

FORESHORE LIMITED
FORESHORE CLOUD SERVICES
SUBSCRIPTION TERMS AND CONDITIONS

Foreshore Limited (“**Foreshore**”) offers Cloud Compute, Data Backup, and Cloud Disaster Recovery services, known as Recovery as a Service. These services enable Foreshore to provide the Customer with a service which enables it to run its IT workloads within Foreshore’s Cloud, as well as protecting the Customer’s data, and providing the Customer with IT business continuity. Each of these services is covered in these Conditions. The Cloud services are offered in Sure/Foreshore Data Centre facilities in Jersey, Guernsey and the Isle of Man.

Foreshore offers a range of Connectivity, Security and Managed services at additional cost. The service specific terms and conditions for these services are available on request and will be specific to the service(s) selected.

1. DEFINITIONS AND INTERPRETATION

1.1 The following expressions have the meaning set opposite:

95th Percentile Calculation – a calculation to compute the 95th percentile value for burstable bandwidth services. Foreshore will gather samples of traffic usage, both inbound and outbound, at regular intervals. Foreshore will discard the highest 5% of the samples for each of the inbound and outbound traffic, and the next highest sample becomes the 95th percentile value for the dataset. Customer will be billed at the higher value of the inbound and outbound 95th percentile calculations;

an Additional Service – a service listed under the heading ‘Additional Services’ in the Service Description and Order Form;

the Acceptable Use Policy – means the Foreshore acceptable use policy attached at Schedule 1;

this Agreement - this document including any schedules, these Conditions, the applicable Order Form including Start and End date, the Service Description and the Acceptable Use Policy, each as amended from time to time in accordance with these Conditions;

Authentication Services – means the two-factor authentication services as defined in Schedule 5;

the Back-Up Policy – the policy (if any) for backing up and, if applicable to the Service, archiving the Customer Data included in the Service Description;

a Business Day - any day which is not a Saturday, Sunday or public holiday in England or Liberation Day in Jersey;

Business Hours - 8.30 am to 5.00 pm London time on a Business Day;

Charges – the amounts payable for the Services, as set out in the relevant Service Description and/or each Order Form;

Cloud Resources – 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.

Commencement Date – The start date of the Agreement as set out in the Customer’s Order Form.

Conditions – has the meaning given to that term in clause 1.2 below.

Control - the power to direct or cause the direction of the management and policies of a party, whether through the ownership of voting shares, by contract, or in some other way and the expressions **to Control** and **Controlled** are to be construed accordingly;

Confidential Information – information or data of a confidential nature, including (without limitation) any and all information which relates to any of the following: a party’s customers, suppliers, technology and business activities (regardless of the form in which that information or data is stored or communicated). Foreshore’s Confidential Information includes (without limitation): any and all Personal Data communicated by Foreshore to the Customer and any and all information relating to any of the following: the Software, the Services, any Additional Service, the technology, the systems, tools and methodologies which Foreshore or its suppliers uses to provide any services, Foreshore’s customers, suppliers and prospects, Foreshore’s business affairs, financial affairs, business plans and strategies. The Customer’s Confidential Information includes the Customer Data and any and all Personal Data communicated by the Customer to Foreshore;

the Customer - means the customer entering into this Agreement;

the Customer Data – the data (if any) which the Customer stores on any equipment used in the provision of the Services or any Additional Service, or which Foreshore inputs into the Software for the Customer for the purpose of facilitating the Customer’s use of the Services or any Additional Services;

the Customer’s Applications – the software applications (if any) which have been acquired by or are licensed to the Customer and which are used by the Customer on the Virtual Machine(s) provided by Foreshore as part of the Services;

the Customer Notification Policy – means the policy for Foreshore notifying, or otherwise communicating with, Designated Contacts attached at Schedule 2;

the Customer Procedures – the procedures for requesting a service or a change to a service, notifying Foreshore of the unavailability of a service or claiming a Service Credit attached at Schedule 3;

the Customer's System – the computer equipment, terminals, peripheral equipment, software, telecommunications systems and network connections necessary for the Customer to connect to Foreshore’s data centre(s) and to receive the Services and any Additional Services (or any of them);

a Defect - a failure of the Services or any Additional Services to comply in any material respect with the description of that service in the Service Description, and **Defective** is to be construed accordingly;

a Denial of Service Attack – 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;

a Designated Contact – an individual designated from time to time by the Customer to be the Customer’s point of contact or one of the Customer’s points of contact for the purpose of this Agreement and whose name and up to date contact details (including email address) have been provided by the Customer to Foreshore. (For the avoidance of doubt this includes the Customer’s Primary Contact and any Security Officer);

Foreshore Associated Service – additional services which may be provided by Foreshore or an affiliate of Foreshore to the Customer;

Foreshore’s IT Infrastructure - the computer equipment, terminals, peripheral equipment, software, telecommunications systems and network connections and other systems and infrastructure used by Foreshore or its suppliers from time to time to provide the Services and any Additional Services (or any of them), as updated, reconfigured and upgraded by Foreshore from time to time;

Group - means the relevant company, any holding company of that company and any subsidiary of that company or its holding company;

a Harmful Element – any virus, worm, time bomb, time lock, drop dead device, trap and access code 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;

Intellectual Property Rights - 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;

Order Form – the initial Order Form and any subsequent order form, each of which individually forms a contract subject to the terms of this Agreement;

Overage – the use of the Services or any Additional Services over and above any of the limitations (for instance, but not limited to, the amount of bandwidth transferred) specified in the Service Description;

The Pay As You Go Services (also referred to as The PAYG Services) - the services listed under the PAYG Services, PAYG Services (Usage Based) and RaaS PAYG Services (Usage Based) in the Service Description section;

the PCI DSS – the data security standard for enhancing payment account data security, issued by the PCI Security Standards Council, as amended by the PCI Security Standards Council from time to time;

Scheduled Maintenance - any planned or preventative repair, maintenance, upgrade, update, support, testing or implementation of any system about which the Customer is notified at least 48 hours in advance and that is performed during a standard maintenance window between 00:00 (midnight) and 02:00 local time of the datacentre or at any other time with not less than 7 days' notice to the Customer;

the Services – means Foreshore’s Cloud Services ‘the Services’ set out in the Service Description and Order Form including any Additional Services;

the Service Credits – the service credits set out in the Service Description;

Service Delivery Date – means the date on which Foreshore make the Service available for use by the Customer or such other date as agreement in writing between the parties;

the Service Description – the service descriptions attached to and forming part of this Agreement or referred to in this Agreement, each as amended by Foreshore from time to time;

the Service Level – the service level set out in the Service Description;

the Software - the online software packages provided for use by the Customer as part of the Services or any Additional Service, including any associated user documentation;

the Software Terms – the terms and conditions imposed by any third party provider of the Software made available to the Customer from time to time online at the web address given in the Service Description (or such other web address as may be notified to the Customer from time to time), as amended from time to time by the relevant Software Supplier;

the Subscription Services – the services listed in the Service Description and the Order Form section that are not Pay As You Go Services;

the Support Services – the support services included in the Service Description; and

A Virtual Machine – a software implementation of a machine (i.e. a computer) that executes programs like a physical machine and provides a complete system platform which supports the execution of a complete operating system 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

A Virtual Desktop – A Virtual Machine that is used as a remote virtual desktop for a single user to connect to.

- 1.1 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.
- 1.2 A reference to a Condition is to a condition in these terms and conditions.
- 1.3 The headings in this Agreement are for ease of reference only; they do not affect its interpretation or construction.
- 1.4 The order of precedence to resolve any inconsistency between different parts of the Agreement shall be (i) the Order Form; (ii) the Service Description; (iii) this Agreement.
- 1.5 This Agreement is structured so that individual Order Forms may be entered into by the Parties. Order Forms are governed by and subject to this Agreement.

2. USE OF THE SERVICES

- 2.1 The Customer will comply with the Acceptable Use Policy in effect at the time when the Services or any Additional Services are provided. Foreshore may amend the Acceptable Use Policy from time to time as it sees fit. Foreshore reserves the right, without liability to the Customer, to disable the Customer's access to the Service and to suspend any Foreshore Associated Service if the Customer breaches the Acceptable Use Policy.
- 2.2 If Foreshore supplies any software to the Customer as part of the Services or any Additional Service, the Customer will comply with the Software Terms for that Software in effect at the time when the Service is provided, and Foreshore reserves the right, without liability to the Customer, to disable the Customer's access to the Service and any Foreshore Associated Service if the Customer breaches those Software Terms.
- 2.3 If the Customer uses the Services or any Additional Services to process payment account data and is subject to the requirements of the PCI DSS or the Customer is otherwise subject to the requirements of the PCI DSS, the Customer will ensure that the guest operating system and applications of each Virtual Machine meets any of the requirements of the PCI DSS applicable to the Customer.
- 2.4 The Customer will not:
 - 2.4.1 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, the Software and any Additional Services (or any of them) in any form or media or by any means, and not to attempt to do any of the above;
 - 2.4.2 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;
 - 2.4.3 use the Services, the Software and any Additional Services (or any of them) to create, promote or supply a product or service which competes with the Services and any Additional Services (or any of them);
 - 2.4.4 use the Services, the Software and any Additional Services (or any of them) to provide any service to any third party or share the use of the Services, the Software and any Additional Services (or any of them) with any third party;
 - 2.4.5 license, sell, rent, lease, transfer, assign, distribute, display, disclose, exploit, make the Services, the Software and any Additional Services (or any of them) available to any third party;
 - 2.4.6 assist or allow any third party to do any of the acts prohibited by Conditions 2.4.1 to 2.4.5 (inclusive); or
 - 2.4.7 not change, add or delete any public IP address or MAC address allocated to it by Foreshore without first obtaining Foreshore's permission in writing.
- 2.5 The Customer will:
 - 2.5.1 use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services, the Software and any Additional Services (or any of them). The Customer will notify Foreshore immediately if the Customer becomes aware of any such unauthorised access;

- 2.5.2 comply with, and ensure that its staff comply with any rules, regulations, standards, protocols and procedures issued by Foreshore to the Customer from time to time in connection with the use or security of the Services, the Software and any Additional Services (or any of them);
- 2.5.3 comply with, and assist Foreshore with, all reasonable requests for information in respect of customer verification or other information as may be required in order to provide the Service, as and when required by Foreshore; and
- 2.5.3 notify Foreshore as soon as the Customer becomes aware of, or suspects, any unauthorised use of or breach of security in relation to the Services, the Software and any Additional Services (or any of them).

3. THE SERVICES AND THE ADDITIONAL SERVICES

- 3.1 Provided the Customer complies with its obligations under this Agreement, Foreshore will, from the Commencement Date and until the termination date of this Agreement, provide the Services and any Additional Services to the Customer on the terms and conditions of this Agreement.
- 3.2 Subject to Condition 3.5, Foreshore will use reasonable endeavours to make the Services available in accordance with the Service Level, except for when planned or preventative repair, maintenance, upgrade, update, support, testing or implementation of any system is carried out and except for when emergency or unplanned repair, maintenance, upgrade, update, support, testing or implementation of any system is carried out.
- 3.3 Foreshore will endeavour to carry out emergency and unplanned maintenance and other emergency operations outside Business Hours and Foreshore will endeavour to give the Customer at least 2 Business Hours' notice in advance of the same. However, the Customer acknowledges that, depending on the circumstances, Foreshore may not be able to give that or any notice of emergency or unplanned maintenance. Foreshore will give notice of Scheduled Maintenance to one of the Designated Contacts by e-mail.
- 3.4 Foreshore will provide the Customer with the Support Services and, if any Additional Services is listed in the Service Description or Order Form, subject to receiving payment from the Customer for those services, Foreshore will provide the Customer with the Additional Services (as the case may be).
- 3.5 Foreshore may suspend access to Services and to any Additional Services without liability to the Customer if:
 - 3.5.1 there is an immediate threat to life or limb;
 - 3.5.2 there is an emergency and Foreshore considers it necessary or appropriate (in its absolute discretion) to provide or safeguard service to a hospital or to the emergency or other essential services (as may be determined by Foreshore from time to time in its absolute discretion);
 - 3.5.3 there is receipt of instruction, or under the direction, of a government body, the emergency services, a regulatory body or a competent court;

- 3.5.4 there is a threat of violation to or harm to any person, the Foreshore telecommunications network or Foreshore's IT Infrastructure;
 - 3.5.5 there is a breach of the terms of this Agreement by the Customer including the Acceptable Use Policy;
 - 3.5.6 has been, or if Foreshore suspects that there may have been, a breach of security, or a breach of this Agreement, or any unlawful or illegal use of the Services, the Software or any Additional Services by the Customer or by any other person;
 - 3.5.7 Foreshore knows or suspects that a Harmful Element has been introduced into the Services, the Software, any Additional Service, or Foreshore's IT Infrastructure, or the system of any other person where that may affect the Services, the Software, any Additional Services, or the Customer's System, or the system of any other Foreshore customer;
 - 3.5.8 Foreshore knows or suspects that any Customer 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 or threatening legal proceedings against anyone;
 - 3.5.9 there is a Denial of Service Attack that affects the Services, Foreshore's Equipment, or the systems of or the services provided to any other Foreshore customer;
 - 3.5.10 the Customer changes, adds to or deletes any public IP address or MAC address allocated to it by Foreshore without first obtaining Foreshore's written permission.
- 3.6 Suspension of the Service, or any part thereof, shall not exclude Foreshore from terminating the relevant Agreement or an Order Form in the event of such right arising and shall not exclude any other rights or remedies available to Foreshore.
- 3.7 Suspension of the Service as a result of the acts or omissions of the Customer, its users or its sub-contractors shall not entitle the Customer to any remedies pursuant to this Agreement.
- 3.8 During the period of suspension, the Customer shall remain liable for all Charges due in respect of the Service.
- 3.9 Foreshore will restore the Service as soon as reasonably possible after the suspension.

4. THE CUSTOMER DATA

- 4.1 Foreshore does not claim any Intellectual Property Rights in the Customer Data and the Customer will own all Intellectual Property Rights in the Customer Data.
- 4.2 Foreshore is not responsible for the content of any of the Customer Data. The Customer will ensure that no Customer Data includes anything that is pornographic, obscene, offensive, indecent, abusive, menacing, unlawful, blasphemous, an invasion of privacy, an infringement of Intellectual Property Rights or of any data protection legislation, defamatory, a malicious falsehood or seditious libel, a contempt of court, or anything that is likely to incite, or is

capable of inciting, violence, racial hatred, sadism, cruelty, or which encourages any unlawful or illegal act or omission.

- 4.3 Foreshore may, but is not obliged to, monitor the activities of the Customer or any other person. Foreshore may, in order to avail itself of any defence allowed to it by law, or to reduce its liability to any third party, remove from the Services or any Additional Service, or block, any Customer Data.
- 4.4 The Customer is responsible for setting the controls so that particular Customer Data are accessible only by, and may be changed only by, those people whom the Customer intends to have access to or to be able to change them.
- 4.5 Where the Customer has purchased a Back-Up service, Foreshore will comply with the Back-Up Policy (if any) for the Customer Data in effect at the time when the Service is provided. Foreshore may amend that policy as it sees fit from time to time.
- 4.6 Foreshore will not be responsible for any degradation, loss, destruction, alteration or disclosure of any of the Customer Data caused by any third party outside Foreshore's control.
- 4.7 Whilst during the provision of the Services or any Additional Services any Customer Data are in transit between the Customer's System and Foreshore's IT Infrastructure, they are at the Customer's risk, and Foreshore will not be liable for any degradation, loss, destruction or corruption of any of the Customer Data while in transit.
- 4.8 The Parties shall comply with the terms of Schedule 4 (Data Protection).

5. THIRD PARTY PROVIDERS

- 5.1 The Services or an Additional Service may allow the Customer to access and use software and operating systems provided by third parties. If the Customer does so, it does so at the Customer's (and not Foreshore's) risk.
- 5.2 Foreshore 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 Customer with any third party, or in relation to any transaction or contract entered into between the Customer and any third party.

6. WARRANTIES

- 6.1 Foreshore warrants that the Services and any Additional Services provided to the Customer will be provided with reasonable skill and care and will substantially comply with the Service Descriptions relating to them.
- 6.2 Subject to Conditions 6.3 and 6.4, if the Services or any Additional Services provided to the Customer does not comply with the warranty in Condition 6.1, Foreshore will use reasonable endeavours to re-perform the Services or the Additional Services (as the case may be), or will endeavour to provide the Customer with an alternative means of carrying out the task which it was carrying out using the Services or the Additional Services (as the case may be). That re-performance or the provision of the alternative means is the Customer's sole and exclusive remedy for any breach of the warranty in Condition 6.1.

- 6.3 Foreshore 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:
- 6.3.1 the Customer or any User not having complied with this Agreement; any negligent or unlawful act or omission of the Customer, any User or any employee, contractor, agent or supplier of the Customer; the misuse of the Services or any Additional Services (or any part of any of them), or the use of, the Services or any Additional Services by the Customer or any User contrary to Foreshore's instructions; any delay or failure on the part of the Customer in providing any information or data to Foreshore; any delay or failure on the part of the Customer to notify Foreshore of any error in the Customer Data or of any actual or suspected Defect or of any failure of, or fault, error or bug in, any equipment, software, network or telecommunications system; any other act or omission on the part of the Customer; any act or omission of any third party;
 - 6.3.2 the Customer 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 Customer'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;
 - 6.3.3 the failure of any firewall (whether supplied by Foreshore or by any third party);
 - 6.3.4 the modification or alteration of the Services or any Additional Services by anyone except Foreshore or Foreshore's suppliers; or
 - 6.3.5 any failure by the Customer to keep full and up-to-date security copies of the software forming part of the Customer's System and of the Customer's Applications in accordance with best computing practice, and of the Customer Data which it supplies to Foreshore or processes using the Services or any Additional Service.
- 6.4 Notwithstanding Condition 6.1 or any other provision of this Agreement:
- 6.4.4 because of the nature of software, information systems, telecommunications systems and the internet, Foreshore does not warrant or represent that the use of the Services or any Additional Services will be uninterrupted or error-free; nor that every Defect, error or deficiency in the Services or any Additional Services can be rectified, nor that the Services or any Additional Services or the information obtained by the Customer through the use of the Services or any Additional Services will meet the Customer's requirements;
 - 6.4.5 Foreshore will not be liable for any problem with, or any delay or interruption in the Services or any Additional 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, including (without limitation) the Customer's network connections or telecommunications links and the internet, and the Customer acknowledges that the Services and any Additional Services may be subject to limitations, delays and other problems inherent in the use of such communications networks and facilities;

- 6.4.6 Foreshore will not be liable if the Services or any Additional Services do not provide a facility or feature not set out in the Service Description or Order Form;
- 6.4.7 Foreshore will not be liable for any fault or defect in any of the Customer'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 Customer's Applications; and
- 6.4.8 Foreshore will not be liable for any error or incompleteness in the Customer Data.
- 6.5 The Customer acknowledges that the benefits of using the Services and any Additional Services are dependent on the Customer exercising proper skill, care and judgement in inputting and maintaining the Customer Data and in interpreting the information and data received via the Services and any Additional Service. Foreshore does not warrant that any such data will be complete, accurate or up to date, and Foreshore will not be liable for the consequences of any decision taken by the Customer or any other person, on the basis of that information or data.
- 6.6 The express undertakings and warranties given by Foreshore in this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations on the part of Foreshore, 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.
- 6.7 The Customer warrants that:
 - 6.7.4 it has not been induced to enter into this Agreement by any representation or warranty except those specifically set out in this Agreement. The Customer waives all claims for breach of any warranty and all claims for any misrepresentation, (negligent or any other kind, unless made by Foreshore fraudulently) which is not specifically set out in this Agreement; and
 - 6.7.5 the Customer has, and will have, the right to provide the Customer's Applications and any information, other software, data, materials and facilities which it provides to Foreshore and, in doing so, the Customer will not be in breach of any obligation to any third party or infringing any third party Intellectual Property Rights.

7. THE CUSTOMER'S OBLIGATIONS

- 7.1 The Customer will:
 - 7.1.1 before the Commencement Date, procure the Customer's Applications and all internal computer equipment, terminals, peripheral equipment, software, telecommunications systems and network connections necessary for it to receive the Services and any Additional Services;
 - 7.1.2 keep the Customer's Applications and the Customer's System in good working order until the termination date of the Agreement;

- 7.1.3 before the Commencement Date, obtain and afterwards, until the termination date of this Agreement as set out in the Customer Order Form, maintain all licences of the Customer's Applications and any other third party software, data and materials used or processed by the Customer and any consents necessary for the disclosure and use of the Customer's Applications and that software, data and materials to or by Foreshore; and
 - 7.1.4 ensure that any of the operating systems or Customer's Applications are appropriately licensed for use on Virtual Machines in multi-tenant virtualized (Cloud) environment including, but not limited to, Microsoft SPLA licensing requirements.
- 7.2 The Customer will co-operate fully and will ensure that its staff co-operate fully with Foreshore in the diagnosis of any problems encountered in using the Services and any Additional Services and will provide and will ensure that its staff provide Foreshore with all information reasonably required by Foreshore in connection with the provision of the Services and any Additional Services (or any of them). Where Foreshore needs the Customer to provide information or materials, or to take a decision, the Customer will do so promptly and so as not to cause any delay.
- 7.3 The Customer will make available to Foreshore, free of charge, all information, facilities and services reasonably required by Foreshore to allow it to provide the Services and any Additional Service.
- 7.4 When using the Services or any Additional Services the Customer will comply with all laws and regulatory requirements and the rules, regulations and standards imposed by any competent body which apply to its activities and will not use the Services and any Additional Services (or any of them) to commit, or to assist in the commission of, any fraud or other criminal or unlawful activity.
- 7.5 The Customer will not introduce any Harmful Element into the Services and any Additional Services (or any of them). The Customer will keep the Customer's System, Virtual Machines, operating systems and applications free from infection by Harmful Elements and 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 is reasonably possible.

7.6 The Customer will:

7.6.1 in accordance with the Customer Procedures, appoint at least one Designated Contact who will act as the Customer's Primary Contact and who will have authority to take decisions and act on behalf of the Customer in relation to the Services, the Additional Services and this Agreement. (The Customer agrees that Foreshore may act on any request, notification or claim made in accordance with the Customer Procedures.); and

7.6.2 unless stated to the contrary in the Service Description, nominate up to three Designated Contacts who are authorised to place calls to Foreshore's help desk, notify Foreshore immediately of any changes in the details of those individuals and ensure that no one except those individuals contacts Foreshore's help desk.

7.7 The Customer 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 Customer, Foreshore may adjust any agreed timetable or delivery schedule as reasonably necessary.

7.8 The Customer will indemnify Foreshore and keep Foreshore indemnified against all and any losses, costs, claims and liabilities incurred by Foreshore as a result of any and all breaches of Conditions 2.1, 2.2, 2.3, 2.4, 2.5, 4.2, 6.5.5, 7.1.4, 7.4, 7.5 and 10.

8. CHARGES AND PAYMENT

8.1 All Charges duly invoiced shall be payable within thirty (30) days after the date of the invoice (being the "Due Date" for payment) and the Customer undertakes to pay (or procure the payment of) all undisputed Charges by BACS to Foreshore or such other method of payment as may be agreed by the Parties from time to time. Payment of an invoice by an affiliate or other third party shall satisfy the Customer's payment obligations under this Agreement and shall be the responsibility of the Customer. Billing for partial months is prorated and the Customer is responsible for all charges in respect of the Service, even if incurred as a result of unauthorised use.

8.2 The Customer shall make payments to Foreshore by way of direct debit or in cleared funds at Foreshore's discretion. In the event that any sums payable under this Agreement are in arrears of more than twenty one (21) days following the Due Date, without prejudice to any other right or remedy under this Agreement, Foreshore shall be entitled;

8.2.1 to terminate this Agreement immediately upon provision of notice in writing without requiring the remedy of such default; and/or

8.2.2 to notify the Customer that payment is due within seven (7) days of the notice and if payment is not fulfilled within the seven (7) days, to charge a penalty of £120 to the Customer; and/or

8.2.3 without notice, to immediately suspend the provision of the Services.

8.3 Unless agreed otherwise in the relevant Service Description or Order Form, Foreshore shall be entitled to invoice the Customer for each Service, starting from the Service Delivery Date for such Service and at the intervals specified in the relevant Order Form, Service Description or

as otherwise agreed in writing between the Parties. Where no such interval is specified, Foreshore shall invoice the Customer on a monthly basis.

- 8.4 All payments will be made and all credits given in pounds sterling.
- 8.5 Any service credits owed to the Customer shall be paid by Foreshore in accordance with the procedure set out in the relevant Service Description or as otherwise agreed in writing.
- 8.6 All Charges are exclusive of any withholdings or deductions which the Customer is required to make by law and in the event that Foreshore is required to levy any such withholdings or deductions, the gross amount of the Charges shall be increased to cover any addition amount to ensure that the net amount received by Foreshore is the amount of the Charges which would have been receivable by Foreshore without any such withholding or deduction.
- 8.7 The Customer must raise a dispute in relation to an invoice within fourteen (14) days of the date of the relevant invoice by notifying Foreshore in writing setting out the reasons for the dispute and the disputed amount contained within the invoice provided always that any part of a disputed invoice that is itself not disputed remains payable by the Due Date. The Parties shall negotiate in good faith to resolve the dispute promptly.
- 8.8 Provided always that any sums found by Foreshore to be erroneous or not in compliance with the Order Form (or any agreed charges) shall be adjusted accordingly and if paid in accordance with condition 8.2, shall be refunded along with any late payment fees applied pursuant to condition 8.2.2. For the avoidance of doubt, no refunds of monies or interest in respect of late payments shall be refunded in the event that the dispute is not upheld. If the dispute is resolved against the Customer, the Customer shall pay such amounts plus interest from the date originally due.
- 8.9 All payments made by the Customer under this Agreement shall be made in full without any set-off, restriction or condition and without any deductions for or on account of any counterclaim.
- 8.10 All fees, charges and expenses payable under this Agreement are inclusive of GST but exclusive of VAT, any sales tax or other tax payable in connection with the supply of the Services and any Additional Service. Where such tax is chargeable, the Customer will pay it in addition to the fees, charges and expenses payable under this Agreement. The Customer shall indemnify Foreshore on demand against any taxes or duties levied in respect of the Services for which Foreshore is liable pursuant to or by reference to the Customer's use of the Services or Foreshore's delivery of the Services. Foreshore may increase the Charges with effect from each anniversary of the Commencement Date by giving the Customer not less than 30 days' notice. Foreshore may also, by giving the Customer not less than 5 Business Days' notice increase the Charges in line with any increase in the charges which Foreshore has or its suppliers have to pay to any third party provider of any of the Software or any service included in the Services and the Additional Services (or any of them).
- 8.11 If required by Foreshore, the Customer shall provide a security deposit in an the amount to be specified by Foreshore to serve as security for the performance of the obligations of the Customer to Foreshore provided always that such amount shall not exceed the total cost of the Services for a period of three (3) months.

8.12 In the event that a security deposit is provided pursuant to condition 8.11, Foreshore shall return such security deposit within three (3) months of the date of termination of the Agreement provided that the Customer has paid all outstanding sums due to Foreshore and in the event that any sums are still owing at the end of such three (3) month period, Foreshore shall have the right to set-off such amounts owing against the security deposit provided pursuant to this Agreement and the Customer shall be liable to pay any remaining balance following the set-off. The Customer shall not be entitled to the return of such security deposit in the event of early termination of the Agreement other than in the event of a material breach by Foreshore or in the event that Foreshore is subject to an insolvency event.

8.13 In addition to or in place of the rights contained in condition 8.11 and 8.12, Foreshore reserves the right to require the Customer to make payments in advance or receipt of the Services in such sums and at such periods as Foreshore in its sole discretion shall determine. Any payments made in advance shall be credited to the account of the Customer and applied against future Charges subsequently incurred by the Customer in respect of the Services

9. INTELLECTUAL PROPERTY RIGHTS

9.1 The Customer acknowledges and agrees that Foreshore or its licensors own all Intellectual Property Rights in the Service, any Associated Service, any Foreshore Associated Service and the Software. Except as expressly stated in this Agreement, this Agreement does not grant the Customer any rights in respect of the Service, any Additional Service, any Foreshore Associated Service or the Software.

10. CONFIDENTIALITY

10.1 Foreshore and the Customer each agrees:

10.1.1 to keep the other's Confidential Information confidential and, except as permitted elsewhere in this Agreement, not disclose that information to any other person, or use it for any purpose except the exercise of its rights, or the performance of its obligations, under this Agreement; and

10.1.2 to disclose the other's Confidential Information only to those of its employees, suppliers and contractors or any member of its Group who need to know the same to allow it to exercise its rights or perform its obligations under this Agreement, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the receiving party;

10.1.3 subject to Conditions 12.5 and 12.7, immediately on the termination date of the Agreement (however it happens), destroy or, at the other's request, deliver to the other, all copies of the other's Confidential Information, and certify to the other that this has been done.

10.2 Confidential information shall not include, and neither party shall have any responsibility hereunder to hold in confidence, any information that:

10.1.4 Prior to its disclosure by the disclosing party is already lawfully and rightfully known by or available to the receiving party as evidenced by prior written records or other documents in possession of the receiving party;

- 10.1.5 Through no wrongful act, fault or negligence on the part of the receiving party is or hereafter becomes part of the public domain;
 - 10.1.6 Is lawfully received by the receiving party from a third party without restriction and without breach of this agreement or any other agreement;
 - 10.1.7 Is approved for public release or use by written authorisation of the disclosing party;
or
 - 10.1.8 Is disclosed pursuant to the requirement or request of a regulatory body, recognised stock exchange, governmental agency or court of competent jurisdiction to the extent such disclosure is required by a valid law, regulation or court order and sufficient notice is given by the receiving party to the disclosing party of any such requirement or request in order to permit the disclosing party to seek an appropriate protective order or exemption from such requirement or request.
- 10.8 Each party will immediately notify the other if it becomes aware of any breach of confidence in relation to the other's Confidential Information, and it will give the other any assistance reasonably required in connection with any action or proceedings which the other may institute against any third party for breach of confidence.
- 10.9 Neither party will be liable for any loss, destruction, alteration or disclosure of the other's Confidential Information caused by any third party.

11. LIMITATION OF LIABILITY

- 11.1 Subject to the provisions of Condition 11.2 and except as specified elsewhere in this Agreement, this Condition 11 applies to the liability of Foreshore (including any liability for the acts or omissions of its employees, agents and sub-contractors and any liability as a bailee) to the Customer in respect of:
- 11.1.1 any breach of this Agreement;
 - 11.1.2 any use made by the Customer of the Services, any Additional Services and the Software (or any of them);
 - 11.1.3 any loss or damage to any property; and
 - 11.1.4 any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 11.2 Nothing in this Agreement limits or excludes Foreshore's liability for death or personal injury caused by negligence, or for fraud or fraudulent misrepresentation, or for any other liability which the law does not allow Foreshore to limit or exclude.
- 11.3 Subject to Conditions 11.2 and 11.4, Foreshore's total liability to the Customer in connection with the Services, any Additional Services, the Software, the performance or non-performance of this Agreement and in connection with the subject matter of this Agreement, whether in contract, or tort (including negligence and for breach of statutory duty), misrepresentation, restitution or arising in any other way, will not exceed, in aggregate, the greater of £5,000 or

the total Service Fees paid by the Customer to Foreshore during the 12 months immediately preceding the date on which the claim arose.

- 11.4 Subject to Condition 11.2, but otherwise despite anything else contained in this Agreement, Foreshore will not be liable to the Customer for any loss of profits, loss of savings, loss of use, loss of business, loss of opportunity, loss or damage to reputation or goodwill, loss or damage to property, loss of use of any property, loss of contracts (whether direct or indirect) or for any indirect loss or damage, whether in contract, or tort (including negligence and for breach of statutory duty), misrepresentation, restitution or arising in any other way, even if Foreshore had been advised of, or knew of, the likelihood of that loss or type of loss arising.
- 11.5 Subject to Condition 11.2, the Customer's entitlement to the Service Credits in accordance with the Service Description is Foreshore's sole liability and the Customers' sole remedy in relation to any failure to provide the Services or any Additional Services in accordance with the Service Level relating to the same.

12. DURATION AND TERMINATION

- 12.1. This Agreement shall come into force on the Commencement Date hereof and shall continue for the initial Term of 36 months in respect of the Subscription Services and one month in respect of Pay As You Go Services or as otherwise specified on the Order Form and thereafter will automatically continue unless and until terminated in accordance with this Agreement. After the initial Term, the Customer may terminate the Subscription Services and the Pay As You Go Services in this Agreement (and/or as set out in an individual Order Form) by providing Foreshore not less than 30 days written notice.
- 12.2. Foreshore may terminate this Agreement by providing not less than 3 months written notice to the Customer, that notice to expire at the end of the initial Term or any subsequent Term.
- 12.3. Either Foreshore or the Customer may terminate this Agreement immediately on giving written notice to the other if:
- 12.3.1. the other commits any material breach of this Agreement and (in the case of a breach which is capable of being remedied) has failed to remedy that breach within 30 days after receiving notice requiring it to remedy that breach; or
 - 12.3.2. the other has a receiver or administrative receiver appointed over it or over any part of its undertaking or assets, or it passes a resolution for winding-up (except for the purpose of a bona fide scheme of solvent amalgamation or reconstruction), or if a court of competent jurisdiction makes an order to that effect, or if it becomes subject to an administration order, or if it enters into any voluntary arrangement with its creditors, or if any similar process to any of the above is begun in any jurisdiction, or if it ceases or threatens to cease to carry on business.
- 12.4. On the termination date of the Agreement, the Customer's right to use the Services, the Software and any Additional Services will immediately and automatically terminate and the Customer will comply with its obligations on termination set out in the Service Description.
- 12.5. Prior to the date of termination of the Agreement the Customer may download the Virtual Machines and Customer Data in OVF format containing the Customer Data using the vCloud Director Portal for Virtual Machines accessible through the vCloud Portal. Virtual Desktops

cannot be downloaded by the Customer, so the Customer should copy any Customer Data it wants to download to a Virtual Machine prior to downloading it. Following the date of termination of the Agreement, Foreshore may destroy or otherwise dispose of any or all of the Customer Data in its possession unless Foreshore receives, with the Customer's notice of termination or (in the case of Foreshore giving notice of termination) no later than three Business Days after the date of Foreshore's notice of termination, a written request for the delivery to the Customer the Customer Data in a format to be agreed (such as OVF or VMDK files). In that case, Foreshore will use reasonable endeavours to deliver that data to the Customer within 10 Business Days after the date of termination of the Agreement, provided that the Customer has, at that time, paid all fees and charges outstanding at and all fees and charges resulting from the termination of the Agreement (whether or not due at the date of termination) and the Customer pays the then applicable charge for Foreshore to export the Customer Data per Virtual Machine in advance, or, in the event of many Virtual Machines shall pay Foreshore's reasonable costs in advance. Should the volume of data, or the Customer requirements, make it impracticable to do this within 10 Business Days after the date of termination of the agreement, then Foreshore may, at its discretion, charge pro-rated rates for the vCloud resources or Virtual Desktops still consumed by Customer Virtual Machines.

- 12.6. Except as provided for in Condition 12.5 and subject to compliance with Schedule 4 (Data Protection), Foreshore will not be obliged to store or allow the Customer access to any of the Customer Data after the date of termination of this Agreement.
- 12.7. Subject to compliance with Schedule 4 (Data Protection), Foreshore may, despite the termination of the Agreement, retain copies of any of the Customer Data for the purpose of complying with any legal, insurance or regulatory requirement.
- 12.8. The termination of the 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.
- 12.9. Conditions 1, 4.1, 4.2, 4.6, 5, 6 (except 6.1), 7.8, 8.3, 8.4, 8.5, 8.6, 8.8, 9, 10, 11, 12.4, 12.5, 12.6, 12.7, 12.8 and 14 will survive the termination of the Agreement and will continue indefinitely.

13. BRIBERY

- 13.1 Foreshore or the Customer will not, and nor will any of their officers, employees, shareholders, representatives or agents ("Associated Parties"), directly or indirectly, either in private business dealings or in dealings with the public sector, offer, give or agree to offer or give (either itself or in agreement with others) any payment, gift or other advantage (whether or not by using any payments under this Agreement or any Order Form) with respect to Order Form which (i) would violate any anti-corruption laws or regulations applicable to Foreshore, the Customer and the Customer's Group, (ii) is intended to, or does, influence any person to act or reward any person for acting in breach of an expectation of good faith, impartiality or trust, or which it would otherwise be improper for the recipient to accept, (iii) is made to or for a public official with the intention of influencing them and obtaining or retaining an advantage in the conduct of business, or (iv) which a reasonable person would otherwise consider to be unethical, illegal or improper ("Corrupt Act").

- 13.2 Without prejudice to condition 12 (Duration and Termination), in the event either Party breaches condition 14.1 the Party not in breach may terminate this Agreement and any Order Form immediately upon giving notice in writing to the other Party.

14. GENERAL

- 14.1 This Agreement supersedes all earlier agreements, arrangements and understandings between the parties in respect of its subject matter and constitutes the complete agreement between the parties relating to that subject matter.
- 14.2 Foreshore may revise this Agreement, at any time in our sole discretion by posting such revised terms at <https://web.sure.com/jersey/terms-and-conditions>, or otherwise notifying the Customer in accordance with Clause 14.3. Such revised terms shall be effective to the Customer upon posting or other notice, unless otherwise explicitly stated by Sure. If the Customer does not agree with any terms as they may be amended from time to time, Sure may in its sole discretion consider any proposed amendments.
- 14.3 Except where any other method of giving any notice or request is specified elsewhere in this Agreement, all notices and requests to be given or made under this Agreement must be in writing and be delivered personally (including by courier), or sent by first class pre-paid letter or by email to the geographical or email address for notices of the intended recipient set out below or to such other geographical or email address as may from time to time be designated by notice given in accordance with this Condition, and will be deemed to have been served: if by hand, when delivered; if by first class post, 48 hours after posting; and if sent by email 1 hour after being sent. Foreshore may give notice to any Designated Contact in accordance with the Customer Notification Policy:

Addresses for notices:

Foreshore:

Address: Foreshore Limited
PO Box 3
Centenary House
La Vrangue
St Peter Port
Guernsey, GY1 3AB

With a copy to: Legal and Regulatory Director
E-mail: chris.durnell@sure.com

The Customer:

Address: its registered office
E-mail: email address to be provided to Foreshore by the Customer.

- 14.4 Despite anything else contained in this Agreement, Foreshore will not be liable for any delay in performing or failure to perform its obligations caused by circumstances beyond its control (including (without limitation) any act or omission of the Customer or of any third party, any strike, lock-out or other industrial dispute (whether involving the workforce of Foreshore or

any other person), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, epidemic, pandemic, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or act or omission of suppliers or sub-contractors). In those circumstances Foreshore will be granted a reasonable extension of time for the performance of its obligations, the reasonableness of that extension to be assessed not only in the context of this Agreement but also in the context of Foreshore's other commitments.

- 14.5 Except as permitted by this Condition, Foreshore may not assign this Agreement or any of its rights or obligations under it, whether in whole or in part without first obtaining the Customer's written consent. Foreshore may assign this Agreement to any undertaking that, directly or indirectly Controls, is directly or indirectly Controlled by, or is under common Control with Foreshore. The Customer may not assign this Agreement or any of its rights or obligations under it, whether in whole or in part, without first obtaining Foreshore's written consent. In each case that consent will not be unreasonably withheld or delayed.
- 14.6 If any part of this Agreement is held by any competent authority to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Agreement will not be affected.
- 14.7 No delay by any party in enforcing its rights will prejudice or restrict those rights. No waiver of any right will operate as a waiver of any other right or breach. Except where stated to the contrary in this Agreement, no right, power or remedy conferred on, or reserved to, either party is exclusive of any other right, power or remedy available to it, and each of those rights, powers, and remedies is cumulative.
- 14.8 This Agreement and its validity are governed by, and this Agreement is to be construed in accordance with, the laws of Jersey. Each party agrees to submit to the non-exclusive jurisdiction of the Jersey Courts.
- 14.9 Nothing in this Agreement creates any partnership or joint venture between any of the parties, or the relationship between them of principal and agent.
- 14.10 Neither party will have any right or authority to enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, (whether express or implied) of any kind on behalf of the other party or bind the other party in any way.
- 14.11 No third party (except, where applicable, the permitted assign of a party to this Agreement) is entitled to the benefit of this Agreement.

FORESHORE LIMITED

FORESHORE CLOUD SERVICES

SERVICE DESCRIPTION

Change means any remotely implemented modification to a device or system's configuration, typically an addition, modification, movement or deletion.

Cloud Resources means the category of Services to include compute and network resources; including virtual CPUs, virtual RAM, virtual network interfaces, and disk storage.

Continuous Data Protection Journal used in Recovery as a Service is a protection mechanism that allows the Customer to continuously track data modifications.

Incident means anything that takes place which is not part of the standard operation of a Service and which causes or may cause disruption to or a reduction in the quality of Services and Customer productivity.

Initial Response means a ticket has been opened within Foreshore's IT Service Management platform, and an email acknowledgement has been sent to the Customer.

Internet Bandwidth means a subscription service providing a form of connectivity outside the hosted environment, specifically using Internet Protocol as the network layer, and routed with a limited throughput rate.

a **Cloud Pod** means a module of network, compute, storage, and application components that work together to deliver Cloud Resources from a single location.

Normal Operation means that, once configured to do so, one or more VMs within a Cloud Pod are: powered on, CPU processing, accessing RAM, reading and writing to disk, and reachable via a network.

an **Outage** is the period of time from when Normal Operation ceases, to when it resumes.

Problem is a contributing factor in existing or potential Incidents. Problems may sometimes be identified because multiple Incidents have exhibited common symptoms. Problems can also be identified from a single significant Incident, indicative of a single error, for which the cause is unknown. Occasionally Problems will be identified well before any related Incidents occur.

Priority or Priorities has the meanings given in condition 1 below.

Recovery Point Objective means the age of the data that must be recovered for normal operations to resume.

Resolve Time means the time from Foreshore's Initial Response, to when the Incident or Change request has been assigned a state of Resolved.




Response Time means the time from either:


- (a) an alert, alarm, notification, or monitoring event received by one of the default monitors set up by Foreshore as part of this managed service; *or*
- (b) submission of an Incident or Change request to Foreshore’s service desk, until such time when an Initial Response has been provided.

Virtual Replication means the replication of virtualised Cloud infrastructure.

1. Service Support Levels Incident Management Priority Definitions

The Customer must specify one of the following Priorities when submitting an Incident in order for any Response Time SLA to apply. Where no Priority is specified Foreshore will use its discretion to assign a Priority based on the descriptions below, defaulting to the lowest Priority (P4).

Priority	Description	Mutual Commitment	Service Specific Examples, but not limited to:-
 P1 / Critical	Ongoing complete loss of service on services that have protection or redundancy configured. Incidents that (due to their large impact on the business) requires continuous corrective actions, or would constitute the invocation of a business continuity plan.	Both Parties will commit full-time resources, 24x7, to restore Services to satisfactory levels.	<ul style="list-style-type: none"> • Connectivity: No IP routes available; Volumetric DDoS attack • vCloud: Loss of remote access to VMs; Hypervisor unable to contact storage, boot or run VMs.
 P2 / Severe	High risk to Service is ongoing or a high degradation to normal service (with business impact) is ongoing.	Both Parties will commit full-time resources, 9x6 in their local time-zone, to restore Services to satisfactory levels.	<ul style="list-style-type: none"> • Connectivity: Severe degradation of performance due to saturation • vCloud: Severe resource contention affecting performance
 P3 / Significant	Minor degradation to service (with minimal business impact) is ongoing, or a risk of a more severe degradation exists.	Both Parties are willing to commit resources, 9x5 in their local time-zone, to restore	<ul style="list-style-type: none"> • vCloud: Unable to provision a new VM or virtual IP; cluster member fails, individual disk in RAID array fails

		Services to satisfactory levels.	
 P4 / Minor	No impact or degradation to Services likely but is a fault that requires attention before it becomes a risk.	Both Parties are willing to provide resources, 9x5 in their local time-zone.	<ul style="list-style-type: none"> Documentation errors

2. Service Management

As a means of delivering continuous service improvement, Foreshore will provide an overarching Service Management facility to the customer.

Requirement	Target Deliverable	
Outage Report	Preliminary report to be issued within 7 days of an Outage event's cessation	
Service Management Report	<p>A monthly report outlining achieved metrics against agreed SLAs and KPIs.</p> <p>This report is to be delivered to the Customer by email, before the 5th working day of each calendar month.</p>	
Service Management Review	An optional monthly face-to-face meeting or conference call to review the latest Service Management Report.	

3. Availability Service Level

3.10 Foreshore shall use commercially reasonable endeavours to make Cloud Resources and Internet Bandwidth available to the Customer for 100% of each month.

3.11 At the Customer's request made in accordance with the Customer Procedures, Foreshore shall calculate and notify any Outage(s) for the Customer in any calendar month. All Outages shall be reported in the monthly service management report.

3.12 The Cloud Resources and the Internet Bandwidth availabilities set out in this Service Description apply to the virtual infrastructure and Internet Bandwidth being provided to the Customer by Foreshore which shall be monitored and reported on in the monthly service management report. Notwithstanding any other provision of this Agreement, an Outage will

not constitute or contribute to a failure to meet the relevant Service Level if it arises from:













- (a) the suspension of the Services in accordance with this Agreement; or
- (b) carrying out Scheduled Maintenance; or
- (c) carrying out emergency or unplanned repair, maintenance, upgrade, update, support, testing or implementation of any system as a result of any of the following: (i) the Customer's breach of this Agreement; (ii) the Customer's misuse of the Services or any Additional Services; (iii) any negligent or unlawful act or omission of the Customer, any employee, contractor, agent or supplier of the Customer; or
- (d) the period of time it takes a Virtual Machine to reboot and restart on different physical ESXi host server through the use of VMware High Availability in the event of a failure of the physical ESXi host server that the Virtual Machine was originally running on; or
- (e) the Customer's breach of this Agreement; the Customer's misuse of the Services or any Additional Services (or any part of any of them); any negligent or unlawful act or omission of the Customer, or any employee, contractor, agent or supplier of the Customer; or
- (f) problems with the Customer's domain name; or
- (h) problems with the Customer's Systems or the Customer's Applications or the Customer's own configuration of their virtual environment or disabling their Virtual Machines, load balancers, firewalls or other virtual appliance.

Whether any of the above is the cause of a failure to meet the relevant Service Level will be determined by Foreshore, in good faith supported by records, data and other evidence.

4. Support Service Level

- 4.1 Foreshore will provide a help desk to receive requests for support in relation to Incidents and Problems encountered by the Customer in using the Services.
- 4.2 Requests for support must be made in accordance with the Customer Procedures.
- 4.3 Foreshore shall use all commercially reasonable endeavours:
 - to maintain the availability of the Cloud Resources providing the Customers virtual environment and Virtual Machines if applicable; and
 - to maintain the availability of the Internet bandwidth.
- 4.4 Foreshore shall use commercially reasonable endeavours to manage all Incidents within the SLA parameters set out below:

Incident Management SLA

Item	Priority	Target Metric	KPIs	Service Credits
Initial Response Time	 P1	15 Mins (24/7)	95% within target, 98% within 30 minutes	Maximum 20% of MRC
	 P2	1 hour (24/7)	95% within target	
	 P3	4 Working Hours		
	 P4	1 Working Day		
Target Communication Frequency	 P1	At least once every hour (24/7)	Unmeasured	None
	 P2	At least once every 2 hours (24/7), or as mutually agreed		
	 P3	At least once every 6 business hours, or as mutually agreed		
	 P4	As mutually agreed		
Target Resolve Time	 P1	3 hours (24/7)	100% within target	None
	 P2	9 hours (24/7)		
	 P3	8 working hours		
	 P4	5 working days		

4.5 Support for the operating system and for any software installed on a Customer’s Virtual Machine is not included in the Support Services. The Customer may at its own expense make arrangements with third party suppliers for additional support.

5. Security Service Level

5.1 Foreshore shall use commercially reasonable endeavours to maintain a standard of security across its shared cloud environment as follows:

Requirement	Target Deliverable
<p>Vulnerability Assessment</p>	<p>An automated scan for known threats, vulnerabilities and sub-optimal configurations will be performed using internal tools, at least quarterly.</p> <p>The scope will be limited to multi-tenant aspects of the environment</p> <p>A scan will also be performed following any change which Foreshore deems to be significant, such as:</p> <ul style="list-style-type: none"> - Patches for any Internet facing services - Major release upgrades for any internal/DMZ services - Introduction of new equipment, services or features within an existing configuration <p>Scans will only be evidenced by Foreshore via a written attestation, results will not be published.</p>
<p>Penetration Test</p>	<p>An independent penetration test, conducted by a CREST approved tester, will be conducted at Foreshore’s cost at least annually.</p> <p>The scope will be limited to multi-tenant aspects of the environment.</p> <p>Tests will be evidenced by providing the statement of undertaking along with the scope, but not the output report. For the avoidance of doubt Foreshore shall provide a written attestation to confirm any follow up actions have been completed and any high severity items have been re-tested.</p>

ISO/IEC 27001:2013	<p>Foreshore will maintain the certification of its business' information security practices as 'ISO 27001 compliant' for the duration of this Agreement.</p> <p>Audit scope:</p> <p>The provision of an ISMS supporting Internet services (ISP) and the management of a secure data centre including (secure hosting, Cloud Services, Mail Services, and Backup and Recovery Services).</p> <p>If, during renewal of this certification, deficiencies are discovered, Foreshore will be afforded 6 months to rectify and arrange a follow up audit or audits.</p>
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5.2 Any configuration deficiencies highlighted in an audit or automated report, which are deemed by Foreshore or its independent auditors, to have a high impact on the security of its services will be subject to Problem Management processes.

5.3 Foreshore shall use commercially reasonable endeavours to maintain controls that protect customer data to the following standard:

Requirement	Deliverable
Virtual Machine storage repositories	<p>All data held at rest, within a VMware VM disk storage repository, will be encrypted using AES-256 ciphers at the storage provider layer. Foreshore will exercise change control around this configuration parameter.</p> <p>Customers may elect to implement 3rd party VM encryption solutions which allow for more advanced remote key management.</p>
“Data in motion”	<p>All customer network traffic within the multi-tenant cloud environment is segmented using IEEE 802.1Q VLANs or other proprietary technologies.</p> <p>Customers may elect to implement VPNs or other means of encryption to further protect data in motion.</p>

6. Service Credits

6.1 Where the Customer believes that Foreshore has failed to meet any SLA targets set out in this Agreement, this will be determined by Foreshore at its discretion in good faith, supported by records, data and other evidence.

6.2 Provided the Customer claims a credit in accordance with the credit claim process set out in this Service Description, following 5 Business Days after the submission of the monthly service management Report, Service Credits may be awarded as follows:

Availability SLA			
Availability*	Cumulative Downtime	Service Credit Rate (% of MRC)	Total Service Credits **
≥ 99.179 %	≤ 360 mins (≤6 hours)	3.28% (1 days charges) per hour	up to 19.7%
≥ 98.357 %	≤ 720 mins (≤12 hours)	3.75% (1.14 days) per hour	up to 45%
≥ 96.715 %	≤ 1440 mins (≤24 hours)	4.2% (1.28 days) per hour	up to 100%
< 96.715 %	over 24 hours	100%	

* Availability percentage calculations are based on a 730.5 hour month ((365.25 days/12 months) x 24 hours).

** Calculated on the MRC of services running on the affected Cloud Pod

6.3 For the avoidance of doubt:

(a) where a single Cloud Pod has been affected by an Outage, Service Credits will be awarded only in respect of the monthly charges incurred at that individual Cloud Pod. Unaffected services operating in other locations shall not be included in the calculation of Service Credits; and

(b) no Service Credit(s) may be claimed by the Customer upon the resolution of an Incident however both Parties agree to review this position in good faith, on the first anniversary of this Agreement.

In addition:

(c) Service Credits will be provided only following the Customer's claim which must be received within five (5) Business Days after the issuance of the Monthly Service Report to the Customer.

To claim a Service Credit the Customer must make a formal written claim to Foreshore.

Claims for Service Credits must be made in accordance with the Customer Procedures.

Under no circumstances will the total Service Credit granted to the Customer for any month exceed the aggregate Charges paid or payable by the Customer for that month.

7. Additional Services

7.1. Recovery as a Service

Where the Customer has purchased Recovery as a Service, this service utilises Virtual Replication to provide the replication of Virtual Machines in virtual replication groups. This can be between the Customer's vSphere environment into Foreshore's vCloud environment in the "To-Cloud" variant of the service, or between two of Foreshore's vCloud environments in different datacentres in the "In-Cloud" variant of the service.

The Customer must ensure they are within one version release of Foreshore's Zerto software, to ensure compatibility. Foreshore cannot guarantee that the Recovery as a Service will run within specification where this is not the case. Foreshore reserves the right to update the Zerto software in line with vendor specifications.

Where Foreshore provides the service to the Customer to address on premise replication, the Customer should check the Zerto compatibility matrix to ensure that the hardware and software on premise is compatible with Zerto software through time.

As data is written to production disks of Virtual Machines within Virtual Replication Groups, it is replicated to a Foreshore vCloud environment. The Zerto software records resource utilisation every hour and this is used to calculate the protected resources for the month including, but not limited to, protected Virtual Machines, vCPU, memory, disk storage and journal storage.

For pre-purchased protected resources the figures are used to confirm they are within the purchased limits. Should the protected resources used be in excess of the pre-purchased amount the client will have the opportunity to reduce the protected resources or will otherwise be automatically upgraded to provide sufficiently protected resources for the following month.

The Customer may define the target Recovery Point Objective and recovery Continuous Data Protection journal history time and maximum journal size and may receive email alerts when either of these exceeds their target SLA and when they then meet their SLA again.

Significant data change rates on the protected Virtual Machines or network congestion between the protected Virtual Machine and the recovery site may cause the Recovery Point Objective to exceed its target SLA settings for periods of time.

Protected Storage includes the storage associates with the Virtual Machine and also the storage associated with the recovery journal for that Virtual machine.

Where a client takes the "To-Cloud" variant of the service, the customer is responsible for ensuring that they have sufficient bandwidth capacity between their vSphere environment and Foreshore's vCloud environment to meet the required Recovery Point Objective.

The Customer may create, modify or delete virtual replication groups, and fail over for testing or production purposes. Alternatively, the customer may request Foreshore to do this on their behalf provided that they have taken the recovery management service.

RaaS Pay As You Go (PAYG) resources used for VMs that have been failed over, either for test or invocation will be billed as used and measured in minute intervals.

RaaS PAYG resources can only be used for protected virtual replication groups and no other type of workload.

7.2. Online Back Up

Where the Customer has purchased Foreshore Veeam Back-Up Services Foreshore will use Veeam Backup and Replication software to perform an image level backup of each Virtual Machine that has had a Foreshore Veeam Backup-Service purchased for it. Snapshot image backups of each covered machine will be scheduled to run each night and the data will be stored in compressed and de-duplicated format on an encrypted drive. The retention period for these backups will be configured for 7 days unless specified otherwise in the service description

The backups are taken at the hypervisor level and will only provide, as default, a crash consistent backup.

If VMware tools are installed in the guest operating system of the Virtual Machine and it is supported, then, at the request of the Customer, the VMware Tools Quiescence option in the backup job will be selected enabling the freezing of the file-system for proper snapshot creation. Veeam recommend using Application-Aware image processing as opposed to VMware Tools Quiescence for Windows systems that support Windows Virtual Shadow Copy Service.

At the request of the Customer, and providing the Customer provides Foreshore with the credentials of an account with administrator access to the guest operating system, Foreshore will enable the Application-Aware Image Processing option in the backup job so the Veeam Backup and Replication utilizes the Windows Volume Shadow Copy Service to ensure consistent backup of Virtual Shadow Copy Service aware applications running within virtual machines (domain controllers, databases and other applications) without shutting them down.

Backups are image level backups only and Foreshore will provide image level restores at the request of the Customer as defined in the Additional Services.

Additional charges shall be payable in accordance with this Agreement if the Customer requests Services that are not included in the Support Services by raising a support ticket (or Foreshore raising one on behalf of the Customer at the Customer's request). Provided Foreshore is able to satisfy that request, it will be treated as a chargeable support ticket at the agreed support rates in accordance with this Agreement.

7.3. Two-Factor Authentication

Where the Customer has purchased Authentication Services, it shall comply with the provisions of Schedule 5 of this Agreement.

8. Back-Up Policy

8.1 Where the Customer has purchased Foreshore Veeam Back-Up Services, the Customer may use Veeam Backup and Replication software to perform an image level backup of each Virtual Machine that has had a Foreshore Veeam Backup-Service purchased for it.

8.2 Veeam backups are taken at the hypervisor level and will only provide, as default, a crash consistent backup.

8.3 The backup repository (sized in a minimum of 500GB increments) can be located in the same data centre in which the virtual server resides, or can be provisioned in a geographically disparate data centre.

9. Self-Service Backups

9.1 A crash consistent, or optionally an application consistent, backup job shall be configured and managed by the Customer.

9.2 The following unmanaged backup service options are available:

RPO	Retention Period	RTO	Recovery Method	Backup Repository Location	File Level Restore
Configurable	Unlimited	Configurable	Self Service	Single Data Centre	Yes

- "Configurable" RPO means that the Customer configures the backup schedule via the Veeam administration console.
- "Configurable" RTO refers to the Veeam application's backup job configuration options; and the restore actions are taken by the Customer.
- "Unlimited" Retention Period means that Foreshore provides repository space only, in 500GB increments. The Customer can purchase as much space as needed to accommodate their unlimited ability to retain backups based on their need. The customer can configure alerts or access reports to indicate when additional space is required, and request Foreshore to provision additional storage.

10. The Software Terms

Where Foreshore supplies or licenses any third-party software to the Customer, including but not limited to Microsoft Operating Systems and Applications, the Customer must comply with all license conditions and requirements.

By entering into this Agreement, the Customer is confirming that it has read, understood and agrees to the terms of the VMware EULA which is available at www.vmware.com/download/eula

11. Foreshore's Obligations on Termination of the Subscription Services:

- 11.1 Prior to the date of termination of the Agreement or an applicable Order Form, the Customer may download the Virtual Machines and Customer Data in OVF format containing the Customer Data using the vCloud Director Portal for Virtual Machines accessible through the vCloud Portal.
- 11.2 Following the date of termination of the Agreement or an applicable Order Form, Foreshore may destroy or otherwise dispose of any or all of the Customer Data in its possession unless Foreshore receives, with the Customer's notice of termination or (in the case of Foreshore giving notice of termination) no later than three Business Days after the date of Foreshore's notice of termination, a written request for the delivery to the Customer, of the Customer Data in a format to be agreed, where that format is documented and supported by the supporting vendor of Foreshore's Cloud platform (such as OVF or VMDK files), and which provides an accurate representation of each of The Customer's Virtual Machines state, and does not raise the probability of data corruption through intermediate steps or conversion.
- 11.3 The Customer acknowledges that in order to provide the Virtual Machine data in a clean 'powered off' state, rather than a crash-consistent state, some Virtual Machines may need to be powered off in advance of the data export process being initiated. In that case, the precise schedule during which data will be exported, and corresponding Foreshore labour costs, will be agreed with the Customer in advance.
- 11.4 Upon acceptance of a quote to deliver the Customer Data, Foreshore will use reasonable endeavours to deliver that data to the Customer within 10 Business Days after the date of termination of the Agreement, or otherwise agreed, or an applicable Order Form, provided that the Customer has, at that time, paid all agreed fees and charges outstanding at and all fees and charges resulting from the termination of the Agreement or an applicable Order Form (whether or not due at the date of termination) and the Customer has agreed to pay the quoted charge for Foreshore to export the Customer Data per Virtual Machine.
- 11.5 Should the volume of data, or the Customer requirements, make it impracticable to do this within 10 Business Days after the date of termination of the Agreement or an applicable Order Form, then Foreshore may, at its discretion, charge pro-rated rates for the vCloud resources still consumed by Customer Virtual Machines.
- 11.6 Where the Customer has purchased Veeam Back-Up Services, on termination of the Agreement or an applicable Order Form, Foreshore may destroy or otherwise dispose of any or all of the backups of the Customer Data in its possession unless Foreshore receives, with the Customer's notice of termination or (in the case of Foreshore giving notice of termination) no later than three Business Days after the date of Foreshore's notice of termination, a written request for the delivery to the Customer, the backups of the Customer Data. In that case, Foreshore will use reasonable endeavours to deliver that data to the Customer within 10 Business days after the date of termination of the Agreement or an applicable Order Form, provided that the Customer has, at that time, paid all agreed fees and charges outstanding at and all fees and charges resulting from the termination of the Agreement or an applicable Order Form (whether or not due at the date of termination) and the Customer pays Foreshore's reasonable costs. The backup data will be provided in its native format with instructions on how this can be accessed using Veeam Server software.
- 11.7 This condition 11.7 is without prejudice to condition 12 (Duration and Termination) of the Agreement.

12. The Customer's Obligations on Termination of the Subscription Services:

Prior to the date of termination of the Agreement or an applicable Order Form, the Customer must remove any Customer Data that they may require from any Virtual Machines or other Cloud Resources provided as part of the Services or any Additional Service that they have been using.

- 12.1 The Customer will cease using any Software provided as part of the Services or any Additional Service.
- 12.2 This condition 12.2 is without prejudice to condition 12 (Duration and Termination) of the Agreement.

Schedule 1

Acceptable Use Policy

Contents

1. The Purpose of this Policy and the Consequences of Breaching it
2. Monitoring
3. Offensive and Unlawful Material
4. Email
5. Other Prohibited Activities
6. Changes to this Policy

1. The Purpose of this Policy and the Consequences of Breaching it:

- 1.1. This Policy sets out the rules which apply when the Customer use any service (a Foreshore Service) provided by Foreshore.
- 1.2. This Policy is designed to help protect Foreshore, its suppliers and its customer base as a whole from the consequences of irresponsible, illegal and unlawful activities.
- 1.3. This Policy is part of each Customer's Agreement with Foreshore. If the Customer breaches this Policy, Foreshore may suspend or terminate the Customer's use of any Foreshore Service in accordance with the Agreement between Foreshore and its Customer for that Foreshore Service, and Foreshore may claim damages for any loss caused by that breach.
- 1.4. If Foreshore thinks that the Customer's use of any Foreshore Service involves, or may involve, any illegal or unlawful activity, it may report that activity to the appropriate authorities.
- 1.5. If anyone alleges that the Customer's use of any Foreshore Service is, or involves, any illegal or unlawful activity, Foreshore may co-operate with any investigation into that activity and may disclose any information to any law enforcement or regulatory authority and to any other interested party.
- 1.6. Foreshore may 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 this Policy. In particular, Foreshore reserves the right immediately to remove or disable access to any material on its systems which:
 - 1.6.1. Foreshore deems to be defamatory or potentially defamatory;
 - 1.6.2. is, or is alleged to be, an infringement of intellectual property rights;
 - 1.6.3. is, or is alleged to be, obscene or pornographic; or
 - 1.6.4. is, or Foreshore suspects is, infected with a virus or which might infect or corrupt Foreshore's data or systems or the data or systems of any other person.
- 1.7. Each Foreshore Customer must ensure that its users, everyone who accesses or uses any Foreshore Service through that Customer's IT systems and that Customer's customers who use any Foreshore Service comply with this Policy.

2. Monitoring

Foreshore may, but is not obliged to, monitor the Customer's or any other person's use of any Foreshore Service. Foreshore may operate systems to monitor compliance with this Policy.

3. Offensive and Unlawful Material

3.1. The Customer must not, when using any Foreshore Service, store, publish or transmit any material which:

- 3.1.1. is defamatory, a malicious falsehood or a seditious libel;
- 3.1.2. is obscene, indecent, lewd, pornographic, or sexually explicit;
- 3.1.3. is violent, abusive, offensive, threatening, menacing or harassing;
- 3.1.4. facilitates or encourages any activity or conduct which is or may be defamatory, or a malicious falsehood or a seditious libel, obscene, indecent, lewd, pornographic, violent, abusive, offensive, threatening, menacing or harassing;
- 3.1.5. involves terrorism, theft, fraud, drug-trafficking or money laundering;
- 3.1.6. is, or is likely to be understood as, encouragement or other inducement to prepare, instigate or commit any act of terrorism;
- 3.1.7. is an invasion of privacy or a breach of any data protection principle or legislation;
- 3.1.8. is discriminatory in any way, including by way of sex, race, or age discrimination, or is likely to incite or capable of inciting racial hatred, sadism or cruelty;
- 3.1.9. infringes another person's copyright, database rights, trade mark, patent, or other intellectual property right;
- 3.1.10. is intended to assist others in defeating any technical copyright protection;
- 3.1.11. improperly discloses any trade secrets or other confidential information of another person;
- 3.1.12. is blasphemous;
- 3.1.13. contains any virus, corrupted data, Trojan horse or anything else which might damage, destroy or render inaccessible any data or files on any system or any network; or
- 3.1.14. is in some other way unlawful or illegal or encourages any unlawful or illegal act or omission under any law which applies to the Customer or to Foreshore or to any of Foreshore's suppliers.

4. E-Mail

4.1. The Customer must not use any Foreshore Service to:

- 4.1.1. send any email which is intended to harass, inconvenience or annoy anyone, or cause them needless anxiety; or
- 4.1.2. send any email if its content breaches section 3 of this Policy.

4.2. The Customer must ensure that all marketing and other commercial emails comply with all laws and regulations which apply to its activities.

5. Other Prohibited Activities

5.1. The Customer may not use any Foreshore Service to do or attempt to do any of the following:

- 5.1.1. obtain unauthorised access to, or the use of, any data, service, system or network, unless the Customer has the permission of the owner of the data, service, system or network;
- 5.1.2. probe, scan or test the vulnerability of any system or network or breach any security, verification or authentication measures (including those of Foreshore) unless the Customer has the permission of the owner of the system or network;
- 5.1.3. monitor data or traffic on any network or system unless the Customer has the permission of the owner of the system or network;

- 5.1.4.interfere with the provision of any service (including a Foreshore Service) to any other person, system or network, or adversely affect the operation of any service, system or network (including those of Foreshore), whether by mail bombing, flooding, overloading any system or network, broadcast attack, transmissions causing a system or network crash, or in any other way;
 - 5.1.5.use an account or an IT system unless the Customer has the owner’s permission to do so;
 - 5.1.6.collect information by deceit (including, without limitation, internet scamming password theft, phishing, security hole scanning, and port scanning);
 - 5.1.7.distribute software which covertly gathers information about a user or covertly transmits information about a user; or
 - 5.1.8.carry out any other unlawful or illegal activity.
 - 5.2. The Customer must not omit, remove, falsify or misrepresent any transmission information, including but not limited to any:
 - 5.2.1.TCP-IP packet header;
 - 5.2.2.message header; or
 - 5.2.3.IP address.
 - 5.3. If the Customer is using any shared Foreshore Service, the Customer must not use it in a way which:
 - 5.3.1.interferes with the normal operation of that Foreshore Service;
6. Changes to this Policy
 - 6.1. The internet, how it is used and may be misused, and the law relating to that use and misuse frequently change. Therefore Foreshore reserves the right to update or modify this Policy from time to time without prior notice by publishing the revised version of this Policy on its website.
 - 6.2. Foreshore may change this Policy at any time.

Schedule 2

Customer Notification Policy

Contents

1. The Purpose of this Policy
 2. Notifications
 3. Changes to this policy
1. The Purpose of this Policy:
 - 1.1. This Policy sets out how Foreshore may contact the Customer in various circumstances.
 - 1.2. This Policy does not cover formal notices and requests made under the 'Notice' clause in the Customer's Agreement with Foreshore.
 - 1.3. A Designated Contact who has opted out of receiving notifications from Foreshore will not receive communications as described in this Policy.
 - 1.4. A Designated Contact must opt in to receive notification via Customer Emergency SMS Notifications.
 2. Notifications
 - 2.1. Scheduled Maintenance
 - 2.1.1. Foreshore may notify the Customer of any Scheduled Maintenance by sending an email to a contact within the service notification group (if any).
 - 2.1.2. Foreshore may notify the Customer of any planned maintenance to any network or core infrastructure by sending an email to a contact within the service notification group (if any).
 - 2.1.3. Foreshore may notify the Customer of any planned maintenance to a specific service (e.g. to Mimecast Offshore) by sending an email to a contact within the service notification group (if any)
 - 2.2. Emergency Maintenance
 - 2.2.1. Foreshore may notify the Customer of any emergency maintenance by sending an email to a contact within the service notification group (if any).
 - 2.2.2. Foreshore may notify the Customer of any emergency maintenance to any network or core infrastructure by sending an email to a contact within the service notification group (if any).
 - 2.2.3. Foreshore may notify the Customer of any emergency maintenance to a specific service (e.g. to Mimecast Offshore) by sending an email to a contact within the service notification group (if any)
 - 2.3. Performance
 - 2.3.1. Foreshore may notify the Customer of any suspected performance degradation by sending an email to contact within the service notification group (if any).
 - 2.3.2. Foreshore may notify the Customer of any network or core infrastructure related suspected performance degradation by sending an email to a contact within the service notification group (if any)
 - 2.3.3. Foreshore may notify the Customer of any service specific suspected performance degradation (e.g. with Mimecast Offshore) by sending an email to a contact within the service notification group (if any).

- 2.3.4. Foreshore may notify the customer of emergency performance issues by sending a Customer Emergency SMS Notification (CESN) to any contact that has opted in to receive these messages for the affected service.
 - 2.4. Service Updates
 - 2.4.1. Foreshore may notify the Customer of any service update (e.g. a new software release) or provide the Customer with general service information by sending an email to a contact within the service notification group (if any)
 - 2.4.2. Foreshore may notify the Customer of any network or core infrastructure related update notifications or provide the Customer with general information about any network or core infrastructure by sending an email to a contact within the service notification group (if any)
 - 2.4.3. Foreshore may notify the Customer of any service specific update or provide the Customer with general information about that service (e.g. Mimecast Offshore) by sending an email to a contact within the service notification group (if any)
 - 2.5. Primary Contact
 - 2.5.1. If Foreshore does not have details of any other Contact, or if Foreshore only has details of one or more of the Customer's Primary Contacts and Security Officers, Foreshore may send any notification under this Policy to one of the Customer's Primary Contacts by email.
3. Tests
 - 3.1. Foreshore may perform tests of the Customer Emergency SMS Notification system at a frequency no greater than once a quarter.
4. Changes to this Policy
 - 4.1. Foreshore reserves the right to update or modify this Policy from time to time without prior notice by publishing the revised version of this Policy on its website.
 - 4.2. Foreshore may change this Policy at any time.

Schedule 3

Customer Procedures

Contents

1. The Purpose of these Procedures and the Consequences of Not Following them
 2. Service Requests (including Support and Changes to Existing Services)
 3. Deliveries to Foreshore
 4. Requests to Calculate Availability and Notification of Outages
 5. Claims for Service Credits
 6. Appointing or Changing the Customer's Primary Contacts or Security Officers
 7. Non-authorised Requests and Changes to Other Designated Contacts
 8. Changes to these Procedures
1. The Purpose of these Procedures and the Consequences of Not Following them
 - 1.1. These Procedures set out the steps to be followed when the Customer wishes to request Foreshore to provide or change an existing service, or wishes Foreshore to calculate Availability, or to notify Foreshore of an Outage or claim a Service Credit.
 - 1.2. In order to protect both Foreshore and the Customer, these Procedures are designed to help ensure that only the appropriate Designated Contacts request services or a change to an existing service, notify outages or make claims for service credits.
 - 1.3. Failure to follow these Procedures may mean that Foreshore does not comply with the Customer's request. If the Customer is making a claim for a Service Credit, no service Credit will be payable unless the claim is made in accordance with section 5 below.
 - 1.4. The Customer must ensure that each of its Designated Contacts is familiar with and follows these Procedures.
 - 1.5. Foreshore will be entitled to assume that any request made by a Designated Contact is authorised by the Customer without the need for Foreshore to check the identity of the person making the request.
 2. Service Requests (including Support and Changes to any Existing Service)
 - 2.1. Service requests must be made by the Designated Contact for that service sending an email to serviceoperations@sure.com (the preferred method of logging a service request). Any ticket or other reference in any response must be used by the Customer in all further correspondence about that request and whenever contact is made with Foreshore about that request.
 - 2.2. Service requests may also be made by the Designated Contact for that service telephoning the Foreshore Network Operations Centre on +44 1534 752310 in the event that email is unavailable. Additional authentication may, at Foreshore's option, be required in the case of requests made by telephone.
 - 2.3. If a Service request is made by somebody who is not the Designated Contact for that service, they will be advised of this fact and Foreshore will not action the request. Unless

section 2.4 applies, the Customer must arrange for the Designated Contact for that service to make the request.

- 2.4. If there is no Designated Contact for that service available to make the request, one of the Customer's Primary Contacts or Security Officers must send an email to serviceoperations@sure.com, respectively making that request and the procedure set out in section 7 must be followed.
3. Deliveries to Foreshore
 - 3.1. If the Customer wishes to arrange a shipment of equipment to Foreshore it must email serviceoperations@sure.com at least 24 hours in advance of the delivery with the following details:
 - 1) Shipping company and Customer details;
 - 2) Quantity of boxes;
 - 3) Consignment number;
 - 4) Estimated delivery date;
 - 5) Brief description of contents; and
 - 6) Special handling requirements.
 - 3.2. Foreshore reserves the right to accept any deliveries not notified to at least 24 hours in advance in accordance with paragraph 3.1.
 - 3.3. The Customer agrees that Foreshore is not responsible for checking any items delivered or the number of items delivered, and will not be liable for the consequences of signing any delivery or other note if requested to do so by the person making the delivery.
 4. Requests to Calculate Availability and Notification of Outages
 - 4.1. Notification of a suspected outage and a request to calculate the outages in a calendar month must be made by one of the Customer's Primary Contacts or Security Officers by email to serviceoperations@sure.com.
 5. Claims for Service Credits
 - 5.1. Claims for a Service Credit must be made by one of the Customer's Primary Contacts or Security Officers by email to serviceoperations@sure.com.
 6. Appointing or Changing the Customer's Primary Contacts or Security Officers
 - 6.1. The Customer will appoint at least one Primary Contact and Security Officer (if any) at the time the initial order for a service is placed by the Customer.
 - 6.2. If the Customer wishes to change one of its Primary Contacts, another of the Customer's Primary Contacts or one of the Customer's Security Officers (if any) must send an email to serviceoperations@sure.com, giving details of the Primary Contact to be changed and details of the new Primary Contact.
 - 6.3. If the Customer wishes to change one of its Security Officers, one of the Customer's Primary Contacts or another Security Officer (if any) must send an email to serviceoperations@sure.com, giving details of the Security Officer to be changed and details of the new Security Officer.

- 6.4. To request a change to one of the Customer's Primary Contacts or Security Officers when no authorised person is available to make that change, the Customer must send an e-mail to serviceoperations@sure.com containing:
 - 1) A scanned letter on headed paper signed by the Managing Director or, Chief Executive Officer, Managing Partner or Senior Partner of the Customer or a member of the Customer's board of directors;
 - 2) A scanned copy of photographic ID (e.g. passport or driving licence) of the person who has signed the letter; and
 - 3) Full details of the change being requested.
- 6.5. Only after validation of those documents has been completed to Foreshore's satisfaction will the requested change be made.
7. Changes to Other Designated Contacts
 - 7.1. If a Designated Contact (except one of the Customer's Primary Contacts or Security Officers) is to be changed, one of the Customer's Primary Contacts or Security Officers must send an email to serviceoperations@sure.com, giving details of the Designated Contact to be changed and details of the new Designated Contact.
 - 7.2. There may be occasions where a Designated Contact needs to be changed and there is no Primary Contact or Security Officer available to make this change. For example, if a Customer has only a single Primary Contact and no Security Officer and the Primary Contact ceases to be employed by the Customer.
 - 7.3. To request a change to a Designated Contact (except one of the Customer's Primary Contacts or Security Officers) when no authorised person is available to make that change, the Customer must send an e-mail to serviceoperations@sure.com containing:
 - 1) A scanned letter on headed paper signed by the Managing Director or, Chief Executive Officer, Managing Partner or Senior Partner of the Customer or a member of the Customer's board of directors;
 - 2) A scanned copy of photographic ID (e.g. passport or driving licence) of the person who has signed the letter; and
 - 3) Full details of the change being requested.
 - 7.4. Only after validation of those documents has been completed to Foreshore's satisfaction will the requested change be made.
8. Changes to these Procedures
 - 8.1. Foreshore reserves the right to update or modify these Procedures from time to time without prior notice by publishing the revised version of these Procedures on its website.

Schedule 4

Data Protection

Part A – requirements

1.1 In the event that Personal Data is processed by Foreshore under this Agreement, the provisions of this Part A of Schedule 4 shall apply and the following definitions shall apply:

“Data Protection Laws” means all applicable privacy and data protection laws applicable to the performance of Foreshore obligations under this Agreement, including the Data Protection (Jersey) Law 2018, Data Protection (Application of the GDPR) Order 2018, the General Data Protection Regulation ((EU) 2016/679) and any applicable national implementing laws, regulations and secondary legislation in England and Wales and/or the Territories relating to the processing of Personal Data and the privacy of electronic communications, as amended, replaced or updated from time to time, including the Privacy and Electronic Communications Directive (2002/58/EC) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426);

“Personal Data” means any information relating to an identified or identifiable natural person as defined by the applicable Data Protection Laws in the Territory.

“Territory” means Jersey.

1.2 The Parties acknowledge that for the purpose of the Data Protection Legislation:

- 1.2.1 Customer is the controller and Foreshore is the processor in respect of the Personal Data; and
- 1.2.2 Customer retains control of the Personal Data and remains responsible for its compliance obligations under the applicable Data Protection Legislation, including providing any required notices and obtaining any required consents, and for the processing instructions it gives to Foreshore; and
- 1.2.3 Part B of this Schedule 4 sets out the scope of the processing carried out by Foreshore under this Agreement.

1.3 Both Parties warrant that they will duly observe all their obligations under the Data Protection Laws on the protection of individuals with regard to the Processing of Personal Data and on the free movement of such data. Both Parties shall also duly observe and follow the relevant and applicable Data Protection Laws. In this Part A of Schedule 4, the terms “Process”, and “Processing” shall be understood in their meanings as assigned by the applicable Data Protection Laws.

1.4 Without limiting clause 1.2 of Part A of Schedule 4, if Customer passes to Foreshore, or otherwise gives Foreshore access to, Personal Data under this Agreement, Foreshore:

- 1.4.1 will not Process Personal Data held by it under this Agreement except in accordance with this Agreement or otherwise on the written instructions of Customer;

- 1.4.2 will acquire no rights or interest in the Personal Data and will return such Personal Data to the Customer on demand;
 - 1.4.3 will ensure that its employees will maintain proper records of the Processing of any Personal Data received from the Customer or from a third party on behalf of the Customer;
 - 1.4.4 ensure that all personnel who have access to and/or Process Personal Data are obliged to keep the Personal Data confidential;
 - 1.4.5 shall as soon as is reasonably practicable notify the Customer if it receives a subject access request in respect of the Personal Data Processed under this Agreement or any complaint, notice or communication which relates directly or indirectly to the Processing of the Personal Data or to either Party's compliance with the Data Protection Laws and it shall provide the Customer with full co-operation and assistance in relation to any such request, complaint, notice or communication;
 - 1.4.6 will not transfer any Personal Data received from or on behalf of the Customer under this Agreement outside the European Economic Area or an approved "White List" country (or successor EU approval) except with the prior written consent of the Customer and in accordance with any additional terms the Customer may impose on such transfer.
- 1.5 Foreshore shall ensure that the Personal Data is kept secure, and shall use all reasonable security practices and systems applicable to the use of the Personal Data to prevent, and take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution of the Personal Data.
- 1.6 Foreshore shall take reasonable precautions to preserve the integrity of any Personal Data processed by it and to prevent any corruption or loss of such Personal Data.
- 1.7 Foreshore shall:
- 1.7.1 only make copies of the Personal Data to the extent reasonably necessary for the provision of the services under this Agreement (which, for clarity, includes back-up, mirroring (and similar availability enhancement techniques), security, disaster recovery and testing of the Personal Data);
 - 1.7.2 not extract, re-utilise, use, exploit, redistribute, re-disseminate, copy or store the Personal Data other than for the provision of the services under this Agreement; and
 - 1.7.3 not do anything that may materially damage the reputation of the Customer.
- 1.8 Foreshore warrants and represents that it will:
- 1.8.1 having regard to the state of technological development and the cost of implementing any measures, take appropriate technical and organisational measures against the unauthorised or unlawful Processing of Personal Data) and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:

- 1.8.1.1 the harm that might result from such unauthorised or unlawful Processing or accidental loss, destruction or damage; and
 - 1.8.1.2 the nature of the Personal Data to be protected;
 - 1.8.2 discharge its obligations under this Agreement with all due skill, care and diligence.
- 1.9 Foreshore shall keep detailed, accurate and up-to-date records relating to the Processing by it of Personal Data provided by the Customer and to the measures taken under clause 1.5 of Part A of schedule 4, including the permissioning and control of the Personal Data, and books of account (“Records”).
- 1.10 Foreshore shall make available to the Customer and its third-party representatives, all information necessary to demonstrate compliance with its obligations in this Clause 1 and allow and contribute to audits when requested in writing by the Customer (provided such requests relate to the Customer’s Personal Data only). Reasonable notice must be given to Foreshore in respect of such audits which may only be exercised on Business Days, once in any calendar year during the term of this Agreement. Such audits shall be carried out at the expense of the Customer.
- 1.11 Foreshore shall give all necessary assistance as required by the applicable law to the conduct of such audits during the term of this Agreement.
- 1.12 Audit access by any third party representative of the Customer shall be subject to such representative agreeing confidentiality obligations equivalent to those in this Agreement in respect of the information obtained, provided that all information obtained may be disclosed to the Customer.
- 1.13 If either party:
- 1.13.1 becomes aware of any unauthorised or unlawful Processing of the Personal Data or that any such Personal Data is lost or destroyed or has become damaged, corrupted or unusable;
 - 1.13.2 becomes aware of any security breach affecting, or potentially affecting, the Personal Data; or
 - 1.13.3 learns or suspects that any security feature has been revealed to or obtained by any unauthorised person,
- that Party shall, at its own expense, promptly notify the other Party and fully co-operate with the other Party to remedy the issue as soon as reasonably practicable.
- 1.14 Foreshore shall notify the Customer in the event that it is subject to any data protection action or investigation by a data protection supervisory authority which may affect the Processing of data under this Agreement.
- 1.15 Foreshore must, at no additional cost, take such technical and organisational measures as may be appropriate, and promptly provide such information to the Customer as the Customer may reasonably require, to enable the Customer to comply with:

- 1.15.1 the rights of Data Subjects (as defined in the Data Protection Laws) under the Data Protection Legislation, including subject access rights, the rights to rectify and erase Personal Data, object to the Processing and automated processing of Personal Data, and restrict the processing of Personal Data; and
 - 1.15.2 information or assessment notices served on the Customer by any supervisory authority under the Data Protection Legislation.
- 1.16 Foreshore must notify the Customer:
- 1.16.1 as soon as is reasonably practicable if it receives any complaint, notice or communication that relates directly or indirectly to the Processing of the Personal Data or to either Party's compliance with the Data Protection Legislation; and
 - 1.16.2 as soon as is reasonably practicable if it receives a request from a Data Subject for access to their Personal Data or to exercise any of their related rights under the Data Protection Laws.
- 1.17 Foreshore shall give the Customer all necessary assistance as required by the applicable law.
- 1.18 In the event of changes to the Data Protection Laws that affect the provisions of this Agreement, the Parties shall use reasonable endeavours to agree any required amendments to reflect applicable legislative requirements.

Part B - DATA PROCESSING

Data Processing by Foreshore:

Subject matter: all personal data processed by Foreshore for Customer as is necessary for the purposes of the provision of cloud and network services, support of such services and billing thereof as set out in this Agreement and as further instructed by Foreshore in relation to its use of the Services.

Nature: the processing consists of the following activities: storage of Customer's data in the provision of cloud services, usage data in relation to cloud and network services, billing and service management with associated reporting. In order for Foreshore to provide the Service, Foreshore rely on hardware and software vendor support contracts in order to maintain a supported platform. This may result in metadata associated with the Customer tenant being shared. Typically, this data is used to monitor performance and usage, as well as provide hardware and software assistance and escalation on support calls.

Purpose of processing: the data is processed for the following purpose: for the purpose of the provision of the Services by Foreshore to Customer, as set out in this Agreement.

Duration of the processing: the Term of the Agreement.

Types of Personal Data: Names of some of the customers employees, job titles, contact details, copies of signatures on contracts. For Authentication Services, the Customers and Users (as defined in Schedule 5) names. Any other category of data that Sure may process by virtue of supplying the cloud platform to the Customer.

Categories of data subject: Customer employees and their agents and in relation to Authentication Services, the Customers and Users (as defined in Schedule 5). Any other category of data subject that the Customer holds data on within the cloud service.

Schedule 5

Two-Factor Authentication

Foreshore has been appointed as a managed service provider by Duo Security, Inc. with offices at 123 North Ashley Street, Suite #200, Ann Arbor, MI 48104 (“**Duo Security**”) to sell a subscription service for two-factor authentication (the “**Authentication Services**”) provided by Duo Security.

This Schedule governs the use of the Authentication Services as described further in the Order Form. The Authentication Services shall fall within the definition of Services referenced in Clause 1 of the Agreement and the following terms apply to the Customer in addition to those set out in the remainder of the Agreement.

Definitions:

“**Data Protection Laws**” has the meaning given to that term in Schedule 4 (Data Protection).

“**Documentation**” has the meaning given to that term in the Duo Terms.

“**Hardware Tokens**” mean hardware security tokens ordered by Customer.

“**Software**” has the meaning given to that term in the Duo Terms.

“**User**” means any user of the Authentication Services whom a Customer (or Foreshore, as authorised by Customer) may authorise to enrol to use the Authentication Services under the terms of this Agreement.

1. Applicable Terms

By accessing the Authentication Services, you agree to be bound by this Agreement, this Schedule 5 and the terms of Duo Security’s terms and conditions (the “**Duo Terms**”) governing the use of and access to the Authentication Services which are located at: <https://duo.com/legal/pass-through-terms>

2. Licence

Subject to and conditional on Customer’s payment of the Charges and full compliance with all other terms and conditions of this Agreement (including the Duo Terms), Foreshore grants Customer a non-exclusive, non-sublicensable, non-transferable license to use the Authentication Services for the Customers’ and its associated Users’ internal business use.

3. Information and Consents

3.1. Customer shall provide any information and assistance reasonably requested by Foreshore with respect to the Authentication Service and authorises Foreshore to provide such information to Duo Security (where reasonably requested to do so).

3.2. Customer acknowledges that the Authentication Services will require Users to share with Duo Security and Foreshore certain information which may include personal information

regarding Users (such as usernames, Duo Admin Panel passwords, email address and/or phone number) solely for the purposes of providing and improving the Services. By accepting this Agreement and the terms and conditions of this Schedule 5, you agree to obtain the consent of each User in accordance with applicable law, to the use of his/her information by Duo Security and Foreshore. Use of the information is described in Duo Security's Services Privacy Notice, located at <https://duo.com/legal/privacy-notice-services> and in Foreshore's Privacy Notice, located at <https://www.sure.com/guernsey/privacy-policy>

4. SLA

Subject to full compliance with the terms and conditions of this Agreement, Duo Security will provide support to Customer as described in the service level agreement located at <https://duo.com/legal/sla>, which is subject to change from time to time in Duo Security's sole discretion. Foreshore shall provide second line support in relation to issues with Foreshore's IT Infrastructure in accordance with the Service Level as set out in the Service Description.

5. Liability of Duo Security

- 5.1. It is acknowledged by the Customer that to the fullest extent permitted by law, Duo Security shall have no liability for matters arising out of or related to the Authentication Services pursuant to the terms of this Agreement. Any claims relating to the Authentication Services brought by the Customer (or a third party using the Authentication Services) under the terms of this Agreement, shall be brought against Foreshore as managed service provider.
- 5.2. The parties agree that notwithstanding clause 14.11 of the main Agreement, the terms of this Schedule 5 in so far as it relates to the Authentication Services, may where the Customer has permitted a breach in relation to the Authentication Services, be enforced by Duo Security to the fullest extent permitted by law as if it were a party to this Schedule 5.

6. Indemnification

- 6.1. The Customer shall indemnify and hold harmless Foreshore against all resulting liabilities, losses, damages, costs and expenses (including reasonable legal fees) incurred by Foreshore in relation to the use of the Authentication Services by the Customer (or a User) and from any claim related to Customer's breach of Clause 8 "Restrictions," Clause 7 "Intellectual Property Rights or Clause 9 "Data Protection."

7. Intellectual Property Rights

- 7.1. The Customer shall not provide any infringing, offensive, fraudulent or illegal content in connection with the Authentication Services, and the Customer represents and warrants that any content it provides will not violate any Intellectual Property Rights of any third party. Under the Duo Terms, Duo Security reserves the right, in its sole discretion, to delete or disable any content submitted by Customer, or any User, that may be infringing, offensive, fraudulent or illegal. To view Duo Security's complete copyright dispute policy and learn how to report potentially infringing content, please visit: <https://duo.com/legal/copyright>.

8. Restrictions

Customer will not, and will not permit any Users nor any third party to: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Authentication Services, Software, Hardware Tokens or any data related to the Authentication Services (except to the extent such prohibition is contrary to applicable law that cannot be excluded by the agreement of the parties); modify, translate, or create derivative works based on the Authentication Services or Software; share, rent, lease, loan, resell, sublicense, distribute, use or otherwise transfer the Authentication Services or Software for timesharing or service bureau purposes or for any purpose not explicitly permitted by this Agreement; remove, replace, modify or obscure any Duo Security or third party trademarks, trade names, copyright notices or other proprietary marks or notices within the Authentication Services or Documentation; or use the Services or Software other than in accordance with this Agreement and the Duo Terms and Conditions, and in compliance with applicable law.

9. Representations and Warranties

Foreshore makes no representations or warranties concerning the Authentication Services. Any representations and warranties in relation to the Authentication Service are set out in the Duo Terms.

10. Data Protection

- 10.1. In this Section 10, the terms “personal data,” “data processor,” “data sub processor,” “data subject,” “process and processing” and “data controller” shall be as defined in the applicable Data Protection Laws.
- 10.2. For the purposes of the Data Protection Laws, Customer agrees that Duo Security is a data processor (or sub processor, as applicable) and not the data controller of any personal data related to Customer’s use of the Authentication Services. Solely if and to the extent Duo Security is processing personal data, as defined in the relevant Data Protection Laws, on Customer’s behalf, then the terms of the data processing agreement available at <https://duo.com/legal/gdpr-data-protection-addendum> shall apply to such processing.
- 10.3. To the extent Foreshore processes any of the Customer’s personal data in relation to the Authentication Services the provisions of Schedule 4 of this Agreement shall apply.

11. Change in Pricing

Foreshore reserves the right to pass on any increase in fees from Duo Security to the Customer and will give the Customer sixty (60) days prior written notice of any change in pricing. If the Customer does not agree to the fee increase, it may terminate the Authentication Service with two (2) months written notice to Foreshore.

12. Termination

The termination provisions in clause 12 of this Agreement and clause 9 of the Duo Terms shall apply. In addition, Foreshore may terminate the Authentication Services with immediate effect by giving written notice to the Customer, if for any reason Foreshore is no longer authorised to

act as a managed service provider and its contractual relationship with Duo Security is terminated or notice is given of such termination.