment is able to dynamically assign those resources among several Virtual Machines.

2.2 In this Agreement, unless otherwise specified:

- 2.1.1 the headings in this Agreement shall not affect its interpretation;
- 2.1.2 unless otherwise stated, references to a statute or law or any article or part of any statute or law include any amendment, modification or re-enactment and subordinate legislation under it in force from time to time;

- 2.1.3 except where the context otherwise requires, the masculine includes the feminine, the singular includes the plural and, in each case, vice versa;
- 2.1.4 a person includes any person, individual, company, firm, corporation, government, state or agency of a state or any undertaking or organisation (whether or not having separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists); and
- 2.1.5 references to recitals, clauses and schedules are to recitals, clauses of and schedules to this Agreement unless the context otherwise requires.

3 Amending Schedules, Policies and Service Descriptions

- 3.1 Calligo reserves the right to amend the Schedules, the Policies and the Service Definitions (and the location of any hyperlinks and/or websites publishing same) from time to time and, upon doing so, will notify the Client. The Client acknowledges and accepts that Calligo may do so and shall raise no objection in that regard.

4 Interpretation

- 4.1 Wherever possible the contract documents are to be read as cumulative and complementary. However, to the extent that any provisions of any of the contract documents are or may be inconsistent, the contract documents shall be interpreted and applied in the following priority:
 - 4.1.1 highest; the SOW; and
 - 4.1.2 lowest; the provisions of this Agreement.

5 Services

- 5.1 Calligo shall commence provision of the Services on or about the Service Commencement Date.
- 5.2 Calligo shall provide the Services in accordance with the relevant Service Description and the SLA. For the avoidance of doubt, in order to provide the Services, there are responsibilities assigned to the Client (as detailed in the Service Description) that must be met by the Client.
- 5.3 If the service levels described in the Service Description and/or SLA are not met, Service Credits shall accrue in accordance with the SLA, which the Client acknowledges are adequate and sufficient, and shall be the Client's sole remedy for a breach of the SLA or this Clause 5.
- 5.4 Calligo will use reasonable endeavours to make the Services available in accordance with the SLA except for when Scheduled Maintenance, emergency or unplanned maintenance is carried out.

- 5.5 Calligo is not obliged to provide any service except as specified in the SOW and Calligo reserves the right to charge the Client for any other service provided by Calligo at the Client's request (or exceeding the scope described in the SOW) at Calligo's then standard rates.
- 5.6 Calligo will endeavour to carry out emergency and unplanned maintenance and other emergency operations outside Business Hours and Calligo will endeavour to give the Client at least 2 Business Hours' notice in advance of the same. However, the Client acknowledges that, depending on the circumstances, Calligo may not be able to give that or any notice of emergency or unplanned maintenance. Calligo will give notice of Scheduled Maintenance by e-mail.
- 5.7 Calligo reserves the right at any time to make any improvement, substitution, or modification in the design, delivery, architecture, or configuration of the Services without notice to the Client provided that any such improvement, substitution, or modification shall not result, unless agreed to by the Client, in any detrimental change in the functionality or performance of the Services.

SUSPENSION OF THE SERVICE

- 5.8 Calligo may disable the User Account and/or suspend access to Services, without notice and without liability to the Client if:
 - 5.8.1 there has been, or if Calligo suspects that there may have been, a breach of the Acceptable Use Policy;
 - 5.8.2 the Client fails to pay any amount due to Calligo within 20 Business Days of the due date for payment;
 - 5.8.3 Client breaches third party terms and conditions;
 - 5.8.4 Calligo knows or suspects that a Harmful Element has been introduced into the Services, the Software, or Calligo's IT infrastructure, or the system of any other person where that may affect the Services, the Software, or the Client Properties, or the system of any other client of Calligo;
 - 5.8.5 Calligo knows or suspects that any Client Data infringes the Intellectual Property Rights or other rights of any third party, or is in any way unlawful, or is likely to lead to any third party instituting legal proceedings against Calligo or its Affiliates;
 - 5.8.6 there is a Denial of Service Attack that affects the Services, Calligo's Equipment, or the systems of or the services provided to any other client of Calligo; or
 - 5.8.7 the Client changes, adds to or deletes any public IP address or MAC address allocated to it by Calligo without first obtaining Calligo's written permission.

Use of the Services

- 5.9 The Client will comply with the Acceptable Use Policy. Calligo reserves the right, without liability to the Client, to disable the Client's access to the Service if the Client breaches the Acceptable Use Policy.
- 5.10 If Calligo supplies any Software to the Client as part of the Services, the Client will comply with the Software Terms for that Software, and Calligo reserves the right, without liability to the Client, to disable the Client's access to the Service if the Client breaches those Software Terms.
- 5.11 The Client will not:
- 5.11.1 except to the extent expressly permitted under this Agreement, copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute the Services or the Software in any form or media or by any means, and not to attempt to do any of the above;
 - 5.11.2 except to the extent permitted by any applicable law which the parties cannot exclude by agreement, reverse compile, disassemble, reverse engineer or reduce to human-readable form all or any of the Software, and not to attempt to do any of the above;
 - 5.11.3 use the Services or the Software to create or supply a product or service which competes with the Services;
 - 5.11.4 license, sell, rent, lease, transfer, assign, distribute, display, disclose, exploit, make the Services or the Software available to any third party;
 - 5.11.5 assist or allow any third party to do any of the acts prohibited by Conditions 5.11.1 to 5.11.4 (inclusive); or
 - 5.11.6 change, add or delete any public IP address or MAC address allocated to it by Calligo without first obtaining Calligo's permission in writing.
- 5.12 The Client will:
- 5.12.1 use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and the Software. The Client will notify Calligo immediately if the Client becomes aware of any such unauthorised access;
 - 5.12.2 comply with, and ensure that its staff comply with any rules, regulations, standards, protocols and procedures issued by Calligo to the Client from time to time in connection with the use or security of the Services and the Software;
 - 5.12.3 notify Calligo as soon as the Client becomes aware of, or suspects, any unauthorised use of, or breach of security in relation to, the Services and the Software; and
 - 5.12.4 agree to maintain their consumed Services in line with Calligo current standards, Policies and procedures.

- 5.13 User Accounts are specific to an individual user and under no circumstances may User Accounts or passwords be shared among or by different users.
- 5.14 Client and any User agrees to abide by all laws, rules, and regulations that are applicable to the use of the Services. In addition, Client and any User may not, and may not permit any third party to, (i) access the Service for the purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes; (ii) use it in a way that harms Calligo or our affiliates, resellers, distributors, and/or service providers; (iii) use automated scripts to access the service; (iv) resell, copy, transfer, reproduce, modify, translate, prepare derivative works of, decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the Service; (v) use the Service in a service bureau or any other manner to provide services for a third party; or (vi) circumvent or disable any security or other technological features or measures of the Service. Except for the express rights granted herein, Calligo does not grant any other licenses, whether express or implied, to any Calligo software, services, or intellectual property.
- 5.15 Future versions of the Software may be developed and released by Calligo at its sole discretion. Calligo does not warrant or represent that it will develop or release any upgrades within a given timeframe.
- 5.16 Calligo reserve the right to withdraw support for legacy products or services, whether Calligo's own or those of third party providers.
- 5.17 Calligo operates a policy of providing Service Credits for service downtime.

6 Fees and Payments

- 6.1 Payment of the Charges must be made monthly in arrears by electronic bank transfer to Calligo's account in Jersey pounds (the currency of the State of jersey).
- 6.2 Unless otherwise described in the SOW, part months shall be billed as whole months. For example if the Service is provisioned on the 15th of the month then Client will be invoiced for the whole month.
- 6.3 Calligo will invoice Client on a monthly basis.
- 6.4 Charging for Services will commence within 30 days of the Service Commencement Date.
- 6.5 Calligo can vary the Charges by providing one month's notice to Client.
- 6.6 Payment is due on the fifteenth (15th) day after the date of the invoice. A service charge of 1.5% per month (or the maximum rate permitted by applicable law, if lower) will be assessed against overdue invoices from the original due date for payment until receipt by Calligo of cleared funds in complete discharge of the outstanding Charges.
- 6.7 If the Client fails to pay any amount within 20 Business Days of the due date for payment, Calligo may, without liability to the Client and in accordance with clause 5.8, suspend the Client's access to Service(s) and Calligo will be under no obligation to provide the Services while that amount remains unpaid.

- 6.8 Calligo is not obliged to provide any Service except those agreed in the SOW. Calligo reserves the right to charge the Client, and the Client will pay Calligo its standard charges from time to time for, any other service supplied by Calligo.
- 6.9 On the termination of this Agreement Client will pay Calligo, in accordance with this Clause 6,
- 6.9.1 all unpaid Charges accrued up to the date of termination; and
 - 6.9.2 for all costs and expenses which Calligo has incurred or agreed to incur in connection with any work done or to be done for the Client.
- 6.10 If Client exceeds any of the limitations (for instance, but not limited to, the amount of storage capacity utilised) specified in the Service Description, Calligo may charge Client, and Client will pay, Calligo's then current fees for that coverage.
- 6.11 The Charges and other fees and expenses payable under this Agreement are not refundable.
- 6.12 The Charges are stated exclusive of Tax. The Client will pay to Calligo any Tax properly chargeable on the Charges.
- 6.13 Client may utilise more Cloud Resources (whether by using self-service tools or instruction to Calligo) and, unless otherwise agreed in writing, said resources will be charged at the same rate as Client's existing resources. Client recognises that an explicit increase in one Cloud Resource (e.g. storage) may have a consequent increase in other Cloud Resources (e.g. CloudCopy or CloudShield). An increase in Cloud Resources will be reflected in the monthly Charges. The Client may not decrease Cloud Resources below 75% of the existing value of Cloud Resources without obtaining the prior consent of Calligo and in no event may the Client decrease Cloud resources below those detailed in the MSA and/or SOW without Calligo's written consent.
- 6.14 Additional Cloud Resources ordered by Client as described in this Clause 6 will co-term with first order placed by Client for Cloud Resources.

7 Term & Termination

- 7.1 The term of this Agreement shall commence on the Effective Date and shall continue until terminated as stated herein.
- 7.2 The term of the Agreement shall be the Subscription Term unless extended or terminated as described below and thereafter, the Agreement will automatically renew for successive yearly periods, until terminated in accordance with this Agreement.
- 7.3 Unless specifically agreed in writing between the parties in the SOW the Notice Period shall be 12 whole calendar months.
- 7.4 Either party may provide notice that it does not wish to renew a Service at any point subject to such notice not expiring before the later of a) the Subscription Term and b) the Notice Period.

- 7.5 **Termination for Cause.** If either party fails to comply with any of the material terms and conditions of this Agreement, including without limitation the payment of any Charges or other reimbursement due under this Agreement, the non-defaulting party may terminate this Agreement and any and all license rights upon thirty (30) days' written notice to the defaulting party specifying any such breach, unless within the period of such notice, all breaches specified therein shall have been remedied.
- 7.6 Either party may terminate this Agreement upon: (i) the institution of insolvency, bankruptcy, or similar proceedings by or against the other party, (ii) any assignment or attempted assignment by the other party for the benefit of creditors, or (iii) any appointment, or application for such appointment, of a receiver for the other party.
- 7.7 Termination is not an exclusive remedy for Calligo and Calligo reserves all other available remedies in contract or by law.
- 7.8 The termination of this Agreement will not affect any accrued rights or liabilities of either party, nor will it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly, or by implication, intended to come into or to continue in force on or after termination.
- 7.9 **Effect of Termination.** Upon termination of this Agreement;
- 7.9.1 Client and any Users must immediately stop using the Services (and/or Software), return or destroy all Documentation, and certify such return or destruction in writing;
 - 7.9.2 all User Accounts or your access to all User Accounts will be deactivated or deleted;
 - 7.9.3 Client Data will be retained by Calligo and made available to Client as described in the Client Exit Assistance Services Policy; and
 - 7.9.4 All sums due to Calligo will immediately become due and owing in accordance with clause 6.9.
- 7.10 The termination of this Agreement will not affect any accrued rights or liabilities of either party, nor will it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly, or by implication, intended to come into or to continue in force on or after termination.
- 7.11 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

8 The Client Data

- 8.1 Calligo does not claim any Intellectual Property Rights in the Client Data and the Client will own all Intellectual Property Rights in the Client Data.
- 8.2 Calligo is not responsible for the content of any of the Client Data. The Client will ensure that Client Data conforms to the Acceptable Use Policy.

- 8.3 The Client is responsible for defining the controls required so that particular Client Data is accessible only by, and may be changed only by, those people whom the Client intends to have access to or to be able to change them.
- 8.4 If any of the Client Data is degraded, lost, destroyed or corrupted as a result of Calligo's breach of this Agreement or its negligence, Calligo will use reasonable endeavours to restore the degraded, lost or corrupted Client Data from the latest back-up of that Client Data where such a back-up is maintained by Calligo. Calligo's compliance with this clause 8.4 will be in full and final settlement of all claims which the Client may have against Calligo in connection with the degradation, loss, destruction and corruption of the Client Data.
- 8.5 Calligo will not be responsible for any degradation, loss, destruction, alteration or disclosure of any of the Client Data caused by the Client or any third party retained by the Client.
- 8.6 During the provision of the Services, any Client Data in transit between the Client's System and Calligo's IT Infrastructure, is at the Client's risk, and Calligo will not be liable for any degradation, loss, destruction or corruption of any of the Client Data while in transit.
- 8.7 If Calligo processes any Personal Data on the Client's behalf when providing the Services, the provisions of Clause 9 will apply in addition to this Clause 8.
- 8.8 Calligo will, unless otherwise stated, host the Service using its own infrastructure (hosted in commercial, third party, data centres). At the Client's request, Client Data may be stored in specific jurisdictions identified by the Client in the SOW (e.g. Jersey, Guernsey, Switzerland, etc.). The Service can be accessed from outside of these jurisdictions and the Client understands that if it requires to restrict such access then it is responsible for implementing technical or other measures to effect such restriction.
- 8.9 The Client Data will be stored for 30 days following the termination of your account (the "**Storage Period**"). Calligo reserves the right to charge for the storage used to hold the Client Data during the thirty (30) days period. Upon the end of the Storage Period, unless Calligo has been notified that Client wishes to use the assistance in the Client Exit Assurance Policy, and except to the extent that Calligo is required to keep a copy for legal or compliance purposes, then all Client Data will be permanently deleted from the Calligo's servers. Once deleted, this information cannot be recovered.
- 8.10 ***Mere Conduit*** - Calligo is under no obligation to check that the Client Data is lawful or compliant with the Acceptable Use Policy. However, Calligo may (in its sole discretion) delete, edit, block, or permanently remove from its systems any material if it has reason to believe that that material is unlawful or illegal or in some other way breaches the Acceptable Use Policy. Calligo reserves the right immediately to remove or disable access to any Client Data which it suspects is infected with Harmful Element or which might infect or corrupt Calligo's data or systems or the data or systems of any person. For the avoidance of doubt however, Calligo will not interrogate Client Data.

- 8.11 **Client Information** – Calligo will deal with Client Information in compliance with its own internal policies.

9 Personal Data protection

- 9.1 For the avoidance of doubt, this clause 9 relates to Personal Data contained within Client Data. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 9.2 The parties acknowledge that for the purposes of the Data Protection Legislation and this Clause 9, the Client is the Data Controller and Calligo is the Data Processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
- 9.3 Schedule 3 sets out the scope, nature and purpose of processing by Calligo, the duration of the processing and the types of Personal Data (and categories of Data Subject).
- 9.4 Without prejudice to the generality of clause 9.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Calligo for the duration and purposes of this agreement.
- 9.5 Without prejudice to the generality of clause 9.1, Calligo shall, in relation to any Personal Data processed in connection with the performance by Calligo of its obligations under this agreement:
- 9.5.1 process that Personal Data only on the written instructions of the Client unless Calligo is required by the laws of any member of the European Union or by the laws of the European Union applicable to Calligo to process Personal Data ("**Applicable Laws**"). Where Calligo is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, Calligo shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Calligo from so notifying the Client;
 - 9.5.2 ensure that it has in place appropriate technical and organisational measures reviewed, approved and considered sufficient by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- 9.5.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - 9.5.4 not transfer any Personal Data (a) from any specific jurisdiction specified by the Client in the SOW pursuant to Clause 8.8 and (b) outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - 9.5.4.1 the data subject has enforceable rights and effective legal remedies;
 - 9.5.4.2 Calligo complies with its obligations under the Data Protection Legislation by providing appropriate technical and organisational measures to protect any Personal Data that is transferred; and
 - 9.5.4.3 Calligo complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
 - 9.5.5 assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 9.5.6 notify the Client without undue delay on becoming aware of a Personal Data breach;
 - 9.5.7 at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the Personal Data; and
 - 9.5.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 9.
- 9.6 The Client consents to Calligo appointing third-party processors of Personal Data under this agreement. Calligo confirms that it has entered or (as the case may be) will enter with any such third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 9. As between the Client and Calligo, Calligo shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 9.
- 9.7 Either party may, at any time on not less than 30 days' notice, revise this clause 9 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

10 Third Party Providers

- 10.1 The Services may allow the Client to access and use software and operating systems provided by third parties. If the Client does so, it shall be at the Client's (and not Calligo's) risk.
- 10.2 Calligo will have no liability and no obligation in relation to the content or use of any third party software or operating systems, or any correspondence between the Client with any third party, or in relation to any transaction or contract entered into between the Client and any third party.
- 10.3 Before installing any software or operating system, the Client hereby undertakes that it will first consult the Compatibility Matrix and satisfy itself that its third party software and/or operating systems meets the minimum requirements of the Compatibility Matrix and further, warrants that its use of any software or operating system is, and will remain, compatible with the Services and/or the Software.
- 10.4 The Client shall defend, indemnify and hold harmless Calligo against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Client's use of any such software and operating systems provided by third parties.

11 Intellectual Property

- 11.1 Client acknowledges and agrees that Calligo or its licensors own all Intellectual Property Rights in the Services and the Software. Except as expressly stated in this Agreement, this Agreement does not grant Client any rights in respect of the Services or the Software.
- 11.2 For the avoidance of doubt, unless expressly stated to the contrary, ownership of relevant Intellectual Property Rights in software or other materials that existed at the commencement of the Agreement is not affected.
- 11.3 **Calligo Properties.** Calligo has created, acquired or otherwise has rights in, and may, in connection with the performance of Services, employ, provide, modify, create, acquire or otherwise obtain rights in, various concepts, ideas, methods, methodologies, procedures, processes, techniques (including, without limitation, function, process, system and data models); templates; the generalised features of the structure, sequence and organization of software, user interfaces and screen designs; general purpose consulting and software tools, utilities and routines; and logic, coherence and methods of operation of systems; proprietary computer software, software libraries, algorithms, materials, products, and designs; and know-how used by Calligo or its affiliates in providing Services (including all copies, enhancements, modifications, revisions, and derivative works of any of the foregoing) (collectively, the "**Calligo Properties**"). Calligo owns all right, title, and interest in the Calligo Properties, including, without limitation, all rights under all copyright, patent and other intellectual property laws. To the extent that Calligo

utilises any of its property (including, without limitation, the Calligo Properties, Software or any hardware or software of Calligo) in connection with the performance of the Services or incorporates the Calligo Properties into the Client Properties,

- (i) such property shall remain the property of Calligo, and
- (ii) subject to Calligo's receipt of payment for the relevant Services, Calligo grants to Client a non-exclusive, perpetual and royalty-free license to use the Calligo Properties incorporated into the Client Properties only in connection with the Client's use or enhancement of such Client Properties. Except as stated herein, Client shall acquire no right or interest in the Calligo Properties. Calligo may employ, modify, disclose, and otherwise exploit the Calligo materials (including, without limitation, the Calligo Properties) for other clients.

11.4 Calligo and Calligo personnel will be free to fully employ and use at all times their know-how, expertise, methods, techniques, or skills as gained, learned or enhanced during the provision of any Services.

11.5 ***Third-Party Properties.*** Nothing herein shall cause or imply any sale, license, or other transfer of proprietary rights of or in any third party software or products from one party to this Agreement to the other party.

11.6 Calligo is not responsible for any infringements to third party copyrights, patents or trade secrets where the Client has made amendments to original documents and similar works prepared by Calligo without the express approval of Calligo, or where the Client fails to use the most recent versions of such works that have been delivered by Calligo.

12 Confidentiality

12.1 Neither party shall disclose to a third party Confidential Information (as defined below) of the other party.

12.2 The receiving party shall use the same degree of care as it uses to protect the confidentiality of its own confidential information of like nature, but no less than a reasonable degree of care, to maintain in confidence the Confidential Information of the disclosing party.

12.3 Either party may disclose Confidential Information received from the other party which:

12.3.1 is required to be disclosed by law, subpoena or other process,

12.3.2 is disclosed to nominated third parties under written authority from the original disclosing party of the Confidential Information; or

12.3.3 is disclosed to the receiving party's legal counsel, accountants or professional advisors to the extent necessary for them to advise upon the interpretation or enforcement of this Agreement.

- 12.4 Confidential Information means information related to the subject matter of this Agreement (including any Client customer data or third party information), and the business of the disclosing party, which
- 12.4.1 derives economic value, actual or potential, from not being generally known to or readily ascertainable by other persons who can obtain economic value from the disclosure or use of the information,
 - 12.4.2 is the subject of efforts by the disclosing party or owner of the third party Confidential Information that are reasonable under the circumstances to maintain the secrecy of the information,
 - 12.4.3 is identified by either party as "Confidential" and/or "Proprietary", or which, under all of the circumstances, ought reasonably to be treated as confidential and/or proprietary, including this Agreement.
- 12.5 Confidential Information shall not include any information that
- 12.5.1 is at the time of disclosure, or thereafter becomes, through a source other than the receiving party, publicly known,
 - 12.5.2 is subsequently learned from a third party that does not impose an obligation of confidentiality on the receiving party,
 - 12.5.3 was known to the receiving party at the time of disclosure, or
 - 12.5.4 is developed independently by the receiving party.
- 12.6 The obligations of confidentiality hereunder with respect to any Confidential Information shall survive the termination of this Agreement.
- 12.7 If the receiving party receives an order of a competent court (a "**Court Order**") to divulge any Confidential Information belonging to the disclosing party, then the receiving party is permitted to release such information to the court in accordance with any Court Order so served. The party receiving such Court Order agrees (unless the Court Order specifically prohibits this) promptly to notify the disclosing party, and if so requested, will provide reasonable cooperation to the disclosing party in resisting the disclosure.
- 12.8 Upon termination of this Agreement, the receiving party, at the option and written request of the disclosing party, will return or destroy all Confidential Information belonging to the other party.
- 12.9 Calligo may name the Client in its marketing materials, including its website, but may not, without the prior written approval of the Client, identify the products or services supplied or attribute any comment to the Client.

13 Warranty

- 13.1 ***Client's Identity.*** Client warrants:
- 13.1.1 that it has accurately identified itself and will maintain the accuracy of such identification; and

- 13.1.2 that it is a corporation or other business entity authorised to do business pursuant to applicable law or
- 13.1.3 is an individual 18 years or older.
- 13.2 ***Right to Do Business.*** Each party warrants that it has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement.
- 13.3 Calligo warrants;
 - 13.3.1 that the Services provided to the Client will be provided with reasonable skill and care; and
 - 13.3.2 will substantially comply with the Service Description relating to it.
- 13.4 Notwithstanding Clause 13.3 or any other provision of this Agreement:
 - 13.4.1 Because of the nature of software, information systems, telecommunications systems and the internet, Calligo does not warrant or represent that the use of the Services will be uninterrupted or error-free; nor that every Defect, error or deficiency in the Services can be rectified, nor that the Services or the information obtained by the Client through the use of the Services will meet the Client's requirements;
 - 13.4.2 Calligo will not be liable for any problem with, or any delay or interruption in the Services or for any failure or delay in delivery, or for any loss or damage resulting from the transfer of data (or the failure to transfer data) over any communications network or facility not operated by Calligo, including (without limitation) the Client's network connections or telecommunications links and the internet, and the Client acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications networks and facilities;
 - 13.4.3 Calligo will not be liable if the Services do not provide a facility or feature not set out in the Service Description;
 - 13.4.4 Calligo will not be liable for any fault or defect in any of the Client's Applications or for any fault or defect caused by the application of any security patch, or caused by any upgrade, update, new release, revision, version, workaround or modification to the Client's Applications; and
 - 13.4.5 Calligo will not be liable for any error or incompleteness in the Client Data.
- 13.5 Calligo will not be liable under any warranty or any other provision of this Agreement to the extent that any loss or damage is caused by:
 - 13.5.1 the Client or any User not having complied with this Agreement (and in particular, those responsibilities assigned to the Client under the Service Descriptions); any negligent or unlawful act or omission of the Client or User; the misuse of the Services (or any part of any of them), or the use of the Services by the Client or any User contrary to Calligo's instructions; any delay or failure on the part of the Client in providing any information

- or data to Calligo; any delay or failure on the part of the Client to notify Calligo of any error in the Client Data; any other act or omission on the part of the Client; any act or omission of any third party;
- 13.5.2 the Client having failed to comply with any technical prerequisites or licensing requirements specified from time to time by the licensor of any software or the manufacturer of any equipment; or the Client's failure to implement, or delay in implementing, any firewall, anti-virus software, security patch, upgrade, update, new release, revision, version, workaround or modification which would have remedied or mitigated the effects of any Harmful Element, Defect, error or deficiency;
- 13.5.3 the modification or alteration of the Services by anyone except Calligo or Calligo's Affiliates; or
- 13.5.4 any failure by the Client to keep full and up-to-date security copies of the software forming part of the Client Properties and of the Client's Applications in accordance with best computing practice, and of the Client Data which it supplies to Calligo or processes using the Services.
- 13.6 The Client acknowledges that the benefits of using the Services are dependent on the Client exercising proper skill, care and judgement in inputting and maintaining the Client Data and in interpreting the information and data received via the Services. Calligo does not warrant that any such data will be complete, accurate or up to date, and Calligo will not be liable for the consequences of any decision taken by the Client or any other person, on the basis of that information or data.
- 13.7 Calligo warrants that it has up-to-date licenses for all third party software it may use or employ in the provision of the Services.
- 13.8 The express undertakings and warranties given by Calligo in this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations on the part of Calligo, whether express or implied by statute, common law, custom, trade usage, course of dealing or in any other way. All of these are excluded to the fullest extent permitted by law.
- 13.9 The Client warrants that:
- 13.9.1 it has not been induced to enter into this Agreement by any representation or warranty except those specifically set out in this Agreement. The Client waives all claims for breach of any warranty and all claims for any misrepresentation, (negligent or any other kind, unless made by Calligo fraudulently) which is not specifically set out in this Agreement; and
- 13.9.2 ***Disclaimers of Warranty.*** Except for the warranty in clauses 13.3 and 13.7 above, Calligo disclaims any and all express or implied warranties, including any warranties of merchantability, fitness for purpose, or with respect to design or latent defects, or compliance with laws, regulations, or official government releases applicable to the Client.

14 The Client's obligations

- 14.1 The Client will:

- 14.1.1 before the Services Commencement Date, and to the satisfaction of Calligo, procure the Client's Applications and all internal computer equipment, terminals, peripheral equipment, software, telecommunications systems and network connections necessary for it, in the sole opinion of Calligo, to adequately receive and/or utilise the Services and comply with the Compatibility Matrix;
 - 14.1.2 ensure that it and each of the Users have, as a minimum, an understanding of basic IT skills and secure computing best practices; and
 - 14.1.3 ensure that any of the operating systems or Client's Applications are appropriately licensed for use on Virtual Machines in multi-tenant virtualised (cloud) environment including, but not limited to, Microsoft SPLA licensing requirements.
- 14.2 When using the Services the Client will comply with all laws and regulatory requirements and the rules, regulations and standards imposed by any competent body which apply to the Client and its activities and will not use the Services to commit, or to assist in the commission of, any fraud or other criminal or unlawful activity.
- 14.3 The Client will not introduce any Harmful Element into the Services. The Client will use up-to-date and adequate anti-virus software and firewalls and will apply and implement all security patches, upgrades, updates, new releases, revisions, versions, workarounds and modifications in order to remedy or mitigate the effects of any Harmful Element as soon as possible.
- 14.4 The Client will:
- 14.4.1 in accordance with the Client Exit Assistance Policy appoint at least one Primary Contact, who will act as the Client's primary contact and who will have authority to take decisions and act on behalf of the Client in relation to the Services and this Agreement.
 - 14.4.2 The Client recognises that delivery by Calligo of the Services depends upon features and functions provided by VMware, and other software affiliates, and that periodically those affiliates will provide new software releases which will need to be implemented in order that Calligo can continue to deliver its obligations. The Client recognises its responsibility to implement software releases as these are made available by Calligo and its partners or affiliates and that failure to do so may result in Calligo being unable to deliver the Services.
- 14.5 The Client will carry out its obligations under this Agreement in a timely and efficient manner. In the event of any delay on the part of the Client, Calligo may adjust any agreed timetable or delivery schedule as reasonably necessary.
- 14.5.1 The Client shall defend Calligo (and its Affiliates, and its and their subcontractors, employees, and agents), and indemnifies it and them against, any loss, damage, or expense (including reasonably incurred legal expenses) arising out of or in connection with:

- 14.5.2 any claim or allegation that the Client Data or other material provided on the Client's behalf infringes the Intellectual Property Rights or other rights of any person;
 - 14.5.3 a breach of the Acceptable Use Policy; and
 - 14.5.4 any use of Services other than in accordance with this Agreement.
- 14.6 If the provision of the Service(s) requires Calligo to attend at the Clients premises, the Client shall provide Calligo and its representatives with all office and other accommodation and facilities and support that Calligo may reasonably require to perform the Services including, in particular, provision of telephones, photocopying, internet access, and computer facilities.

15 Disclaimer and Limitation of Liability

- 15.1 This Clause sets out the Parties' entire liability (including any liability for the acts and omissions of its employees, consultants, agents and sub-contractors) to the other in respect of:
- 15.1.1 any breach of its contractual obligations arising under this Agreement; and
 - 15.1.2 any representations (other than pre-contractual fraudulent misrepresentations) or statements or tortious acts or omissions including negligence arising under or in connection with this Agreement.
- 15.2 Neither Party excludes or limits liability to the other Party in respect of:
- 15.2.1 death or personal injury;
 - 15.2.2 any fraudulent pre-contractual misrepresentations made by it on which the other Party can be shown to have relied.
- 15.3 The liability of a Party to the other Party in relation to loss of or damage to any tangible property shall be limited to £1,000,000. In all other circumstances, a Party may recover direct loss only and the liability of the other Party shall be as set out in Clauses 15.4 and 15.5 below.
- 15.4 To the extent Calligo is held legally liable to the Client or any Affiliate, Calligo's liability arising out of this Agreement, other than liability arising under Clause 15.2, shall not exceed £2m.
- 15.5 Notwithstanding anything else contained in this Agreement:
- 15.5.1 neither party shall be liable to the other for loss of profits, loss of contracts, loss of business, loss of revenue, loss of goodwill, loss of anticipated savings or loss of custom or customers; any indirect or consequential loss;
 - 15.5.2 Calligo shall have no liability to the Client or any Affiliate for or arising out of any direct or indirect loss of or corruption of any computer application

or operating software or data or for any loss of or damage to or destruction of data or for software restoration.

- 15.6 Other than those expressly set out in this Agreement, there are no other express or implied warranties, terms, conditions or representations in relation to the Services or otherwise, including those for satisfactory quality or fitness for purpose.
- 15.7 The provisions of this Clause 15 shall survive termination of this Agreement insofar as they relate to events occurring before such termination.

16 Law / Dispute Resolution

- 16.1 This Agreement shall be governed by and construed in accordance with the law of England and Wales.
- 16.2 Subject as may be provided elsewhere in this agreement, a director or other senior representative of each party with authority to settle the dispute will, within fourteen (14) days of a written request from one party to the other, speak with the other in a good faith effort to resolve the dispute.
- 16.3 If the director or other senior representative fail to resolve the matter, or fail to speak, within 14 days of the written request, (or such further date as the parties may agree in writing) the parties will be free to commence proceedings for the resolution of the dispute.
- 16.4 Each party irrevocably agrees that the courts of the State of Jersey shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.
- 16.5 Provided that nothing in Clause 16.1 shall prevent either party seeking injunctive relief at any time it considers it appropriate to do so.

17 General

- 17.1 The Client shall not assign, sub-license or otherwise transfer this Agreement whether in whole or in part, without the prior written consent of Calligo, and except as set out in Clause 17.2.
- 17.2 Calligo shall not unreasonably withhold or delay its consent to an assignment or transfer by the Client of the entire benefit of this Agreement (but not part thereof) to a Client Affiliate (for so long as it remains a Client Affiliate) provided that any such person or any such company enters into a written undertaking with Calligo to comply with the terms and conditions of this Agreement.
- 17.3 Calligo may assign, sub-licence or otherwise transfer this Agreement to a subsidiary or holding company without the prior consent of the Client.
- 17.4 Except as specifically provided in this Agreement, this Agreement may only be amended or varied by written agreement between the Parties.
- 17.5 This Agreement, the SOW and any relevant Software Terms constitute the entire agreement between the parties relating to the subject matter hereof and the Client hereby warrants to Calligo that it has not been induced to enter into this Agreement

by any prior representations whether oral or in writing, except as specifically contained in this Agreement and the Client hereby waives any claim for breach of any such representations which are not so specifically mentioned.

17.6 **Severability.** If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision will be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability.

17.6.1 The invalidity or unenforceability of one or more of the provisions contained in this Agreement will not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provisions of this Agreement invalid or unenforceable whatsoever.

17.7 **Force Majeure.** Calligo will be excused from performance of its obligations under this Agreement if such a failure to perform results from acts of god, fire, strike, embargo, terrorist attack, war, insurrection or riot or other causes beyond the reasonable control of the Calligo. Any delay resulting from any of such causes will extend performance accordingly or excuse performance, in whole or in part, as may be reasonable under the circumstances.

17.8 Calligo shall be deemed to be an independent contractor and accordingly in connection with the provision of the Services nothing in this Agreement shall (a) constitute a relationship of employee and employer and/or (b) be construed as establishing a partnership or joint venture, between Calligo and Client. Each party will act in good faith in the performance of its respective duties and responsibilities and will not unreasonably delay or withhold the giving of consent or approval required for the other party under this Agreement.

17.9 No waiver under this Agreement will be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of such waiver is sought. Any such waiver will constitute a waiver only with respect to the specific matter described therein and will in no way impair the rights of the party granting such waiver in any other respect or at any other time. Any delay or forbearance by either party in exercising any right hereunder will not be deemed a waiver of that right.

17.10 The parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the parties, their successors and permitted assigns. Nothing herein, whether express or implied, will confer upon any person or entity, other than the parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

17.11 All notices required by or relating to this Agreement will be in writing and will be sent by means of certified mail, postage prepaid, to the registered address of Calligo and the most recent address of the Client that has been advised to the Calligo or addressed to such other address as that party may have given by written notice in accordance with this provision.

17.12 All notices required by or relating to this Agreement may also be communicated by email, provided that the sender receives and retains confirmation of successful transmittal to the recipient. Such notices will be effective on the date indicated in such confirmation.

- 17.13 In the event that either party delivers any notice hereunder by means of email transmission in accordance with the preceding sentence, such party will promptly thereafter send a duplicate of such notice in writing by means of certified mail, postage prepaid, to the receiving party, addressed as set forth above or to such other address as the receiving party may have previously substituted by written notice to the sender.
- 17.14 Any reference in this Agreement to a statute or regulation is to be construed as a reference to that statute or regulation as amended or re-enacted from time to time.
- 17.15 The headings in this Agreement are for ease of reference only; they do not affect its interpretation or construction.

Signed, etc.

Schedule 1 – The Services

As per the SOW

Schedule 2 – The Statement of Work (SOW)

To issue from Calligo on request

Schedule 3 - Processing, Personal Data and Data Subjects

1 PROCESSING OF PERSONAL DATA BY CALLIGO

1.1 Scope

1.2 Nature

1.3 Purpose of processing

1.4 Duration of the processing

2 TYPES OF PERSONAL DATA

3 CATEGORIES OF DATA SUBJECT