

1. Definitions and Interpretations

1.1 Except to the extent expressly provided otherwise, in these Standard Terms and Conditions:

"Affiliate" means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

"Business Day" means any weekday other than a bank or public holiday in Scotland;

"Change" means any change to the scope of the Services or any change to the Contract

"Charges" means the following amounts:

(a) the amounts specified on the Quote and/or Proposal & Services Agreement;

(b) such amounts as may be agreed in writing by the parties from time to time;

"Confidential Information" means the Provider Confidential Information and the Customer Confidential Information;

"Contract" means a particular contract made under these Terms and Conditions between the Provider and the Customer;

"Control" means the legal power to control (directly or indirectly) the management of an entity (and "Controlled" should be construed accordingly);

"Customer, You, Your" means the person or entity identified as such in the Quotes and/or Proposal & Services Agreements;

"Customer Materials" means all works and materials supplied by or on behalf of the Customer to the Provider for incorporation into the Deliverables or for some other use in connection with the Services;

"Customer Premises" means any premises owned or controlled by the Customer at which the parties expressly or impliedly agree the personnel of the Provider shall provide Services;

"Data Protection" means all applicable laws/regulations relating to the processing of Personal Data including, while it is in force and applicable to Customer Personal Data, the General Data Protection Regulation (Regulation (EU) 2016/679);

"Deliverables" mean those specified in the Quotes and/or Proposal & Services Agreements that the Provider has agreed to deliver to the Customer under these Standard Terms and Conditions;

"Delivery Location" – the place for the delivery of the Products and/or Services referred to in the Order.

"Effective Date" means the date of execution of the Contract;

"Equipment" means a device connected to the System and/or any accessories and/or equipment supplied with it or them.

"EULA" – the licence agreement between a software provider (or its nominated licensing body) regarding that part of the Products which includes software and which You are required to enter into prior to using the software.

"Expenses" means the travel, accommodation and subsistence expenses that are reasonably necessary for, and incurred by the Provider exclusively in connection with, the performance of the Provider's obligations under the Contract;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable Control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Minimum Term" means, in respect of the Contract, the period specified in the Quotes and/or Proposal & Services Agreements;

"Payment Date" means the date determined by the Company on which the Company's invoices fall due for payment.

"Personal Data" has the meaning given to it in the General Data Protection Regulation (Regulation (EU) 2016/679);

"Products" – the products supplied by Us to You as detailed in each Order.

"Provider, Company, We, Us, Our" means boxportable Limited, a company incorporated in Scotland (registration number SC209170) having its registered office at 11 Broomhill Road, Aberdeen, AB10 6JA.

"Services" means the consultancy services specified in the Quotes and/or Proposal & Services Agreements;

"Quotes and/or Proposal & Services Agreements" means a written Quote and/or Proposal & Services Agreement agreed by or on behalf of each of the parties;

"Term" means the term of the Contract, commencing in accordance where specified in the Quotes and/or Proposal & Services Agreement or IT Support Contract.

"Standard Terms and Conditions" means all the documentation containing the provisions of the Contract, namely the main body of these Standard Terms and Conditions, the Schedules and the Quotes and/or Proposal & Services Agreements, including any amendments to that documentation from time to time; and

"Third Party Materials" means the works and/or materials comprised in the Deliverables (excluding the Customer Materials), the Intellectual Property Rights in which are owned by a third party, and which are specified in Section 4 of the Quotes and/or Proposal & Services Agreements or which the parties agree in writing shall be incorporated into the Deliverables.

2. Term

2.1 The Contract shall come into force upon the Effective Date.

2.2 The Contract shall continue in force until the Deliverables within each Quote and/or Proposal & Services Agreement and/or IT Support Contract are completed, upon which the Contract shall terminate automatically, subject to termination in accordance with Clause 21 or any other provision of these Standard Terms and Conditions.

2.3 Unless the parties expressly agree otherwise in writing, each Quote and/or Proposal & Services Agreement shall create a distinct contract under these Standard Terms and Conditions.

3. Services, Equipment & Title

3.1 The Provider shall provide the Services to the Customer in accordance with these Standard Terms and Conditions.

3.2 The Provider shall provide the Services in accordance with the standards of skill and care reasonably expected from a leading service provider in the Provider's industry.

3.3 The Provider shall devote such of its personnel's time and expertise to the performance of the Services as may be necessary for their satisfactory and timely completion.

3.4 The Provider shall keep the Customer informed about the progress of the Services and, in particular, shall promptly provide information about such progress following receipt of a written request from the Customer to do so.

3.5 The Provider shall comply with all reasonable requests and directions of the Customer in relation to the Services.

3.6 The Provider shall comply with all reasonable internal policies and procedures operated by the Customer, communicated by the Customer to the Provider and affecting the provision of the Services.

3.7 All Equipment is supplied by boxportable Limited on an 'as is' basis, and with the benefit of the relevant manufacturer's warranty (if applicable and to the extent freely transferable). boxportable Limited accepts no liability for failure, loss or damage outside of The Sales of Goods Act 1979 and/or Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. Risk shall pass in the Equipment when delivered. Title shall pass when the Customer has paid boxportable Limited in full in respect of (i) the Equipment and (ii) all other sums which are or which become due to boxportable Limited from the Customer on any account. When Equipment is purchased and the purchase price is less than the boxportable Limited published list price as published from time to time, title will only pass on completion of the minimum term as specified in the relevant Product Agreement. Delivery of Equipment shall be completed when boxportable Limited places the Equipment at the Customer's disposal at the delivery point. The Customer shall arrange for the Equipment to be signed for on delivery. Until title in the Equipment has passed to the Customer in accordance with this clause 3.2, the Customer must:

3.7.1 Hold the Equipment on a fiduciary basis as boxportable Limited's bailee;

3.7.2 Store the Equipment (at no cost to boxportable Limited) separately from all other goods of the Customer and/or any third party in such a way that it remains readily identifiable as boxportable Limited's property;

3.7.3 Not destroy, deface or obscure any identifying mark or packaging relating to the Equipment;

3.7.4 Maintain the Equipment in satisfactory condition and keep it insured on boxportable Limited's behalf for its full price against all risks to the reasonable satisfaction of boxportable Limited. On request the Customer shall immediately produce the full policy of insurance to boxportable Limited.

4. Customer Obligations

4.1 Promptly following receipt of a written request from the Provider to do so, the Customer will provide to the Provider such:

(a) assistance and co-operation;

(b) information and documentation;

(c) access to the premises, computers and networks of the Customer

as is reasonably requested by the Provider for the purpose of enabling the Provider to perform its obligations under these Standard Terms and Conditions.

4.2 The Customer shall be responsible for procuring any third party co-operation reasonably required by the Provider to enable the Provider to perform its obligations under the Contract.

4.3 That You will notify the Company of any change in Your trading address, registered office or the details of the bank from which You make payments to the Company and of any other information which You have provided to the Company at any time;

4.4 That You are the owner or the authorised user of any trade mark or name You wish to use in or as part of any domain name or URL which we supply to You;

5. Deliverables

5.1 The Provider shall deliver the Deliverables to the Customer.

5.2 The Customer must promptly, following receipt of a written request from the Provider to do so, provide written feedback to the Provider concerning the Provider's proposals, plans, designs and/or preparatory materials relating to the Deliverables and made available to the Customer with that written request.

5.3 The Provider shall use its best endeavours to ensure that the Deliverables are delivered to the Customer as defined in the Quotes and/or the Proposal & Services Agreements.

6. Delivery of Products

6.1 Unless agreed otherwise in the Order, We will deliver the Products to the Delivery Location and delivery will be deemed, when the Products have arrived at the Delivery Location.

6.2 We will not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or Your failure to provide Us with adequate delivery instructions.

6.3 If You fail to accept delivery of the Products at the Delivery Location, except where such failure or delay is caused by a Force Majeure Event or by Our failure to comply with Our obligations under the Contract, We will be entitled to:

6.3.1 Redeliver the Products to the Delivery Location at such reasonable time as We will set; and/or

6.3.2 Store the Products until delivery takes place; and

6.3.3 Charge You for all related costs and expenses (including insurance) for storage and additional delivery costs and expenses.

6.4 If You fail to accept delivery of the Products within 10 Business Days after We (or Our nominated third party supplier) have notified You that the Products are ready for delivery, We may resell or otherwise dispose of part or all of the Products. If You have paid for the Products in advance, We may deduct our reasonable charges for storage, administration, selling and additional delivery costs and account to You for any excess over the price of the Products or charge You for any shortfall below the price of the Products.

6.5 We may deliver the Products by instalments, which We may invoice separately. Any delay in delivery or defect in an instalment will not entitle You to cancel any other instalment.

6.6 Each Product will be supplied in accordance with the manufacturer's published specification (if any), unless You and We have agreed any Change to that specification. We reserve the right to make Changes to the Products where necessary to comply with any legal requirements and which do not materially affect quality or performance.

6.7 Where the Products are or include software, that software will be licensed to You on the terms of the EULA between You and the software developer or licensing body. You acknowledge and agree that We are not able to grant any rights regarding that software. By entering into the Contract, You warrant to Us that You will observe and perform all obligations and restrictions imposed upon You by the EULA. You will indemnify Us against all losses, damages, claims and expenses (including reasonable professional fees) incurred directly or indirectly by Us as a result of Your failure to observe or perform the obligations and restrictions contained in the EULA.

7. Customer Premises

7.1 The Customer shall:

- (a) promptly provide to the Provider such access to the Customer Premises as is reasonably required by the Provider for the provision of the Services;
- (b) maintain the Customer Premises in good order for the supply of the Services and in accordance with all applicable laws;
- (c) be responsible for ensuring the health and safety of the Provider's personnel whilst they are at the Customer Premises;
- (d) inform the Provider of all health, safety and security rules, regulations and requirements that apply at the Customer Premises; and
- (e) maintain reasonable insurance cover for the Provider's personnel whilst they are working at the Customer Premises (including reasonable public liability insurance).

7.2 In the performance of the Services at the Customer Premises, the Provider shall comply with all reasonable health, safety and security rules, regulations and requirements advised by the Customer to the Provider.

7.3 The Provider shall use all reasonable measures to secure any keys, and any other means of access, supplied by the Customer to the Provider for the purpose of enabling the Provider's personnel to enter and work at the Customer Premises.

8. Customer Materials

8.1 The Customer must supply to the Provider the Customer Materials specified in the Quotes and/or Proposal & Services Agreements, in accordance with the timetable specified in the Quotes and/or Proposal & Services Agreements.

8.2 The Customer hereby grants to the Provider a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Materials to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under these Standard Terms and Conditions, together with the right to sub-license these rights to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under these Standard Terms and Conditions.

8.3 The Customer warrants to the Provider that the Customer Materials when used by the Provider in accordance with these Standard Terms and Conditions will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.

9. Intellectual Property Rights

9.1 The Provider hereby assigns to the Customer all of its Intellectual Property Rights in the Deliverables, whether those Intellectual Property Rights exist on the Effective Date or come into existence during the Term, excluding the Intellectual Property Rights in the Customer Materials and the Third Party Materials. This assignment is for the full term of the assigned rights, including all extensions, renewals, reversions and revivals, and includes the right to bring proceedings for past infringements of the assigned rights.

9.2 The Provider shall ensure that the Third Party Materials are:

- (a) licensed to the Customer in accordance with the relevant licensor's standard licensing terms;
- as reasonably agreed between the parties from time to time.

9.3 To the maximum extent permitted by applicable law:

- (a) the Provider irrevocably and unconditionally waives all moral rights (including rights of paternity and rights of integrity) in respect of the Deliverables to which the Provider may at any time be entitled; and
- (b) the Provider undertakes to ensure that all individuals involved in the preparation of the Deliverables will irrevocably and unconditionally waive all moral rights (including rights of paternity and rights of integrity) in respect of the Deliverables to which they may at any time be entitled.

9.4 The Provider must use best endeavours to:

- (a) do or procure the doing of all acts; and
- (b) execute or procure the execution of all documents,

that the Customer may reasonably request from time to time in order to perfect or confirm the Customer's ownership of the rights assigned by these Standard Terms and Conditions.

10. Charges

10.1 The Customer shall pay the Charges to the Provider in accordance with these Standard Terms and Conditions.

10.2 If the Charges are based in whole or part upon the time spent by the Provider performing the Services, the Provider must obtain the Customer's consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded.

10.3 All amounts stated in or in relation to these Standard Terms and Conditions are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Provider.

10.4 The Provider may elect to vary any element of the Charges by giving to the Customer not less than 14 days' written notice of the variation.

11. Expenses

- 11.1 The Customer shall reimburse the Provider in respect of any Expenses, providing that the Provider must obtain the prior written authorisation of the Customer before incurring any Expenses.
- 11.2 The Provider must collect and collate evidence of all Expenses and must retain such evidence during the Term and for a period of 90 days following the end of the Term.
- 11.3 Within 10 Business Days following receipt of a written request from the Customer to do so, the Provider must supply to the Customer such copies of the evidence for the Expenses in the possession or control of the Provider as the Customer may specify in that written request.

12. Payments

- 12.1 The Provider shall issue invoices for the Charges to the Customer on or after the invoicing dates set out in the Quotes and/or Proposal & Services Agreements and/or IT Support Contract.
- 12.2 The Customer must pay the Charges to the Provider following the issue of an invoice in accordance with this Clause 12.
- 12.3 The Customer must pay the Charges by bank transfer (using such payment details as are notified by the Provider to the Customer from time to time).
- 12.4 If the Customer does not pay any amount properly due to the Provider under these Terms and Conditions, the Provider may:
- (a) charge You interest at the rate of 5% per annum above the Bank of England base rate, for the time being, from the due date until the actual date of payment and whether before or after any judgment.
 - or
 - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
- 12.5 The reasonable fees and expenses incurred by the Company in pursuing payment of all sums due to it under the Contract including the costs charged by any debt collection agent, all legal fees incurred by the Company (on a solicitor and own client basis) and all other costs and expenses to which the Company is put in its attempts to recover such payment.
- 12.6 If We have not received payment in 5 days after the due date We may suspend the supply of Products and/or Services in this Contract (and any other contracts that We have with You) until all outstanding invoices are paid.
- If You dispute the validity of any invoice, You will notify Us in writing within 5 days of receipt of such invoice. You must pay the undisputed part of such invoice in accordance with the payment terms set out in clause 12.
- 12.7. We will work with You to resolve the dispute.

13. Non Solicitation of Employees

- 13.1 Neither party will solicit, entice away or attempt to entice away from the employment of the other, any person employed or engaged by it in the provision or receipt of the Products and/or Services at any time during the Term and for a further period of 12 months after its expiry.
- 13.2 In the case of a breach of clause 13.1, the breaching party will on demand pay to the claiming party the sum equal to 35% of a year's basic salary as paid by the claiming party to the relevant employee at the effective date the employee leaves the claiming party.

14. Confidentiality

- 14.1 Each party undertakes to the other that, except as provided by Clause 14.2 or as authorised in writing by the other party, it will at all times during the continuance of the Agreement and after its termination:
- 14.1.1 Keep confidential all Confidential Information;
 - 14.1.2 Not disclose any Confidential Information to any other party;
 - 14.1.3 Not use any Confidential Information for any purpose other than as contemplated by these Standard Terms and Conditions;
 - 14.1.4 Not make any copies of, record in any way or part with possession of any Confidential Information; and
 - 14.1.5 Ensure that (as applicable) none of its directors, officers, employees, agents or advisers does any act which, if done by that Party, would be a breach of the provisions of this Clause 14.
- 14.2 Subject to Clause 14.3, either party may disclose any Confidential Information to:
- 14.2.1 Any of its sub-contractors, substitutes or suppliers;
 - 14.2.2 Any governmental or other authority or regulatory body; or
 - 14.2.3 Any of their employees or officers or those of any party described in sub-Clauses 14.2.1 and 14.2.2.
- 14.3 Disclosure under Clause 14.2 may be made only to the extent that is necessary for the purposes contemplated by these Standard Terms and Conditions, or as required by law. In each case the disclosing party must first inform the recipient that the Confidential Information is confidential. Unless the recipient is a body described in sub-Clause 14.2.2 or is an authorised employee or officer of such a body, the disclosing party must obtain and submit to the other a written undertaking from the recipient to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made.
- 14.4 Either party may use any Confidential Information for any purpose, or disclose it to any other party, where that Confidential Information is or becomes public knowledge through no fault of the disclosing party.
- 14.5 When using or disclosing Confidential Information under Clause 14.4, the disclosing party must ensure that it does not disclose any part of that Confidential Information which is not public knowledge.
- 14.6 The provisions of this Clause 14 will continue in force in accordance with their terms, notwithstanding the termination of the Agreement for any reason.

15. Publicity

- 15.1 Neither party may make any public disclosures relating to the Contract or the subject matter of the Contract (including disclosures in press releases, public announcements and marketing materials) without the prior written consent of the other party.
- 15.2 Nothing in this Clause 15 shall be construed as limiting the obligations of the parties under Clause 14.

16. Data Protection

16.1 Each party shall comply with all applicable Data Protection Laws, including the UK GDPR and Data Protection Act 2018.

16.2 To the extent that the Provider processes Personal Data on behalf of the Customer in the provision of the Services, the Customer shall be the Controller and the Provider shall be the Processor.

16.3 The Provider shall process Personal Data only on the documented instructions of the Customer, including as necessary to provide the Services, unless required to do otherwise by applicable law.

16.4 The Provider shall implement and maintain appropriate technical and organisational measures to protect Personal Data, taking into account the nature of the Services, including (where applicable):

- (a) access controls and authentication;
- (b) endpoint security and monitoring tools;
- (c) encryption and secure data transmission; and
- (d) backup and recovery processes.

16.5 The Provider shall ensure that all personnel authorised to process Personal Data are subject to confidentiality obligations.

16.6 The Provider may appoint third-party sub-processors (including cloud, backup, security and infrastructure providers) where reasonably required to deliver the Services, provided that:

- (a) it remains responsible for their compliance; and
- (b) it ensures that such sub-processors are subject to data protection obligations no less protective than those in this Clause.

16.7 The Provider shall notify the Customer without undue delay if it:

- (a) receives any request from a data subject relating to Personal Data, including a subject access request, request for erasure or rectification; or
- (b) receives any complaint, notice or communication from a supervisory authority.

16.8 The Provider shall not respond directly to any data subject request without the Customer's prior written instruction (unless legally required to do so).

16.9 The Provider shall provide reasonable assistance to the Customer in fulfilling its obligations under Data Protection Laws, including:

- (a) responding to subject access requests and other data subject rights;
- (b) conducting data protection impact assessments (where relevant to the Services); and
- (c) complying with obligations relating to security and breach reporting.

16.10 The Provider shall notify the Customer without undue delay upon becoming aware of a Personal Data breach affecting Customer Personal Data and shall provide reasonable assistance in investigating and mitigating such breach.

16.11 On termination of the Contract, the Provider shall, at the Customer's option, securely delete or return Personal Data, unless retention is required by law.

16.12 The Customer acknowledges that the Provider's Services may involve access to systems containing Personal Data (for example, during remote support, monitoring, or maintenance), and agrees that such access is incidental to the provision of the Services and carried out in accordance with this Clause.

16.13 The Provider reserves the right to charge on a time and materials basis for assistance with data subject requests or compliance activities that are materially onerous or fall outside the scope of standard service provision.

17. Warranties

17.1 We warrant that, on delivery, the Products and/or Deliverables will conform in all material respects with their description (and any applicable specification).

17.2 You acknowledge that, unless We have specified to the contrary in the Order, We are acting only as a reseller.

17.3 We will use our reasonable endeavours to transfer to You the benefit of any warranty granted by the manufacturer.

17.4. In order to make a valid claim regarding a Product or Deliverable that fails to comply with the warranty in clause 17.1:

17.4.1 You must give Us notice in writing within 3 Business Days of discovery that some or all of the Products and/or Deliverables do not comply with the warranty set out in clause 17.1;

17.4.2 We must be given a reasonable opportunity to examine any alleged defect; and

17.4.3 At Our request, You must return such Products and/or Deliverables to Us. 17.4 We will have no liability if:

17.5.1 You make any further use of such Products and/or Deliverables after giving Us notice in accordance with clause 17.4.1;

17.5.2 The defect arises due to actions of any nature taken by You or Your employees, agents or subcontractors or any failure to follow instructions given by Us or the manufacturer in relation to the Products and/or Deliverables;

17.5.3 You alter or repair such Products and/or Deliverables without Our prior written consent; or

17.5.4 The defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.

17.6 We warrant to You that the Services will be provided using reasonable care and skill.

17.7 In order to make a valid claim regarding Services that fail to comply with the warranty in clause 17.6:

17.7.1 You must give Us notice in writing within 3 Business Days of discovery that some or all of the Services do not comply with the warranty set out in clause 17.6; and

17.7.2 You must give Us a reasonable opportunity to investigate the matters giving rise to the claim.

17.8 If we accept your claim for breach of clause 17.1 and/or 17.6 as valid, Our obligations will be limited to:

17.8.1 (At our choice) repairing or replacing the defective Products and/or Deliverables or refunding the price of the defective Products or that part of the price that relates to the Deliverables; and

17.8.2 (At our choice) carrying out the Services in the correct manner or refunding the price of those defective Services.

17.9 Except as provided in this clause 17, We will have no liability to You in respect of the Products' and/or Deliverables' failure to comply with the warranty set out in clause 17.1 or the Services, failure to comply with 17.5.

17.10 All other warranties that are implied by statute, regulation or by custom and practice are excluded from the Contract.

17.11 The terms of this clause will apply to any repaired or replacement Products and/or Deliverables and any Services which have been carried out again under clause 17.8.2.

18. Indemnities

18.1 You will indemnify Us against all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with Your use of the Products and/or the Services.

18.2 Either We or Our suppliers or licensors will defend You against any claim that any Intellectual Property Rights forming part of the Products and/or Services infringes any valid third party Intellectual Property Rights, and will indemnify You for any amounts awarded against You in judgment or settlement of such claims, provided that:

18.2.1 We are given prompt notice of any such claim;

18.2.2 You provide reasonable co-operation to Us and/or Our suppliers or licensors (as the case may be) in the defence and settlement of such claim, at Our expense; and 18.2.3 We or Our suppliers or licensors are given sole authority to defend or settle the claim.

18.3 In the defence or settlement of the claim, We or Our suppliers or licensors may obtain for You the right to continue using the relevant Products and/or Services, replace or modify the Products and/or Services so that it or they become non-infringing or, if such remedies are not reasonably available, terminate the Contract without liability to You.

18.4 We will have no liability if the alleged infringement is based on:

18.4.1 Modification of such Products and/or Services by anyone other than Us;

18.4.2 Your use of the Products and/or Services in any manner other than as specified by Us or Our suppliers or licensors; or

18.4.3 Your use of such Products and/or Services after notice of the alleged or actual infringement from Us or any appropriate authority.

18.5 You will indemnify Us against claims by any third party that data and information provided by You in relation to the Products or Services provided by Us infringe the Intellectual Property Rights of any third party. You are solely responsible for excluding any infringing material.

19. Liability and Insurance

19.1 This clause 19 (and any amendments to it in the Order) sets out Our entire financial liability (including any liability for the acts or omissions of Our employees, agents and sub-contractors) to You.

19.2 Except as expressly and specifically provided in the Order:

19.2.1 We will have no responsibility for results obtained from Your use of the Products and/or Services; and

19.2.2 All warranties, conditions and other terms implied by statute or common law are (so far as is allowed by law) excluded from the Contract.

19.3 Nothing in this Contract excludes liability for:

19.3.1 Death or personal injury caused by Our negligence;

19.3.2 Fraud or fraudulent misrepresentation; or

19.3.3 Any other liability that cannot be excluded as a matter of law.

19.4 We have no liability whether in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise arising under or in connection with the Contract for any:

19.4.1 Loss of profit;

19.4.2 Loss of goodwill;

19.4.3 Loss of business;

19.4.4 Loss of business opportunity;

19.4.5 Loss of anticipated saving;

19.4.6 Loss or corruption of data or information; or

19.4.7 Special, indirect or consequential damages.

19.5 Subject to clauses 19.3 and 19.4 Our total aggregate liability in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract will be limited for each claim or series of connected claims to the amount covered by the public liability insurance We hold, which is relevant to such claim at the time of that claim,

19.6 During the term of the Contract, We will maintain in force, with a reputable insurance company:

19.6.1 Public and product liability insurance in an amount not less than £2,000,000.

20. Force Majeure Event

20.1 No Party to the Contract will be liable for any failure or delay in performing its obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

21. Termination & Suspension

21.1 The Company may terminate the Contract at any time and without reason by giving to You at least 90 days' notice in writing whereupon the Contract and the Services provided under it will cease and determine.

21.2 Either Party may terminate the Contract immediately by notice in writing if:

21.2.1 The other Party commits any material breach of its obligations under the Contract (including but not by way of limitation non-payment of any invoice) and fails to remedy such breach within 14 days of being given notice to do so;

21.2.2 An encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;

21.2.3 The other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);

21.2.4 The other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under the Contract);

21.2.5 Anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;

21.2.6 That other Party ceases, or threatens to cease, to carry on business; or

21.2.7 Control of that other Party is acquired by any person or connected persons not having control of that other Party on the date of the Contract.

21.3 For the purposes of this Clause 21, "control" and "connected persons" will have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.

21.4 For the purposes of sub-Clause 21.2.1, a breach will be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.

21.5 If You have agreed to take a Service from the Company and the Contract has not been terminated in accordance with any other provision of the Contract, the following provisions will apply:

21.5.2 You must give at least 90 days' written notice to the Company expiring on or before the end of the Minimum Term to terminate the Contract and, in that event, the Contract will terminate on the expiry of the Minimum Term.

21.5.3 Following expiry of the Minimum Term, the Contract shall continue unless terminated by either party giving not less than 90 days' written notice.

21.6 The Company may (in its sole discretion and either in addition to or in substitution for all other rights referred to in this Clause 21) suspend the Service without any liability to You:

21.6.1 If You fail to make any payments due by the Payment Date; or

21.6.2 If the right to terminate the Contract arises under any provision of the Contract; or

21.6.3 If You carry out any action which, in the reasonable opinion of the Company, would or might jeopardise the safe and secure operation of the Service; or

21.6.4 If, in the sole discretion of the Company, Your use of the Service demonstrates activity which suggests that You are abusing or misusing the System; or

21.6.5 If the Company is required by a competent authority or by law to suspend or terminate the Service or any part of it or if, for any reason, the Company is unable to provide the Service; or

21.6.6 If the Company has reason to believe that You or anyone under Your Control has committed any action which could compromise the security of the Service or of the System; or

21.6.7 The Charges which have accrued on Your Account exceed the limit which the Company has placed on the credit available to You at any time and You accept and agree that such limit is a matter for the Company to set in its sole discretion.

21.7 The rights to terminate or suspend the Contract given by this Clause 21 will not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

21.8 If the Customer terminates the Contract before the expiry of the Minimum Term (other than due to the Provider's material breach), the Customer shall pay: (a) all outstanding Charges; and (b) an amount equal to the Charges that would have been payable for the remainder of the Minimum Term. Such amounts shall become immediately due and payable upon termination.

The parties agree that the amount in clause 21.8(b) represents a genuine pre-estimate of the loss that would be suffered by the Provider as a result of such early termination, taking into account committed costs, lost margin, administrative expenses and the recovery of costs incurred under third-party supplier commitments which the Provider is unable to cancel or mitigate. The parties further agree that this amount is reasonable and proportionate in the circumstances and is not intended to operate as a penalty.

22. Effects of Termination

Upon the termination of the Contract for any reason:

22.1 Any sum owing by either Party to the other under any of the provisions of the Contract will become immediately due and payable;

22.2 You will immediately return to the Company the Equipment, in the state and condition required by the Contract;

22.3 All Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Contract will remain in full force and effect;

22.4 Termination will not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Contract which existed at or before the date of termination;

22.5 You will have no right to claim a refund of any monthly Service fee or part thereof if the Contract is terminated before the end of the month in which that Service is being provided;

22.6 You accept that the Company may make reasonable Charges for providing information and assistance to any other service provider to whom You transfer the Fixed Line Service provided under the Contract and a reasonable charge for porting Your number or other identifier to another service provider; and

22.7 Subject as provided in this Clause 22 and except in respect of any accrued rights, neither Party will be under any further obligation to the other.

23. Notices

23.1 All notices under the Contract will be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

23.2 Notices will be deemed to have been duly given:

23.2.1 When delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

23.2.2 When sent, if transmitted by e-mail and a successful read receipt is generated; or

23.2.3 On the fifth Business Day following mailing, if mailed by national ordinary mail, postage prepaid.
In each case notices will be addressed to the most recent address or e-mail address notified to the other Party.

24. Subcontracting

24.1 Subject to any express restrictions elsewhere in these Terms and Conditions, the Provider may subcontract any of its obligations under the Contract, providing that the Provider must give to the Customer, promptly following the appointment of a subcontractor, a written notice specifying the subcontracted obligations.

24.2 The Provider shall remain responsible to the Customer for the performance of any subcontracted obligations.

25. Assignment

25.1 You will not without Our prior written consent assign, transfer, charge, sub-contract or deal in any other manner with all or any of Your rights or obligations under the Contract.

25.2 We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of Our rights or obligations under the Contract.

26. No Waivers

26.1 No breach of any provision of the Contract will be waived except with the express written consent of the party not in breach.

26.2 No waiver of any breach of any provision of the Contract shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of the Contract.

27. Severability

27.1 If a provision of these Standard Terms and Conditions is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.

27.2 If any unlawful and/or unenforceable provision of these Standard Terms and Conditions would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

28. Third Party Rights

28.1 No part of the Contract is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 will not apply to the Contract.

28.2 The Contract will continue and be binding on the transferees, successors and assigns of either Party as required.

29. Variation

29.1 The Contract may not be varied except by means of a written document agreed and signed by both parties.

30. Entire Agreement

30.1 The main body of these Standard Terms and Conditions, and if applicable the Fixed Lines terms and conditions and the IT Managed Services terms and conditions along with the Quotes and/or Proposal & Services Agreements and IT Support Contract shall constitute the entire agreement between the parties in relation to the subject matter of the Contract, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

30.2 Neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Contract.

30.3 The provisions of this Clause 30 are subject to Clause 19.3.

31. Law and Jurisdiction

31.1 The Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) will be governed by, and construed in accordance with, the laws of Scotland.

31.2 Any dispute, controversy, proceedings or claim between the Parties relating to the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) will fall within the jurisdiction of the courts of Scotland.

32. Interpretation

32.1 In these Standard Terms and Conditions, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) any subordinate legislation made under that statute or statutory provision.

32.2 The Clause headings do not affect the interpretation of these Standard Terms and Conditions.

32.3 References in these Standard Terms and Conditions to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.

32.4 In these Standard Terms and Conditions, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.