

## OnApp General Terms and Conditions of Trading

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### GENERAL TERMS AND CONDITIONS OF TRADING (“GTCs”)

By executing an Order with OnApp that references these GTCs, the entity identified in such Order (“you”, “your”) agrees to these terms which, together with any other documents incorporated by reference into such Order and/or these GTCs, will exclusively govern such order (collectively “Agreement”).

#### 1. DEFINITIONS

1.1 Where used in these GTCs, the following capitalised words and phrases shall have the meaning given to them below:

“**Current Balance**” means the balance of your account with us, prevailing from time to time, taking into account all unpaid Fees due from you and all monies due to you;

“**Confidential Information**” means all non-public information of a secret or proprietary nature relating to the disclosing party’s business, products and/or services, affairs, customers, clients or suppliers, except: (i) such information that was known to the receiving party prior to its receipt from the disclosing party, without restriction as to use or disclosure; (ii) such information that is released into the public domain through no fault of the receiving party; and (iii) such information as was independently developed solely by or for the receiving party without access to or use of Confidential Information. For the avoidance of doubt, the terms of the Agreement are confidential and may not be disclosed by you without the prior written consent of OnApp;

“**Cloud.net Service**” has the meaning given in the CTCs;

“**CTCs**” has the meaning given in clause 3.3.1(c);

“**Deposit**” means the amount of money to be provided by you to us, to be held by us and which, acting in our discretion, we may apply in payment of Fees owed by you to us from time to time;

“**End Users**” means (as the context so requires): (i) your employees and agents that use the OnApp Services on your behalf; and (ii) your customers who are lawfully entitled to use the OnApp Services without the right to: licence, distribute, rent, lend, hire or sell them to others, or offer to do so;

“**Force Majeure Event**” means an event or sequence of events beyond a party’s reasonable control (which could not reasonably have been anticipated and avoided by a party) preventing or delaying it from performing its obligations hereunder, including without limitation war, revolution, terrorism, riot or civil commotion, or reasonable precautions against any such; strikes, lock outs or other industrial action, whether of the affected party’s own employees or others; blockage or embargo; acts of or restrictions imposed by government or public authority; explosion, fire, corrosion, flood, natural disaster, or adverse weather conditions. A Force Majeure Event does not include, without limitation, inability to pay, mechanical difficulties, shortage or increase of price of raw materials, over-commitment or market or other circumstances which may make the terms of the Agreement unattractive to a party;

**“Intellectual Property Rights” or “IPRs”** means without limitation, all present and future rights title and interest (as the same may be extended or amended) throughout the world in to or arising out of all forms of intellectual property including: (i) any national or international patent and any and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof; (ii) know-how, inventions (whether patentable or not in any country), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology and technical data; (iii) copyrights, copyright registrations, mask works, mask work registrations; (iv) all trade names, logos, trade marks, service marks, whether registrable or not, goodwill, business names and domain names; (v) all database rights and so-called ‘sui generis’ rights in databases; (vi) all rights in registered and unregistered designs; (vii) any other proprietary rights anywhere in the world and all rights or forms of protection having equivalent or similar effect to any of the foregoing; (viii) applications for the grant of any of the foregoing anywhere in the world, and all other rights corresponding thereto throughout the world together with any and all rights of registration, extension and renewal thereof; and (ix) the right to bring legal proceedings to enforce any of the foregoing rights;

**“GTCs”** means these General Terms and Conditions as amended from time to time in accordance with Clause 3.6;

**“Marketplace”** has the meaning given in the MTCs;

**“MTCs”** has the meaning given in clause 3.3.1(b);

**“OnApp”** means OnApp Limited of Brentano Suite, Hamstead Garden Suburb, First Floor, Lyttelton House, 2 Lyttelton Road, London, N2 0EF;

**“OnApp Services”** means all services or OnApp Software provided by or on behalf of OnApp under an Order, including the Cloud.net Service;

**“OnApp Software”** means any software provided by or on behalf of OnApp where you have access to the underlying code (in object code form or otherwise);

**“Order”** means an order in writing between OnApp and you;

**“Policies”** means the OnApp Information Security Policy (“InfoSec Policy”), Acceptable Use Policy (“AUP”), Data Processing Terms (“DPT”), and OnApp Trademark Guidelines and such other policies as notified to you from time to time;

**“Seller”** has the meaning given in the MTCs; and

**“Service Specific Terms”** means the terms that apply to a specific OnApp Service as further described in clause 3.3.1 of these GTCs, but excluding the Policies.

## **2. AGREEMENT STRUCTURE**

2.1 You may request to purchase/licence OnApp Services by executing a written Order. The Order shall only be deemed to be accepted by OnApp when OnApp issues a written acceptance that is also executed by OnApp. OnApp shall be free to accept or decline each Order in its own discretion.

2.2 Each Agreement shall govern a single Order that forms part of it and shall constitute a distinct contract independent of any other Order and Agreement between you and OnApp.

2.3 Any quotation given by OnApp shall not constitute an offer, and is only valid for the period specified in the quotation (or if no such period is specified, 20 business days from its date of issue).

2.4 Any documents or terms issued by you or which you seek to impose or incorporate, including any purchase order, shall be for your internal administrative purposes only and, regardless of what they may say otherwise, will have no contractual force or effect on OnApp and shall not operate to govern our relationship or modify OnApp's Agreement with you (whether signed by OnApp or not).

### 3. COMMENCEMENT AND DURATION

3.1 Each Order shall become legally binding once accepted and executed by OnApp in writing ("**Commencement Date**") and, unless earlier lawfully terminated, shall continue until you have paid all the payments set out in that Order or, if longer, such other minimum term as may be expressed in it ("**Initial Period**"). Upon expiry of the Initial Period the Order shall automatically renew for a further period equal to the Initial Period, or as otherwise stated on the applicable Order ("**Renewal Term**") unless you or OnApp have given written notice of non-renewal in accordance with clause 3.2, (the Initial Period and each Renewal Term, collectively the "**Term**").

3.2 Without limiting any other right either of us may have under the Agreement, either of us may terminate this Agreement for convenience at the end of the then-current Term by giving the other party written notice at least 7 days prior to the expiry of the then-current Term (or such other period as specified in the relevant Order). If such notice is not received by OnApp at least 7 days prior to the expiry of the then-current Term a further Renewal Term will apply as described in clause 3.1, and you will be obliged to pay for the next Renewal Term. You will be invoiced for Renewal Terms up to 21 days prior to the commencement of that Renewal Term.

3.3 The following are expressly incorporated into each Agreement by reference and form part of the Agreement to which it applies:

3.3.1 All Service Specific Terms which are applicable to the OnApp Service you receive which includes in every case (unless explicitly stated to the contrary in the Order):

- (a) the OnApp Software Licence Terms and Conditions ("**STCs**") which shall apply to any use of OnApp Software provided by or on behalf of OnApp;
- (b) the Marketplace Terms and Conditions ("**MTCs**") if you use or provide any Marketplace Services;
- (c) the OnApp Cloud.net Terms and Conditions ("**CTCs**") which shall apply to the Cloud.net Service; and
- (d) such other service specific terms as may be specified in the relevant Order from time to time,

in each case being the most current version which is located at <https://onapp.com/legal/> at the time the Agreement come into force (and as updated from time to time pursuant to clause 3.6);

3.3.2 All Policies including:

- (a) the InfoSec Policy;
- (b) the AUP;
- (c) the DPT (where applicable);
- (d) the OnApp Trademark Guidelines,

in each case being the most current version which is located at <https://onapp.com/legal/> at the time the Agreement comes into force (and as updated from time to time pursuant to clause 3.6);

3.3.3 To the extent we provide any professional services in relation to the provision of any other OnApp Services (including the implementation of any OnApp Software), such professional services shall be subject to our OnApp Professional Services Terms and Conditions (which shall apply whether or not such professional services are separately chargeable). Where no separate Order is entered for such professional services, clauses 3, 4, 6.1, 6.2, 6.4, 7 and 9 of the OnApp Professional Services Terms and Conditions shall be incorporated into the relevant Agreement and, in addition to the other clauses of the Agreement (including without limitation clause 7.4 of these GTCs), shall apply solely to such professional services provided under such Agreement. In the event of any conflict or inconsistency with the other provisions of the Agreement, such clauses of the Professional Services Terms and Conditions shall prevail.

3.4 Unless the Order specifically states otherwise, if there is an inconsistency between any of the documents comprising the Agreement, the following, descending order of precedence shall apply: (i) the Order; (ii) any Service Specific Terms that apply to that part of the OnApp Service; (iii) these GTCs; (iv) the InfoSec Policy; (v) the AUP; (vi) the DPT; and (vii) the OnApp Trademark Guidelines.

3.5 Subject to Clause 3.6, no Order shall be modified except by a subsequently dated, written amendment that expressly amends the Order and which is signed on behalf of both parties.

3.6 Unless stated otherwise in the Agreement, OnApp may amend the terms of the Agreement (including these GTCs and any or all the documents incorporated by reference including the Service Specific Terms and the MTCs (where applicable)) or the nature of the OnApp Services (including modifying or discontinuing any element of the OnApp Service) from time to time and will notify you accordingly on at least 21 days' written notice. Any such amendments will become part of the Agreement on the next renewal of an expiring of the Initial Period or the current Renewal Term (as applicable). If you do not agree with any such amendments, please notify OnApp that you do not wish to renew your Agreement in accordance with clause 3.2. Any change to the Policies shall be effectively immediately from when they are uploaded to <https://onapp.com/legal/> and your continued use of the OnApp Services shall constitute acceptance of such amendment. OnApp shall provide reasonable notice of any material change to the Policies.

#### **4. FEES**

4.1 In consideration for (i) the supply of the OnApp Services by or on behalf of OnApp, you shall pay all fees ("**Fees**") in accordance with the applicable Order and Service Specific Terms at the times and in the manner specified therein. Fees for OnApp Services are payable by you in advance unless otherwise stated on the Order. Where additional usage charges apply as described in this Agreement (e.g. additional bandwidth or usage charges or services provided on a pay-as-you-go basis), the same will be invoiced to you monthly in arrears as part of your next invoice for the OnApp Service (or upon expiry or termination of this Agreement, a further final invoice).

4.2 Except where agreed otherwise in an Order, you will pay all Fees to us in cleared funds within 14 days of the date of our invoice ("due date"). You agree to pay the undisputed portion of any disputed invoice pending resolution of any dispute. A dispute over one invoice shall not entitle you to delay or dispute payment in respect of another invoice or OnApp service or Agreement. The Fees owed to OnApp by you shall not be contingent upon your ability to collect any amounts from

your own customers. If you do not pay the invoices when due, OnApp may charge interest at one percent (1%) per month on the unpaid balance between the date due and the date paid.

4.3 Except where agreed otherwise in an Order, we may amend the Fees applicable to your Order on 21 days' written notice. Following expiry of such notice, OnApp may then amend its Fees effective upon the next renewal of an expiring of the Initial Period or the current Renewal Term (as applicable).

4.4 In the event that OnApp terminate an Agreement for your breach or insolvency OnApp shall be entitled to invoice immediately for all the minimum Fees that would have been payable during the then remaining balance of the Term of each terminating Agreement.

4.5 All amounts payable by you are exclusive of all sales taxes, use, excise, import or export, value added, governmental permit fees, license fees, and customs. If you are legally obliged under applicable tax law to withhold any amount of any payment to OnApp, then the amount of the payment to OnApp shall be automatically increased to totally offset such tax, so that the amount actually remitted to OnApp, net of all taxes, equals the amount invoiced or otherwise due. You will promptly furnish OnApp with the official receipt of payment of these taxes to the appropriate taxing authority. You may provide OnApp with a certificate of exemption acceptable to an applicable taxing authority.

4.6 All payments made by you must be received by OnApp in cleared funds by the due date for which purpose time shall be of the essence. No payments due to OnApp shall be subject to any setoff, counterclaim, withholding or deduction except as is mandatory under applicable law and subject to the other provisions of the applicable Agreement. OnApp shall be entitled to set off and cross-collateralise between each of your balances under any other Agreement in place with OnApp (if more than one).

4.7 The following provisions apply additionally to OnApp Services where OnApp notifies you that a Deposit is required:

4.7.1 We may alert you if the amount of your Deposit does not fully offset the amount of your Current Balance. If it does not, then you must take action immediately to reduce the amount owing to OnApp on your Current Balance or to increase the amount of your Deposit.

4.7.2 we reserve the right to suspend your access to and/or use of OnApp Services, should your Deposit not fully offset or exceed the amount of your Current Balance and once notified of that by OnApp you fail to promptly increase the amount of the Current Deposit.

4.7.3 subject to clause 4.6 (including payment of any applicable administration fees), remaining Deposits are refundable on termination

4.8 If you are a Marketplace Seller: (i) amounts earned by you will be applied in settlement of any Fees that become due regardless of the OnApp Services to which those Fees apply; and (ii) amounts will be remitted to you on your request when your Current Balance is in credit after payment of all Fees for all OnApp Services that are then due.

## **5. SUSPENSION AND TERMINATION**

5.1 Without prejudice to any other rights or remedies which the parties may have under the Agreement, either party may terminate the Agreement without liability to the other immediately upon giving notice to the other if the other party commits a material breach of an Agreement which is irremediable or, if capable of being remedied, is not remedied within 7 days (or such shorter

period set out in an Order or Service Specific Terms) of receipt of a notice from the other party requiring it to be remedied; or

5.2 Without prejudice to OnApp's other express rights under the Agreement, OnApp may immediately terminate the Agreement or suspend your access to and/or OnApp's provision of, the OnApp Services if:

5.2.1 you fail to promptly provide payment prior to, or by, the due date as per the Order;

5.2.2 OnApp, acting reasonably, determine that you or your End Users are in breach of the AUP;

5.2.3 you are in breach of your obligations set out in the Agreement and such breach has had (or is reasonably likely to have) a serious adverse impact on:

(a) the performance of OnApp's, and/or OnApp's third party providers', IT systems; and/or

(b) the security of OnApp's IT systems and the security of OnApp's other customers and their data;

5.2.4 you become insolvent, are the subject of a petition for creditor protection or a petition in bankruptcy or of any other proceedings under bankruptcy, insolvency (or equivalent laws in other countries) or make an assignment for the benefit of creditors; or

5.2.5 for such other reasons as set out in the Service Specific Terms.

5.3 OnApp shall notify you of a suspension pursuant to clause 5.2 and the same shall continue until the you have remedied your breach to OnApp's satisfaction. Such suspension shall not place OnApp in breach of OnApp's obligations to provide the OnApp Services and shall not relieve you from paying the Fees in accordance with the terms of the Agreement. OnApp shall use reasonable endeavours to provide you with such information OnApp is aware of to expedite your remedy of such breach. OnApp may charge you a reconnection and/or administration fee following any such suspension.

5.4 Any right of OnApp to suspend or terminate an Agreement shall entitle OnApp to suspend or terminate any other Agreement or contract with you or your affiliates.

5.5 On termination of an Agreement all rights and licences granted by OnApp to you shall immediately cease.

5.6 Termination or expiry of the Agreement shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

5.7 Any provision hereof that, by its nature, is intended to survive termination or expiry hereof shall so survive.

## **6. WARRANTIES AND INDEMNITIES**

6.1 You warrant that, in the performance of your obligations under the Agreement, you shall comply with all laws and regulations, (including those regarding export and re-export of equipment, computer hardware, software or technical data from the United States) which apply to you in respect of the activities you carry out in connection with this Agreement ("**Laws**").

6.2 You shall ensure that the User Content shall not: (i) breach applicable law; (ii) infringe any third party Intellectual Property Rights; or (iii) breach the AUP, (together “**Infringing Content**”).

6.3 You warrant that all necessary and appropriate consents and obligations have been met as required by applicable data protection legislation in relation to any User Content provided by you or on your behalf that is supplied to and processed by us under this Agreement.

6.4 You shall indemnify OnApp (and OnApp’s affiliates and subcontractors and its and their officers, directors, employees, agents, successors, and assignees (“**OnApp Indemnitees**”)) on demand and hold them harmless from and against all losses, damages, claims and expenses suffered by OnApp Indemnitees (including reasonable legal and other professional fees) that are directly or indirectly caused by your actual or threatened violation of any Laws, your infringement of any third party intellectual property right, or personal data or privacy rights, any of your User Content, including Infringing Content or any violation by you or your End Users of the AUP (“**General Claim**”). However, you shall no liability under this clause to the extent that OnApp’s breach of this Agreement causes your General Claim. Nothing in clause 7 limits or excludes your indemnification obligations pursuant to General Claim as described in this clause.

6.5 Subject to your compliance with Clauses 6.1 to 6.4 and 6.6, OnApp shall at its own expense defend you or, in its sole and absolute discretion, settle any claim or action brought against you alleging that the possession or use of the OnApp Services (or any part thereof) in accordance with the provisions of the Agreement infringes any UK and/or EU patent, copyright or registered trade mark rights of a third party (“**Claim**”) and shall be responsible for the losses, damages, costs and expenses (including reasonable legal fees) agreed to by OnApp in full and final settlement of such Claim or finally awarded against you by a court of competent jurisdiction in satisfaction of such Claim and not capable of further appeal, provided that in no event shall OnApp be liable to you to the extent that the Claim arises out of or in connection with: (i) the possession or use of the OnApp Services (or any part thereof) by you other than in accordance with the provisions of the Agreement; (ii) use of the OnApp Services in combination with any hardware or software not supplied or specified by OnApp, if the infringement would have been avoided by the use of the OnApp Services not so combined; (iii) use of a non-current release of the OnApp Services; (iv) a modification of the OnApp Services by anyone other than OnApp; or (v) your use of the OnApp Services or related documentation after you became aware of the Claim.

6.6 Our indemnification obligations in respect of Claims under this clause 6 are conditional on you: (i) as soon as reasonably practicable, giving written notice of the Claim to OnApp, specifying the nature of the Claim in reasonable detail; (ii) not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of OnApp (such consent not to be unreasonably conditioned, withheld or delayed); (iii) giving OnApp and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within your power or control, so as to enable OnApp and its professional advisers to examine them and to take copies (at OnApp’s expense) for the purpose of assessing the Claim; and (iv) taking such action as OnApp may reasonably request to avoid, dispute, compromise or defend the Claim.

6.7 If any Claim is made, or in OnApp’s reasonable opinion is likely to be made, OnApp may in its sole and absolute discretion and expense: (i) procure for you the right to continue using the OnApp Services (or any part thereof) in accordance with the provisions of the applicable Agreement; (ii) modify the OnApp Services so that it ceases to be infringing; (iii) replace the OnApp Services with

non-infringing OnApp Services; or (iv) terminate the affected Agreement by notice in writing to you and refund any pre-paid unused Fees. If OnApp modifies or replaces the OnApp Services, you shall have the same rights in respect thereof as you had in relation to the replaced version of the OnApp Services

6.8 Subject to clauses 7.1 to 7.3 and 7.6, clauses 6.5 to 6.7 inclusive constitutes your exclusive remedy, and OnApp's entire liability, in respect of Claims.

## **7. LIMITATIONS AND EXCLUSIONS OF LIABILITY**

7.1 Except as set out in clause 6 above, and subject to clause 7.2 below, this clause 7 sets out the sole rights and remedies and the entire financial liability and obligation of OnApp (including any liability for the acts or omissions of OnApp's affiliates, employees, officers, agents, consultants and subcontractors) to you in respect of: (i) any breach of any Agreement; (ii) any use of the OnApp Services (or any part of them); and (iii) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with any Agreement.

7.2 Nothing in any Agreement limits or excludes:

7.2.1 your payment obligations (including under any indemnity) or for your breach of any licence granted under or licence restrictions contained within the Agreement,

7.2.2 the liability of either party for death or personal injury resulting from negligence; or for fraud including fraudulent misrepresentation, or for any other liability that cannot be limited or excluded by law.

7.3 Subject to clause 7.2, neither party shall be liable for loss of profits, loss of business and/or business opportunity, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss of or corruption of data or information, property damage, cost of substitute goods or services or for any special, indirect, consequential, costs, damages, charges or expenses, or for pure economic loss, even if it is aware of the circumstances in which they could arise.

7.4 Subject to clauses 7.1, 7.2, 7.3, 7.5, 7.6, and 7.7 OnApp's (including OnApp's affiliates, employees, officers, agents, consultants and subcontractors) maximum aggregate liability to you (including your affiliates, employees, officers, agents, consultants, customers and third party service providers) in contract, tort (including negligence) or for breach of statutory duty, misrepresentation, or otherwise, arising out of or in connection with the performance or contemplated performance of an Agreement shall be limited to an amount equal to the greater of: (i) the Fees paid by you to OnApp under the relevant Agreement in the twelve months preceding the incident first giving rise to liability; or (ii) \$2,000.

7.5 OnApp's (including OnApp's affiliates, employees, officers, agents, consultants and subcontractors) maximum aggregate liability to you across all Agreements between OnApp and you arising out of any breach of the data protection provisions or intellectual property rights provisions (including under any indemnity) shall not exceed \$100,000 (USD) in the aggregate across all Agreements between OnApp and you.

7.6 To the maximum extent permitted by applicable law, and except as expressly provided otherwise in the Agreement: the OnApp Services are provided "as is" and "as available" without any warranty, and your access to and use of the OnApp Services is solely at your own risk; OnApp does

not warrant that the OnApp Services will meet your requirements or that access or operation of the OnApp Services will be uninterrupted or error-free or completely secure or that they will operate in combination with third party hardware or software products or services; and OnApp disclaims all representations, conditions and warranties, express, implied, and statutory, concerning the OnApp Services, or otherwise related to an Agreement, including, but not limited to, the implied warranties of satisfactory quality and fitness for a particular purpose, and any statutory warranties of non-infringement.

7.7 You are responsible for verifying the accuracy of any output from the OnApp Services. You shall be entirely responsible for all content and data that you send or that is sent on your or your End Users' behalf over the OnApp Services including those OnApp operate for you or via the Marketplace. OnApp shall have no liability in that connection and you shall indemnify OnApp in respect of all such content and data use in accordance with the provisions of the agreement. You are responsible for maintaining an appropriate backup of all data and content as we don't do that for you.

7.8 You acknowledge that the OnApp Services may enable or assist you to access POPs, websites and the website content of, and/or correspond with, third parties and that you do so solely at your own risk. OnApp does not endorse or approve any third-party, any third party POP, website or other service nor the content of any third-party website made available via the OnApp Services or otherwise.

7.9 You shall be entirely responsible for all content (including User Content) that you send or that is sent on your behalf over the OnApp Services including those we operate for you. To the maximum extent permitted by applicable law, we shall have no liability to you in connection with such content (including User Content) that you send or that is sent on your behalf over the OnApp Services and you shall indemnify the OnApp Indemnitees against any losses, damages, claims and expenses suffered by the OnApp Indemnitees in respect of all such content that you send or that is sent on your behalf over the OnApp Services.

## **8. IPRs AND CONFIDENTIALITY AND USER CONTENT**

8.1 All Intellectual Property Rights of whatever nature in the OnApp Services and related documentation are and shall remain wholly and exclusively the property of OnApp. No rights in to or under them are granted to you except the express licences granted under the applicable Agreement. OnApp strictly reserves all rights not expressly granted by it to you in writing.

8.2 Subject to clauses 8.3 and 8.4 below, each party undertakes that it shall not disclose to any person any Confidential Information of the other, except as permitted by this clause and shall not use it for any purposes except as necessary to perform an Agreement.

8.3 Each party may disclose the other party's Confidential Information: to its subcontractors, employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under the Agreement; and as may be required by law, court order or any governmental or regulatory authority, or law enforcement agency.

8.4 OnApp reserve the right to conduct a credit check on you and report to relevant third parties credit related information about any non-performance by you of your payment obligations.

8.5 As between you and OnApp, you (or your licensors) retain ownership of all Intellectual Property Rights in and to the information, data and/or software uploaded transmitted or otherwise provided by or on your behalf (including from users and End Users) to us via or during your use of

the OnApp Services (“**User Content**”). You are solely responsible for the accuracy, quality and legality of User Content and the means by which you acquire User Content.

8.6 You hereby grant (and shall procure the grant of) a royalty-free, non-transferable (save to the extent set out in this clause 8.6), non-exclusive licence for the Term of this Agreement to us (together with a right for us to sub-licence the same to our third party suppliers) to use your User Content to the extent necessary to carry out our obligations under this Agreement. Where User Content includes software or material owned and/or licensed by a third party, you are responsible for obtaining all rights required to give effect to this clause.

8.7 You acknowledge and agree that while OnApp (or its subcontractors) does not actively monitor your use of the OnApp Services and the User Content that you use in connection with the OnApp Services, we may remove any User Content where (i) we are required to so by law, regulation, court order or law enforcement agency; or (ii) in respect of your use of the Cloud.net Services and/or OnApp Services provided under the MTCs where we reasonably believe any User Content constitutes Infringing Content. To the extent permitted by applicable law, OnApp shall notify you promptly if OnApp becomes aware of any allegation that any User Content may be Infringing Content.

## **9. TEST LICENCE**

9.1 Subject to clause 8.1, from time to time OnApp may grant you a non-exclusive, non-sublicensable, non-transferable, revocable license to use certain OnApp Software and/or OnApp Services for evaluation and internal business purposes in connection with this Agreement in non-production environments for non-commercial use only (“**Test Licence**”). A Test Licence will be indicated by the OnApp Software product and/or OnApp Services being described on the Order Form, or via email, and indicated on your Control Panel license description as “Test”, “NFR”, “Back-up” or similar. Any Test Licence granted to you by OnApp will terminate on the earlier of: (i) the expiry of the license key relating to that Test Licence (unless extended by OnApp at its discretion); and (ii) the expiry or termination of the relevant Order or this Agreement (as applicable).

## **10. GENERAL**

10.1 Without prejudice to clause 3.6, OnApp may change, discontinue, or remove any OnApp Services or part of any OnApp Services or change or remove features or functionality of any OnApp Services from time to time provided that such alterations do not materially diminish the functionality of your ordered OnApp Services. If you consider that OnApp’s alterations breach this clause, you must notify OnApp within 30 days of such alteration, and if OnApp agree (in its sole but reasonable determination) that such alterations materially diminish the functionality of your ordered OnApp Services in breach this clause then OnApp shall use its reasonable endeavours to reinstate such feature or functionality. If OnApp (having determined in your favour) has been unable to reinstate such feature or functionality within 14 days of your notice, you shall have the right to terminate the Agreement within 14 days of being notified on the same and receive a pro-rata refund of Fees in respect of the period after the effective date of termination. The rights set out in this clause shall be your exclusive remedy for such breach by OnApp.

10.2 The parties may only use the trademarks of the other with the other’s prior written consent and strictly in accordance with its then prevailing trademark guidelines and its other written directions as given from time to time. All goodwill arising from such use shall inure to the benefit of the trademark’s owner.

10.3 Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

10.4 Each Agreement constitutes the whole agreement between the parties concerning the Order that forms part of it and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of that Order. Each party acknowledges that, in entering into the Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Agreement.

10.5 Unless expressly stated otherwise, the rights granted under the Agreement are granted only to you and not to any other person or entity. Except in the case of assignment to an acquiring, acquired or merging entity, or an entity that acquires all or substantially all of your assets, you shall not assign your rights or obligations under the Agreement without our prior written consent (not to be unreasonably withheld or delayed).

10.6 OnApp may sub-contract all or any of our rights or obligations under this Agreement.

10.7 Except as expressly stated in the Agreement, the parties intend that no term of the Agreement may be enforced by any person who is not a party to it. The parties reserve the right to agree to rescind or vary the Agreement without the consent of any other person. Save as described in the foregoing, the provisions of the Contracts (Rights of Third Parties) Act 1999 shall be and hereby are excluded.

10.8 Unless the context requires otherwise: a reference person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); a reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established; words in the singular shall include the plural and in the plural shall include the singular; a reference to one gender shall include a reference to the other genders ; and any words following the terms *including, include, in particular, for example* or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

10.9 Apart from User Account Messages (as defined below), all notices that are required to be given under the Agreement must be in writing (email is sufficient) and, provided notice of non-delivery is not received, shall be effective: (i) on the date sent, if by email; (ii) on the date received if delivered by hand, registered or other 'signed for' post or by international post; (iii) on the day after posting if sent by first class Royal Mail; or (iv) on the third day after posting if sent by second class Royal Mail. To be effective, all notices to OnApp: (i) if other than by email, must be sent to The COO, OnApp Limited, Brentano Suite, Hamstead Garden Suburb, First Floor, Lyttelton House, 2 Lyttelton Road, London, N2 0EF; or, (ii) if by email, must be sent to notices@onapp.com.

10.10 OnApp may also communicate with you via any user account in OnApp's systems to which you have secure access ("User Account Messages"), in which case the communication will be treated as received by you when it is posted by OnApp to that user account.

10.11 Any failure of either party to insist upon or enforce performance by the other party of any of the provisions of the Agreement or to exercise any rights or remedies under the Agreement will not be interpreted or construed as a waiver or relinquishment of such party's right to assert or rely upon such provision, right or remedy in that or any other instance.

10.12 If any provision of the Agreement is held to be invalid or unenforceable, the remaining portions will remain in full force and effect and such provision will be enforced to the maximum extent possible so as to give effect the intent of the parties and will be reformed to the extent necessary to make such provision valid and enforceable.

10.13 Except with respect to payment obligations, neither party will be liable for, or be considered to be in breach of, or in default under, any Agreement, as a result of any Force Majeure Event.

10.14 Each party acknowledges that it is aware of, understands and, in connection with the Agreement, has complied and will comply with, all applicable anti-corruption laws.

10.15 You and OnApp shall each comply with all applicable laws and regulations applicable to our respective performance of the Agreement, including without limitation the UK Bribery Act 2010, and all anti-corruption and anti-money laundering laws and regulations. You acknowledge that OnApp Services may be subject to national and international controls including laws and regulations on its export to and use in certain territories and agree to abide by all such controls, laws and regulations.

10.16 You shall implement and maintain at all times a suitable policy for prevention of the criminal facilitation of tax evasion containing reasonable "prevention procedures" as required for the purposes of the defence set out in s.45(2) and s.46(3) of the Criminal Finances Act 2017 (a "Prevention of Tax Evasion Policy") which covers all aspects of the performance of the Agreement and shall procure that all of your relevant officers, employees or agents and any other persons who are engaged to perform any part of the Agreement and who are "associated" with it for the purposes of section 44 of the Criminal Finances Act 2017 ("Associates") shall at all times in the performance of the Agreement, comply with its Prevention of Tax Evasion Policy.

10.17 Each Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England. The courts of England shall have exclusive jurisdiction over any and all disputes or claims (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation except that OnApp shall have the right to bring or enforce proceedings against you for a breach of the Agreement or a claim for injunctive relief in your country of residence or any other relevant country.