



## Terms and Conditions of Business

### 1. Introduction

1.1 These terms and conditions constitute the entire terms and conditions upon which the Customer agrees to contract for the purchase of Equipment and Services.

1.2 This Agreement supersedes any written or oral representations, statements, understandings or Agreements, except where specifically varied by written Agreement by Cloud Cover IT.

1.3 By placing an order for the Equipment or Services, you, the Customer, confirm your acceptance of the terms of the Agreement.

1.4 In the event of any conflict between the Agreement and any other document, the Agreement shall prevail.

### Definitions

In this Agreement:-

**“Accessories”** means additional equipment which is not inherent to the functionality of Service necessary to complete the work including consumables, headsets and handsets.

**“Additional Services”** means additional services offered by Cloud Cover IT and subject to a separate set of terms and conditions.

**“Additional Usage”** means the usage including telephony calls and data and storage usage in-excess of the agreed Customer package and subject to the Customer Pricing Policy.

**“Agreement”** means these terms and conditions together with the Order Confirmation.

**“Automatic Sign Off”** means the process that allows the Customer to review the various stages of the Development Service which includes a (four) 4-week automatic ‘Sign Off’. In the event the Customer has not reviewed the development work, the service will automatically move to the next stage of Development automatically. Cloud Cover IT will be the sole arbiter of this issue.

**“Charges”** means the prices for the Service set out in the Order Confirmation including any installation charge.

**“Cloud Cover IT”** or **“we/our/us”** means Cloud Cover IT Services Ltd, a company registered in Scotland (Company Registration Number SC421512) and with its registered office at 29 Brandon Street, Hamilton, South Lanarkshire, ML3 6DA

**“Connectivity Services”** means the synchronous internet access services offered by Cloud Cover IT guaranteeing minimum bandwidth based upon the particular package purchased, includes all related services including ADSL (broadband), leased line services more fully described in the Order Confirmation.

**“Contract Price”** means the total of all charges (calculated by service charges, customer packages, hourly rate or fixed priced) for the Service to be provided under this Agreement as set out in the Order Confirmation.

**“Customer Information”** means the detailed business information required from the Customer enabling Cloud Cover IT to deliver the Service more fully described in the Order Confirmation.

**“Customer Pricing Policy”** means the pricing structure first agreed and subject to amendment after the Work has commenced based on the actual workload and complexity of the work carried out by us.

**“Customer Response Times”** means Cloud Cover IT response to the Customer support query based on the impact of the Customer’s issue and subject to the appropriate pricing and response times (critical and non-critical) agreed with the Customer outlined in the SLA further described in the Order Confirmation.

**“Customer Survey”** means a mandatory service where Cloud Cover IT assesses the Customer’s request for all services that require further information prior to a quotation more fully described in the Order Confirmation.

**“Development Services”** means all Sharepoint based development provisioned by Cloud Cover IT.

**“End User”** means the Customer’s client is the user or end user of the Service.

**“End User Responsibilities”** means the Customers responsibilities to communicate to the End User the responsibilities outlined in this agreement with regards the use and treatment of the Service.

**“Equipment”** means any type of hardware or equipment including switches, routers and Servers used for the purpose of delivering Services.

**“Installation Charge”** means the initial charge for setting up the service subject to change based upon the Customer Survey.

**“IT Infrastructure Services”** means network management services, cabling solutions, and software and hardware solutions and cyber security solutions and training services provisioned by Cloud Cover IT.

**“Live Date”** means the date Cloud Cover IT services go live, this date cannot be guaranteed by Cloud Cover IT.

**“Migration Services”** means the migration Services provided by Cloud Cover IT including the migration of all data (to be agreed) provided by the Customer as recorded in the Order Confirmation.

**“Order”** means the Customers instruction to Cloud Cover IT to proceed with the supply of the Equipment and/or Services.

**“Out of Hours”** means the unplanned or emergency services offered to the Customer and charged at a different hourly rate; these services are delivered outside the hours of 9.00am to 5.30pm, Monday to Friday, these services are offered on a “when available” basis as fully described in the Order Confirmation.

**“POD”** means proof of delivery.

**“Quotation Document”** means pre-contract information provided by you to allow Cloud Cover IT to provide an accurate quotation; the information provided by you will also be used to inform the Scope of Work Document.

**“Relocation Services”** means Services provided by Cloud Cover IT combining Equipment and Services for an agreed price for a set contract duration.

**“Replacement” or “Replacement Services”** means where Cloud Cover IT replace Equipment, this service is only available when Equipment is hired by the Customer or the service of replacement is subject to the warranty or the service stated in the SLA or Order Confirmation.

**“Sign Off”** means the Customer’s instruction to Cloud Cover IT to proceed with agreed stages of the Work including what data requires back up as set out in the Order Confirmation.

**“Site Survey”** means the site audit which is a mandatory service where Cloud Cover IT assesses the Customer’s request for all services that require further information prior to a quotation more fully described in the Order Confirmation.

**“SLA” or “Service Level Agreement”** means the support plan created on the basis of the Customers support requirements (Customer Response Times) subject to the Customer Survey and delivered via the SLA.

**“Spec Document”** means the detailed information provided by us to you following acceptance of the Quotation Document which will require Sign Off and is required by Cloud Cover IT to deliver Services.

**“Storage”** means the Service offered by Cloud Cover IT generally as a support to any Customer Relocation Service which will include Business insurance for the period the Equipment is stored by Cloud Cover IT.

**“Support Ready”** means including the Equipment is installed (visible to Cloud Cover IT), functioning, in a workable state to our satisfaction. Cloud Cover IT being the sole arbiter of this issue.

**“Telephony Services”** means all VOIP based services including 3CX Telephony Services and includes both voice and data Usage.

**“the Customer”** and “You / Your” means the company, firm, person, persons, corporation or public authority identified in the Order Confirmation as contracting for the Service and includes their successors or personal representatives.

**“the Order Confirmation”** means the email or letter or sales contract sent to the Customer by Cloud Cover IT which sets out details of the Service to be provided, price, delivery time, completion date (if any) and such other specific contractual terms as may be appropriate.

**“the Service”** means provision of Connectivity Services, IT infrastructure Service and Support Services and Training and Consultancy service and other related services including hire of equipment collectively known as **“Service”** or **“Work”** more fully described in the Order Confirmation.

**“Training and Consultancy Services”** means provision of Training and Consultancy Services relevant to the Service deployed by Cloud Cover IT, including cyber security services more fully described in the Order Confirmation.

**“Usage”** means both data and outgoing telephone calls made using a Cloud Cover IT telephone line and data usage.

**“Usage Facility”** means the facility for the Customer to make outgoing telephone calls using a Cloud Cover IT telephone line and data usage.

**“Working Day”** means within the hours of 9.00am to 5.30pm, Monday to Friday only, not including bank holidays or weekends;

**“Work Ready”** means that the Work Location is prepared and is safe for Cloud Cover IT to deliver services (in line with all relevant legislation).

**“Writing”** includes any written paper document, any fax and any email correspondence.

## **2. Contact Details**

2.1 Cloud Cover IT will provide email support for general enquiries via [helpdesk@cloudcoverit.co.uk](mailto:helpdesk@cloudcoverit.co.uk) or telephone by calling +44 (0) 141 280 2882. The standard Service will include;

2.2 Unless otherwise stated on the Order Confirmation, we may offer monthly account management telephone based meetings available between 9.00am and 5.30pm, Monday to Friday (excluding bank holidays and weekends).

## **3. Service Provision**

3.1 Cloud Cover IT will provide an Order Confirmation for all orders accepted but reserves the right to accept or reject any order.

3.2 Cloud Cover IT will use all reasonable endeavours to provide the Equipment and Services as described in the Order Confirmation.

3.3 Where an Order is placed orally or in the event of any dispute as to the Order, the Order Confirmation shall be deemed as the authoritative Order.

3.4 Cloud Cover IT may at any time amend the Service for any reason including, but not limited to, technical, legal or business reasons.

3.5 Any dates quoted for delivery of services are approximate only and we shall not be liable to you for any delay in delivery of services howsoever

caused. Time for delivery shall not be of the essence unless stated on the Order Confirmation.

3.6 Cloud Cover IT reserves the right to sub-contract Services where appropriate.

3.7 Cloud Cover IT reserves the right to change the Service in line with customer's service usage patterns; (Customer Pricing Policy) actual changes would not take place until next billing period and after the Customers been notified.

3.8 Cloud Cover IT will always endeavour to complete any upgrades or maintenance work with minimum amount of downtime. Cloud Cover IT will notify the Customer of any planned outages 24 hours before the work is carried out.

3.9 Cloud Cover IT will not conduct activities counter to any legislation or breach health and safety regulations.

3.10 Following completion of the contract, including payment of all outstanding Payments made to Cloud Cover IT, the Customer shall return all Equipment; should the Equipment suffer damage, the Customer is liable for replacing the Equipment.

3.11 Cloud Cover IT will upon the Customers instruction to upgrade Services with the additional costs reflected in the next month's invoices (including Leased line or Broadband Services).

3.12 Cloud Cover IT will provide a quotation subject to the Customer Survey and cannot guarantee the availability of any Service.

3.13 Cloud Cover IT will use all reasonable endeavours to provide the Service as described in the Order Confirmation. Due to the nature of such Services, the Live Date will not be the essence of the contract.

3.14 Cloud Cover IT will not act counter to any OFCOM regulation or any legislation relevant to Cloud Cover IT providing services to the Customer.

3.15 The Customer agrees that Cloud Cover IT can conduct a Site Audit. In the event that the Customer will not agree to a Site Audit, the Order will not be accepted by Cloud Cover IT.

#### **4. Customer Obligations**

4.1 The Customer shall pay the Charges for the Equipment or Services in accordance with clauses 11, 12 and 13 below.

4.2 The Customer is responsible for notifying Cloud Cover IT as soon as reasonably possible (within 24 hours) in the event of any problem with the Equipment or Services, together with such information as Cloud Cover IT may request.

4.3 The Customer is responsible for providing a satisfactory level of cooperation and for providing all necessary information and access to enable Cloud Cover IT to deliver a quality service including;

4.3.1 provision of the service requirements.

4.3.2 full cooperation with Customer Survey (site audit), including information full details of "Customer Response Times" required by the business.

4.3.3 signature of the Cloud Cover IT Order Confirmation and where applicable provision of a purchase order number.

4.3.4 provision to Cloud Cover IT promptly of all information (where applicable including username and passwords) and documentation reasonably required by Cloud Cover IT.

4.3.5 where applicable provision to Cloud Cover IT of both on site and remote access to all relevant systems to enable Cloud Cover IT to perform and deliver services.

4.3.6 Sign Off where applicable including the Spec Document.

4.3.7 where applicable backing up all their own data, files and business and customer information.

4.3.8 provision of the estimated service usage where applicable.

4.3.9 suitable access, the work space is Work Ready and there are the facilities to carry out the Service.

4.3.10 adhering to Cloud Cover IT Customer Pricing Policy.

4.3.11 adhere to Automatic Sign Off through for all Development Services.

4.4 Without prejudice to its rights in terms of Clause 22 hereof, Cloud Cover IT is entitled to suspend or terminate the Agreement if the Customer fails to comply with any of its obligations under this Clause 4.

4.5 The Customer is responsible for the performance of all third-party contractors or suppliers including the provision of all necessary cooperation and access to information required for provision of the Service. Cloud Cover IT will cooperate with suppliers of such services but shall not be responsible for their performance.

4.6 The Customer will not request or permit anyone other than Cloud Cover IT to modify or interfere with the Services provided unless this has been agreed and is stated in the Order Confirmation.

4.7 The Customer is liable for any third-party costs incurred by Cloud Cover IT in order to provide Services to the Customer.

4.8 Where applicable, the Customer acknowledges and confirms they understand the terms of their End User Responsibilities and agrees to be bound by such terms outlined in this Agreement.

4.9 The Customer agrees that any quotation delivered subject to a Customer Survey is not legally binding and is subject to Service availability.

4.10 In the event the Customer purchases directly from the Equipment Supplier, the Customer is responsible for ensuring that such Equipment is purchased on time and in line with installation dates as described in the Order Confirmation.

4.11 The Customer is responsible for gaining permission to use Intellectual Property not owned by the Customer and takes full responsibility for such undertakings; Cloud Cover IT will have no responsibility with regards to this issue.

4.12 Unless otherwise agreed, Cloud Cover IT is not responsible for renewing services with regard to domain names, or other third-party suppliers.

4.13 The Customer agrees to act within the law and not to download illegal copyright material or files or images of a sexual nature. Cloud Cover IT will not tolerate hoax calls being made, any type of abusive behavior and reserve the right to suspend services further to an investigation and report the offense or issue to the ISP or relevant supplier. The Customer must cooperate with any investigation conducted by Cloud Cover IT as a result of any infringement or illegal material downloaded.

4.14 Cloud Cover IT must be kept informed of any upgrades or third-parties updating systems or software that may affect the Services provided.

4.15 With regards Services purchased from directly from third-party suppliers; Cloud Cover IT has no responsibility with regards the performance of these Services.

4.16 In the event of discontinuation of service, Cloud Cover IT is not responsible for renewing services with regard to third-party suppliers.

4.17 In the event the Customer requires Cloud Cover IT to offer Storage, the Customer is required to provide business insurance or accept Cloud Cover IT Service which will include business insurance. Cloud Cover IT being the sole arbiter with regards to this issue.

4.18 The Customer agrees to comply with the number portability functional specification, and cannot transfer the number or IP address to another party, for any reason.

4.19 Migration Services are subject to the following additional terms and Conditions:

4.20 With regard to Cloud Cover IT Migration Services, the Customer is responsible for back-up of all their personal and business data. This Service is subject to quotation from Cloud Cover IT. Cloud Cover IT take no responsibility for any loss of Data during the Service being delivered.

4.21 The Customer must have cleared all outstanding payments owned to Cloud Cover IT before the Migration Services can be completed.

4.22 Training and Consultancy Services are subject to the following additional terms and Conditions:

4.22.1 the Customer is responsible for ensuring attendance numbers and no reduction in the Contract Price will be made due to a fewer number of attendees being trained than has been confirmed on the Order Confirmation.

4.22.2 where the Customer has contracted for Training and Consultancy Services; the Service will only cover Services originally agreed at the time of contract and further work is subject to quotation more fully described in the Order Confirmation.

4.22.3 to cancel any Training and Consultancy Services the Customer must notify Cloud Cover IT no later than 14 days prior to commencement of Services and will be subject to a cancellation fee of 50% of the Contract Price. Where notice of cancellation is less than 14 days prior to commencement of Services, the Customer will incur the full Contract Price. Payment will be due from you to us within 30 days of cancellation.

4.23 Cloud Cover IT will only provide Services as described in the Order Confirmation.

4.24 Hire Services are subject to the following additional terms and Conditions:

4.25 It is the Customers responsibility to check for damage to the Equipment, at the point of delivery. Any damages reported after delivery will be deemed to be the Customer's liability and the Customer liable for replacement.

4.26 The Customer is responsible for carrying out routine checks of the Equipment and including PAT testing, maintaining power to all Equipment, cleaning and general maintenance to ensure the Equipment is fit for purpose.

4.27 The Customer will pay for any replacement or site visits carried out by Cloud Cover IT as a result of routine checks not being conducted by the Customer.

4.28 The Customer is responsible for all relevant paperwork and legislative responsibilities are fulfilled to allow Cloud Cover IT to deliver Services, including a signed POD.

4.29 IT security or anti-virus Services are subject to the following additional terms and Conditions:

4.30.1 Cloud Cover IT is not responsible for the Customers IT security or anti-virus arrangements unless stated on the Order Confirmation.

4.30.2 Unless otherwise agreed, it is the Client's responsibility to maintain and update the browser, firewall or anti-virus, malware, and anti-spyware software. The Client must protect their computer and ensure they update all security software by downloading the latest security patches from the relevant software provider.

4.30.3 It is the Customer's responsibility to ensure all data is backed up and they must take all precautions to ensure the data is secure.



## **5. Service Level Agreement (SLA)**

5.1 Where you have contracted for Services that require support (as set out in the Order Confirmation), we will for the duration of this Agreement:

5.1.1 endeavour to achieve agreed response time (time not being of the essence);

5.1.2 fix times will depend on the complexity of the service unless otherwise agreed and stated on the Order Confirmation.

5.2 PROVIDED THAT we shall not be required to provide an SLA or shall (at our sole discretion) be entitled to provide SLA services only on payment of such additional fee as we may agree with you where a defect has arisen or an SLA is required as a result of you or a third-party altering, modifying or in any altering the System.

5.3 Where you have not contracted for Support Services from us in relation to services, we will only offer Services based upon a Service contract, Cloud Cover IT does not offer adhoc services.

5.4 Where the Customer has contracted for a SLAs direct from Cloud Cover IT (separately from any other third-party SLA), the duration of the Agreement will be set out in the Order Confirmation.

5.5 In the event an on-site engineer is required to visit the Customer premises; the cost will be subject to support package agreed and outlined in the SLA as stated in the Order Confirmation. If no Agreement exists, the visit will be subject to the Customer contracting with us for Support Services.

5.6 In the event Cloud Cover IT conduct a Site Visit at the Customers premises and it transpires the responsibility is not with Cloud Cover IT, the Customer will be liable to pay for Site Visit.

5.7 Due to the nature of the Services to be provided, no refund is offered by Cloud Cover IT

5.8 The details of the Customers Support Services will be recorded in the Service Level Agreement which is additional to Clause 5.

## **6. Returns, Inspection and Delivery**

6.1 Notification of damage, loss of goods in transit or of non-delivery must be given in writing to Cloud Cover IT or the carrier within three (3) clear days of delivery (or, in the case of non-delivery, within five (5) days of notification of despatch of the goods) and any claim in respect thereof must be made in writing to Cloud Cover IT and the carrier within three (3) clear days of delivery (or in the case of non-delivery, within five (5) days of notification of despatch). All other claims must be made in writing to Cloud Cover IT within three (3) days of delivery.

6.2 Within seven (7) days from receipt of any returned goods, Cloud Cover IT will conduct a quality inspection and test of the Equipment (s) and if corrective action is required, will replace the Equipment and where we will then re-issue the Equipment in question and forward it to you at no extra cost.

6.3 Due to the nature of Cloud Cover IT Services, photographic evidence will be required regard the return of damaged Equipment.

6.4 We do not offer refunds except in the case of Cloud Cover IT being at fault resulting in delivery of an incorrect Equipment or the Equipment delivered in a damaged or faulty condition.

6.5 Completed Orders will be sent to the delivery address that you have given on your Order form. We cannot be held responsible if that delivery address is incorrect or incomplete. Please note that we do not deliver to PO boxes.

6.6 Cloud Cover IT times of delivery are based Monday to Friday excluding weekends and Public Holidays. The Service will be subject to additional costs when delivered outside the standard Working Day.

6.7 Cloud Cover IT shall bear all risk in respect of consignments until delivered to the Customer. Once an Order has been received by you, all risk of damage to, or loss of, the Equipment shall pass to you.

6.8 Delivery dates are approximate only and not an essential term of the Agreement. Cloud Cover IT shall have no liability in respect of delay in delivery to the Customer.

6.9 Should Cloud Cover IT not receive delivery instructions or be unable through no fault of Cloud Cover IT to affect delivery within 30 days after notification to the Customer that items are ready for despatch; the Customer shall pick up the Equipment or arrange for delivery by a third-party.

## **7. Relocation Services**

7.1 Relocation Services are subject to the following additional terms and Conditions:

7.2 Due to the nature of the Services, no refund is offered by Cloud Cover IT.

7.3 The Customer is responsible for the performance of all third-party contractors or suppliers including the provision of all necessary cooperation and access to information required for provision of the Relocation Service. Cloud Cover IT will cooperate with suppliers of such services but shall not be responsible for their performance.

7.4 With regard to Cloud Cover IT Relocation Services, the Customer is responsible for back-up of all their personal and business data. Cloud Cover IT take no responsibility for loss of any Data.

7.5 Cloud Cover IT has no responsibility for any delay in Services whether it be the delay of a third-party or with regards to any delay concerning the Customer's premises.

7.6 In the event the Service is delayed for any reason, Cloud Cover IT can store the Customers Equipment further to quotation for Storage services.

7.7 The Customer must have cleared all outstanding payments owned to Cloud Cover IT before the Relocation Service can commence.

## **8. Further Services**

8.1 Where the Customer has acquired other related services (including Connectivity Services, off the shelf (software) Telephony and VOIP services; and network management services and cabling solutions. The Customer will contract with Cloud Cover IT using this agreement and due to the nature of the services will be subject to the additional terms and conditions.

## **9. Delivery**

9.1 Completed Orders will be sent to the delivery address that you have given on your Order form. We cannot be held responsible if that delivery address is incorrect or incomplete. Please note that we do not deliver to PO boxes.

9.2 Cloud Cover IT times of delivery are based Monday to Friday excluding bank holidays. The Service will be subject to additional costs when delivered outside the standard Working Day.

9.3 Cloud Cover IT shall bear all risk in respect of consignments until delivered to the Customer. Once an Order has been received by you, all risk of damage to, or loss of, the Equipment shall pass to you (unless otherwise agreed).

9.4 We shall be entitled to (a) deliver a completed Order in installments and each installment shall be deemed to constitute a separate contract and (b) supply only part of an order.

9.5 Delivery dates are approximate only and not an essential term of the Agreement. Cloud Cover IT shall have no liability in respect of delay in delivery to the Customer.

9.6 Should Cloud Cover IT not receive delivery instructions or be unable through no fault of Cloud Cover IT to affect delivery within 30 days after notification to the Customer that items are ready for despatch; the Customer shall pick up the Equipment or arrange for delivery by a third-party.

## **10. Indemnification**

10.1 The Customer shall indemnify Cloud Cover IT and keep Cloud Cover IT indemnified against any liability to any third-party arising out of or connected with the Customer's use of the Equipment or Services.

10.2 The Customer hereby indemnifies and holds harmless Cloud Cover IT against all claims, demands, losses, damages, costs or expenses howsoever arising incurred by Cloud Cover IT in-connection with the Agreement as a result of a breach by the Customer of any provision of this Agreement, law or regulation.

## **11. Charges**

11.1 Charges shall be based upon the Customer paying the Contract price as specified in the Order Confirmation.

11.2 For cash sales all payments must be received prior to delivery.

11.3 Cloud Cover IT will not be held responsible for any delay to the Service payment is not received pursuant to clause 13.1 hereof. Subsequently, in certain circumstances expediting of services delivery following late payment may incur additional costs due to be payable by the Customer.

11.4 In the event the Customer provides incorrect information which leads to Cloud Cover IT incurring costs, the Customer is liable for such costs.

11.5 If for any reason Cloud Cover IT is unable to gain access to the premises which leads to Cloud Cover IT incurring charges; the Customer is liable for such charges.

11.6 If it transpires that the fault is due to Equipment not supported by or under warranty by Cloud Cover IT, the Customer is liable to pay the cost of the Work.

11.7 Unless otherwise agreed, third-party costs in excess of 30% of the overall Contract Price are payable in advance of delivery of the Equipment or Services.

11.8 Without exception, all charges will be payable within 14 days of the date of invoice.

## **12. Payment terms (subscription services)**

12.1 With regard to payments agreed through Cloud Cover IT subscription services; all payments are to be made as set out in the Order Confirmation. The first payment shall be paid in advance on the 1<sup>st</sup> of every month prior to Service commencement. Please note the initial Work will only commence when the initial payment has cleared.

12.2 Subject to any special terms, (which we may agree with you in the Order Confirmation or otherwise in writing) the Customer may cancel subscription services by providing a minimum of 30 days written notice before the end of the contract period; the contract duration to be recorded on the Order Confirmation. In the event the Customer cancels as outlined in 12.2, the full Contract Price will be due within 14 days of cancellation.

12.3 Payment by the Customer shall be made by direct debit, at the election of Cloud Cover IT and as confirmed in the Order Confirmation.

12.4 Where direct debit is applicable, charges shall be based upon the Customer making the initial payment prior to the Work commencing. Subsequent payments will be made monthly by direct debit for Work or projects other than described above staged payments may be required as set out where applicable in the Order Confirmation.

12.5 Without prejudice to the foregoing, all charges for subscription services are non-refundable in the event of early cancellation by the Customer.

12.6 Where a Customer fails to make a direct debit payment, Cloud Cover IT reserves the right to charge an admin fee (£25.00). In the event the Customer fails to make payment more than one time, Cloud Cover IT reserve the right to request the full Contract Price, which shall be payable by you to us within 30 days from date of invoice.

12.7 The Customer will be charged for Usage of the Services through direct debit; with the Additional Usage being calculated and billed retrospectively the following month.

### **13. Payment**

13.1 Subject to any special terms which we may agree with you in the Order Confirmation or otherwise in writing, payment by you to us will be made within 14 days of the date of each invoice issued by us to you. In certain circumstances Charges shall be based upon the Customer paying staged payments including a percentage of the Contract Price in advance upon our acceptance of the Customer's order and the reminder payable on completion. Please note the initial work will only commence when the initial payment has cleared. Additional Usage will be calculated and billed retrospectively the following month.

13.2 Time of payment shall be of the essence of the Agreement. You shall not be entitled to set off or withhold any payment for any reason whatsoever.

13.3 If you fail to make payment within the period specified in clause 23.1 then, without prejudice to any other right or remedy available to us, we shall be entitled to;

13.3.1 suspend any further service provision to you and/or suspend performance of the Services; and/or

13.3.2 cancel the Agreement; and/or

13.3.3 charge you interest on the amount unpaid, at the rate of 4 per cent per annum above the RBS Bank base rate from time to time, until payment is made.

13.4 The Customer shall not be entitled by reason of any set-off, counter-claim, abatement, or other deduction to withhold payment of any amount due to Cloud Cover IT. All payments made are non-refundable.

13.5 If the Customer's cheque is returned by the bank as unpaid for any reason, Cloud Cover IT reserves the right to levy a "returned cheque" charge.

13.6 If you are late in making a payment under this Agreement for 45 consecutive days or more, we reserve the right to pass your Agreement with a reputable debt recovery agency and you shall reimburse us on demand for all costs, expenses and losses associated therewith (including lost profit) or enter the small claims process to recover payments due if necessary.

13.7 In the event that the Customer prematurely cancels the Agreement or any portion thereof, Cloud Cover IT shall be entitled to payment of the full or 100% of the Contract Price and the total sum of expenses incurred by Cloud Cover IT (including any disconnection charges incurred by Cloud Cover IT), at the sole discretion of Cloud Cover IT.

13.8 As a limited company it is a condition of our accepting instructions on your behalf that your directors/owners are personally jointly and severally or severally liable along with you for any fees, outlays and other sums due to us. That means that you and each individual directors are each individually and personally liable for the whole amount.

13.9 All Equipment supplied shall remain the property of Cloud Cover IT until payment is made in full or all sums due under all contracts and/or Agreements between Cloud Cover IT and the Customer.

#### **14. Amendments to Contract**

14.1 Should the Customer require a change to any aspect of an Order or in or any other aspect of this Agreement, such change shall be requested in writing. Cloud Cover IT shall advise the Customer of the effects including any increase in the Charges which may result and the Agreement shall be modified to reflect such changes.

#### **15. Warranty (Services)**

15.1 Cloud Cover IT will endeavour to deliver Services to the best of their ability and as the Service as stated on the Order Confirmation or the Spec Document. In the event of any errors, omissions Cloud Cover IT will promptly take corrective action.

#### **16. Equipment Warranty and Replacement Services**

16.1 All Equipment supplied by us includes a one year manufacturer's warranty (excluding accessories or consumables) and SLAs (Support Services) or any other services offered by Cloud Cover IT, which is not guaranteed, which commences on the day on which the Equipment is delivered. We shall assign the remaining period of the manufacturer's warranty to you with effect from the purchase date and, to the extent that we cannot assign the manufacturer's warranty to you for any particular item, we will hold it in trust for your benefit. Such warranty shall be invalidated if you or a third-party tamper with or work on the Equipment in any way.

16.2 For the avoidance of doubt we shall not be responsible nor liable for any compatibility issues relating to any equipment not supplied by us where we were not consulted or where we were consulted but our advice was not heeded and acted upon.

16.3 Unless otherwise agreed, Equipment are not covered by the SLA only the labour, Cloud Cover IT being the arbiter of this issue.

16.4 In the event the Equipment is not performing to the manufacturers guaranteed specifications, the parts maybe inspected and the issue referred to the manufacturer subject to the manufacturer's terms and conditions.

16.5 Where applicable, with regard to replacement of Equipment, Cloud Cover IT shall endeavour to replace Equipment within the timeframe outlined in the SLA, as fully described in the Order Confirmation.

16.6 Following delivery of the Equipment and full payment having been made to Cloud Cover IT, the Customer shall own the Equipment (unless otherwise stated); should the Equipment subsequently either suffer damage or require Replacement not covered by the Warranty or the SLA, the incident should be treated as an insurance issue.

16.7 In some instances servers (may include 24, 36 or 48 months, warranty), the details will be as outlined in the Service Level Agreement.

## **17. Retention of Title**

17.1 Although the Equipment may have been delivered and risk in the Equipment may have passed to the Customer, title and ownership in the Equipment shall remain with Cloud Cover IT and shall pass to the Customer only when Cloud Cover IT has received in cash or cleared funds the (i) full price for the Equipment, (ii) full value of the hired Equipment (iii) any applicable VAT and (iv) payment of any other sums then due by the Customer to Cloud Cover IT under the contract or under any other contract, agreement or arrangement between them whereby Cloud Cover IT will supply Equipment or services to the Customer.

17.2 Until title and ownership in the Equipment does pass to the Customer then the Customer shall:

17.2.1 hold the Equipment on a fiduciary basis for Cloud Cover IT;

17.2.2 clearly mark or identify the Equipment as being the property of Cloud Cover IT; and/or

17.2.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and/or

17.2.4 ensure that the Equipment are kept safe, secure and maintained in satisfactory condition; and/or

17.3 The Customer grants Cloud Cover IT, its agents and employees an irrevocable license at any time to enter any premises where the Equipment are or may be stored, in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

17.4 On termination of the contract, howsoever caused, Cloud Cover IT (but not the Customer's) rights contained in Clauses 17 shall remain in effect.

## **18. Disclaimer and Limitation of Liability**

18.1 Except as expressly provided in this Agreement, no warranty, condition, undertaking or term, expressed or implied, statutory or otherwise, as to the condition, quality, performance, durability or fitness for purpose of the Equipment is given or assumed by us and all such warranties, conditions, undertakings and terms are hereby excluded insofar as permitted by law.

18.2 WE SHALL NOT IN ANY CASE BE LIABLE TO YOU OR TO ANY OTHER PARTY FOR DIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL INDIRECT OR SIMILAR LOSS OR DAMAGES (INCLUDING ALL MANNER OF COSTS, FEES AND EXPENSES) ARISING FROM BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE OR ANY OTHER CAUSE.

18.3 If any exclusion, disclaimer or other provision contained in this Agreement is held to be invalid for any reason by a court of competent jurisdiction and Cloud Cover IT becomes liable thereby for loss or damage that may lawfully be limited, such liability whether in contract, tort (including negligence but specifically excluding personal injury or death resulting from Cloud Cover IT negligence) or otherwise, will not exceed the value of the previous month's payment from the Customer.

18.4 Cloud Cover IT shall have no liability for delay or for any effect upon the quality of the Service caused by external activities, third-party failures or problems suffered as a result of the Customer's internal communication or the lack of accessibility or cooperation of the Customer.

18.5 Unless otherwise agreed, Cloud Cover IT cannot be held responsible for disposing of any Customer Equipment used or captured when the work is completed more fully described in the Order Confirmation.

18.6 The Customer is responsible for disposing of the Equipment or old Equipment in a lawful way in line with relevant legislation.

18.7 Unless otherwise agreed, the Customer is responsible for choosing the Equipment specifications including capacity, RAM and the speed of the device. Cloud Cover IT cannot be held responsible for future capacity issues encountered by the Customer in relation performance of the Equipment.

18.8 Cloud Cover IT is not responsible for the Customers IT security or anti-virus arrangements unless stated on the Order Confirmation.

18.9 Cloud Cover IT is only liable for delivering SLAs as outlined in the SLA subject to the Customers cooperation as outlined in Clause 3.

18.10 The Customer is responsible for backing up their data. Cloud Cover IT takes no responsibility for any loss of data.

18.11 Cloud Cover IT will not be held responsible for any delay to the Service if payment is not received pursuant to clauses 11.3 and 13.3 hereof.

18.12 Cloud Cover IT cannot be held responsible for downtime or extensive periods of downtime not limited to and including:-

18.12.1 unforeseen problems with Equipment.

18.12.2 power outages.

18.12.3 incompatibility of Equipment or hardware.

18.12.4 lack of Customer preparation or failure to provide a sufficient environment or Equipment necessary to complete the Work.

18.13 Cloud Cover IT cannot take responsibility for the Customer's inability to obtain credit from any third-party financial institution.

18.14 Cloud Cover IT is not responsible for any goods purchased by the Customer.

18.15 Unless otherwise agreed, it is the Customers responsibility to maintain update browser, firewall or anti-virus and anti-spyware software. The Customer must protect their Computer and ensure they update all security software by downloading the latest security patches from relevant software provider.

18.16 Cloud Cover IT is not responsible for any compatibility issues or any performance issues with regards to the number of customer devices connected to the Equipment.



18.17 Where applicable, the Customer must not reset the Cloud Cover IT Equipment as the Equipment is configured by Cloud Cover IT before dispatched to the Customer. The Customer will be liable for an additional cost to re-configuring the Equipment and/or re-issuing a new Equipment.

18.18 Cloud Cover IT is not responsible for the performance of the Service due to the distance of the Customers address from the local telephone exchange.

18.19 Cloud Cover IT can only be responsible for delivering Services as agreed in the Spec Document.

18.20 Cloud Cover IT cannot be held responsible for any loss of data for any reason whatsoever.

## **19. Privacy (Protection of Information).**

19.1 Any personal data (as defined in the DPA and GDPR Act) provided by you to us shall at all times remain your property and we shall take all reasonable precautions to preserve the integrity of such Personal Data and to prevent any corruption or loss, damage or destruction of such Personal Data, PROVIDED THAT we reserve the right to disclose to the police, the fire authorities, any other relevant authority, our insurance company and any of their representatives details of the records kept by us.

19.2 For the purposes of this Agreement the terms of The Customer shall ensure that any Personal Data which it supplies or discloses (Data processor) has been obtained fairly and lawfully and that it has obtained all necessary consents in relation to the processing of the Personal Data including any obligation it has as Data controller to notify its employees that their Personal Data may be processed outside of the European Economic Area.

19.3 Any personal data (as defined in the Act) provided by you to us shall at all times remain your property and we shall take all reasonable precautions to preserve the integrity of such Personal Data and to prevent any corruption or loss, damage or destruction of such Personal Data, PROVIDED THAT we reserve the right to disclose to the police, the fire authorities, any other relevant authority, our insurance company and any of their representative's details of the records kept by us.

19.4 The Internet is inherently insecure. The Customer accepts that Customer Information including any personal data or other information submitted by means of the Internet may be vulnerable to unauthorised access by third-parties. We will take reasonable and appropriate technical measures to ensure that your Customer Information including any personal data is stored in a secure manner. However, we shall have no liability for disclosure of data due to errors in transmission or the fraudulent, negligent or other illegal acts of a third party, such as 'hacking'. Any transmission of Customer Information and/or personal data through the Customer Interface or by any other means is at your own risk.

## **20. Compliance**

20.1 At all times during this Agreement the Customer undertakes to use the Service in accordance with;

20.1.1 the relevant legislation or act.

20.1.2 any acceptable usage policy and the Customer agrees to act within the law and not to download illegal copyright material or files or images of a sexual nature. Cloud Cover IT reserve the right to suspend services further to an investigation and report the offense or issue to the ISP. The Customer must cooperate with any investigation conducted by Cloud Cover IT as a result of any illegal material downloaded.

20.1.3 any direction of the General Director of Telecommunications, OFCOM or other competent authority which applies to the use of communication services by the Customer.

## **21. Confidentiality**

21.1 Each party will keep confidential any Confidential Information disclosed to it by the other. Neither party will disclose any Confidential Information to any third-party, save to its agents, subcontractors, advisers or to an employee who needs to have access to such Confidential Information in connection with the performance of any obligations under the Customer Agreement, PROVIDED THAT the disclosing party will be responsible for ensuring that any person to whom it makes any such disclosure complies with this Clause

21.2 This Clause 21 shall survive termination of this Agreement.

## **22. Termination**

22.1 Cloud Cover IT may without prejudice to its other rights is immediately entitled to suspend or cancel each or any of its contracts with the Customer upon the occurrence of any of the following:

22.1.1 The Customer shall fail to make payment of any sum owing on the due date or commits any act of bankruptcy or makes any arrangements with its creditors or if any execution or distress is levied upon the goods of the Customer; or

22.1.2 Being a body corporate shall have a receiver or administrative receiver appointed or if any petition be presented for an administration order or if any petition be presented or resolution passed for the winding up of the same (otherwise than for the purpose of a bona fide amalgamation or reconstruction) or compounds with its creditors or becomes insolvent or any step is taken to proceed to such winding up or receivership or if any court order is made upon or against any of the Customer's property or anything similar or analogous to the foregoing occurs in any jurisdiction other than Scotland; or

22.1.3 The Customer makes default in respect of any of its obligations under any of its contracts with Cloud Cover IT. Any occurrence of the above events shall render all amounts owing in respect of goods sold by Cloud Cover IT to the Customer to become immediately due and payable.

22.2 We reserve the right to cancel this Agreement if: (i) we have insufficient stock to deliver the Equipment or Services you have ordered; (ii) we do not deliver to your area; or (iii) one or more of the Equipment or Services you ordered was listed at an incorrect price due to a typographical error or an error or change in the pricing information.

22.3 If we do cancel your Order under the condition of 22.2, we will notify you by e-mail or by letter and will re-credit to your account within 30 days.

22.4 In the event of cancellation, Cloud Cover IT reserve the right to retrieve all property belonging to Cloud Cover IT.

22.5 Ethical clause - Cloud Cover IT will not tolerate duplicity, deceit or pretence regards the parties using the Service, or in any way abusing the Service, reserving the right to terminate services as a result of such behaviour.

22.6 Unless otherwise agreed; all Cloud Cover IT contracts will renew automatically for a further 12-month period unless the Customer offers one month's notice before the end of the contract period as outlined in the Order Confirmation.

22.7 If you have ordered Equipment made to your specification (bespoke work, this includes pre-configured Equipment), no cancellation will be possible and no refunds will be made.

22.8 To cancel your Order, please contact Cloud Cover IT by telephone on +44 (0) 141 280 2882, giving details of the items ordered, WITHIN 24 HOURS OF PLACING THE ORDER. After the initial 24-hour period, the Customer is liable to pay Cloud Cover IT 100% of the Charges as described in the Order Confirmation.

22.9 Where applicable, Cloud Cover IT must be satisfied with the quality of any third-party supplier suggested by the Customer and the suggested supplier must be capable of delivering against agreed specifications, if not Cloud Cover IT has right to terminate. The Customer will be liable for any expenses incurred by Cloud Cover IT as a result of any third-party shortfall or failure deliver Services.

22.10 Cloud Cover IT will suspend the Usage Facility with the exception of the Customers ability to dial 999 services:

22.10.1 within 14 days of the Customer missing a direct debit payment; and/or

22.10.2 immediately if in the reasonable view of Cloud Cover IT, the Customer's Usage is unusually high or otherwise gives rise to concern.

## **23. Force Majeure**

23.1 Cloud Cover IT shall not be liable to you or be deemed to be in breach of the Agreement by reason of delay in performing, or any failure to perform, any of our obligations in relation to the Equipment or Services, if the delay or failure was beyond our reasonable control. Without prejudice to the generality

of the foregoing, the following shall be regarded as causes beyond our reasonable control:

23.1.1 act of god, explosion, flood, tempest, fire or accident; weather, war or threat of war, sabotage, pandemic flu or virus, insurrection, civil disturbance or requisition; acts, data breaches, restrictions, regulations, bye-laws, prohibitions or measures or any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes, strikes, lock-outs or other industrial actions, power cuts or trade disputes (whether involving our employees or of a third-party); or technical problems, external circumstances preventing suppliers delivering against deadlines or preventing delivery of third-party against agreed commitments.

## **24. Intellectual Property rights and ownership**

24.1 Unless otherwise agreed in writing and except for Intellectual Property Rights pertaining to the Equipment or Software Services, all Intellectual Property Rights arising during this Agreement shall vest in Cloud Cover IT (including any reports, template, schematic or design of a solution). The Customer is granted a non-exclusive, non-transferable, royalty-free licence to use that intellectual property for the purposes envisaged by the Agreement.

24.2 Unless otherwise agreed, the Intellectual Property Rights belonging to all document templates and any forms used by the Customer are owned by Cloud Cover IT.

24.3 Nothing in this Agreement shall be taken to prevent us from using any expertise acquired or developed during the performance of this Agreement in the provision of services to other parties. Cloud Cover IT retains the right to use Intellectual Property content for marketing use; this includes the use of the Customers logo and a brief description of the Work.

## **25. Assignment**

25.1 Neither party shall assign, transfer or in any other manner make over to any third-party the benefit and/or burden of this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed.

25.2 Nothing in this clause 25.1 shall prevent Cloud Cover IT from engaging subcontractors or consultants as may be deemed necessary or desirable for the performance of Cloud Cover IT obligations under the Agreement.

## **26. Non-Solicitation**

26.1 For a period of 12 months (as stated on the Order Confirmation), the Customer will not employ or offer employment to any person employed by Cloud Cover IT. If the Customer breaches this condition, the Customer recognises that Cloud Cover IT will suffer substantial loss and will reimburse Cloud Cover IT for such loss.

## **27. Financing**

27.1 Cloud Cover IT will recommend a third-party company with regards to Financing. This arrangement is subject to the third-parties terms and conditions.

27.2 The Customer is responsible and liable (as outlined in this agreement) for all Equipment purchased including Equipment purchase and financed using a third-party Financing company.

27.3 In the event Cloud Cover IT recommends to the Customer a third-party Financing option, it is the Customer's responsibility to contract directly with the third-party.

27.4 In the event the Customer fails to secure Financing, Cloud Cover IT will attempt to offer an alternative solution, however Cloud Cover IT will not be liable for failure to do so and will be the sole arbiter of this issue.

## **28. Notices**

28.1.1 if personally delivered, upon delivery at the address of the relevant party;

28.1.2 if sent by first class post, two business days after the date of posting;

28.1.3 if by email, when sent;

provided that if, in accordance with the above provision, any notice, demand or other communication would otherwise be deemed to be given or made after 1730 hours, it shall be deemed to be given or made at the start of the next business day.

28.2 Any notice personally delivered or sent by first class post shall be delivered to the address of the relevant party set out in the Order Confirmation

## **29. General**

29.1 Failure or delay by Cloud Cover IT in enforcing any term of the Agreement shall not be construed as a waiver of any of its rights under it.

29.2 The illegality, invalidity or unenforceability of any part of this Agreement will not affect the legality, validity or enforceability of the remainder.

29.3 The construction, validity and performance of this Agreement shall be governed by Scots Law and the parties submit themselves to the exclusive jurisdiction of the Scottish Courts.