

Dunedin IT
Mobile Services
Terms and Conditions

1 Contract structure and contracting entity

- 1.1 These are the terms and conditions on which Dunedin IT will supply Goods and Services to the Customer.
- 1.2 The Contract shall comprise of:
- 1.2.1 each Order Form;
 - 1.2.2 each Schedule where applicable;
 - 1.2.3 these Conditions; and
 - 1.2.4 any other document referred to in the Contract.
- If there is any conflict between the documents listed above, the document higher in the list shall take precedence.
- 1.3 By entering into the Contract, the Customer confirms that it is contracting as a business and not as a consumer.

2 Interpretation

2.1 Definitions

In these terms and conditions, the following definitions apply:

Actual Spend the total amount paid or payable to the Provider by the Customer pursuant to the Provider Agreement, including Provider Recovery Charges but excluding the following expenditure: (i) insurance; (ii) administration services/charges; (iii) sums charged via carrier billing (including (without limitation) Just Giving and other charity texts); (iv) any interest, penalty, fee or other sum charged as a result of the Customer's default under the Provider Agreement (but not Provider Recovery Charges); and (v) any payment made to the Provider which is not a payment pursuant to the Provider Agreement;

Applicable Law the laws of Scotland and any other laws and regulations that apply to providing or receiving Goods and/or Services;

Authorised Contacts individuals authorised to act on behalf of the Customer in relation to the Service;

Business Day a day other than a Saturday, Sunday or public holiday;

Charges the fees and charges payable to Dunedin IT in relation to the Goods and/or Services provided by Dunedin IT as set out on the Order Form, prior to the application of any Investment;

Commencement Date in respect of any Order, the earlier of the date upon which: i) Dunedin IT accepts such Order; ii) the Provider begins to provide the Network Services in respect of that Order; or iii) where it is a Goods-only Order, Dunedin IT dispatches the Goods;

Connections Schedule a schedule on or annexed to a Provider Agreement detailing the telephone numbers the Customer wishes to connect to the Provider and the required Network Services in respect of each such telephone number;

Conditions the terms and conditions set out herein;

Contract has the meaning given in clause 1.2;

Customer the party identified as the Customer on the Order Form;

Data Protection Legislation the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018

Data Protection Losses all liabilities, including all:

- (a) costs (including legal costs), claims, demands, actions, settlements, interest, charges, procedures, expenses, losses and damages (including relating to material or non-material damage); and
- (b) to the extent permitted by Applicable Law:
 - (i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority;
 - (ii) compensation which is ordered by a Supervisory Authority to be paid to a Data Subject; and
 - (iii) the reasonable costs of compliance with investigations by a Supervisory Authority;

Data Subject has the meaning as defined in the Data Protection Legislation;

Equipment the equipment detailed on the Order Form or in a Goods Schedule which is intended for use with the Network Services, such as a mobile phone or accessory;

Equipment Software software which is (i) embedded in an item of Equipment supplied by Dunedin IT, or (ii) provided by Dunedin IT and downloaded to any item of Customer equipment;

Force Majeure Event an event or circumstance beyond a party's reasonable control;

Goods Equipment and/or Third Party Software;

Goods Schedule a schedule setting out details of, and additional terms and conditions relating to, Goods;

Intellectual Property Rights patents, rights to inventions, copyright and related rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Investment the investment by Dunedin IT detailed on the Order Form (where applicable, being the aggregate of the one-time and recurring investment totals shown (as minus figures) in the summary table) and/or in the Investment Schedule;

Investment Account an account recording the Investment available to the Customer pursuant to clause 10.2;

Investment Recovery Charge the charge payable by the Customer to Dunedin IT calculated in accordance with clause 10.7;

Investment Schedule a schedule setting out additional terms and conditions relating to Investment;

Minimum Spend the sum (if any) specified on the Order Form, subject to any variation pursuant to the terms of the Contract, being the minimum amount that the Customer commits to pay in charges to the Provider during the Minimum Term;

Minimum Term the minimum term of the relevant Provider Agreement;

Network Services the mobile phone services described on the Order Form and provided by the Provider pursuant to the Provider Agreement;

Notice any notice given by one party to the other under the Contract in accordance with clause 20.9;

Dunedin IT Dunedin IT Limited (Company No. SC364906) whose registered office is 31 Dunedin Street, Edinburgh, EH7 4JG

Order the Customer's acceptance of an Order Form and, where applicable, related Provider Agreement;

Order Form (i) for telephone sale verbal contracts, the details confirmed and/or agreed by the Customer on a verification call and which are summarised on a document headed 'Quote' following such call, and (ii) in all other cases, a document provided to the Customer headed 'Quote';

Overdrawn Investment the amount by which a Customer's Investment Account is overdrawn as set out in clause 10.3;

Personal Data has the meaning as defined in the Data Protection Legislation;

Privacy Policy Dunedin IT's privacy policy (as amended from time to time) at <https://Dunedin.IT.co.uk/privacy-policy/> (or any other online address that Dunedin IT advises the Customer of);

Provider the third-party provider of the Network Services to the Customer as identified on the Order Form, and, where there is more than one such Provider, references to Provider shall be construed as references to the relevant Provider;

Provider Agreement the agreement between the Customer and the Provider for provision of Network Services, including a Purchase Order (for certain Providers only) and/or a Connections Schedule (where necessary);

Provider Recovery Charges the sums charged by the Provider for termination of a Provider Agreement before expiry of its Minimum Term, and/or failure to achieve spend targets;

Purchase Order a purchase order in a form approved by Dunedin IT, on the Customer's headed paper, addressed to the Provider and signed by the Customer

Schedule in relation to a particular Order, any Goods Schedule, Investment Schedule, Services Schedule or other any document supplied by Dunedin IT that sets out the specific terms that apply to an Order and which is clearly marked as forming part of the Contract, excluding any proposal or other marketing material;

Services the account management services (and such additional services as may be detailed in a Services Schedule) provided by Dunedin IT (if any), which are ancillary to the Network Services;

Services Schedule a schedule setting out additional terms and conditions relating to Services;

Shipping Address in relation to a particular delivery, the shipping address set out on the Order Form relating to such delivery, or such other

address agreed between the parties in writing;

Sub-Processor has the meaning given in clause 18.4;

Supervisory Authority means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Legislation; and

Third Party Software the third party software detailed on the Order Form or in a Schedule plus any Equipment Software.

2.2 Construction

In this Contract, the following rules apply:

- 2.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 2.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;
- 2.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 2.2.4 any phrase introduced by the terms including, include, or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- 2.2.5 a reference to writing or written includes reference to any communication effected by electronic transmission or similar means; and
- 2.2.6 a party or the parties refer to the parties to the Contract.

3. Provider Agreement

3.1 The Customer agrees to comply with the terms of the Provider Agreement and acknowledges and agrees that:

- 3.1.1 Dunedin IT facilitates the entry into the Provider Agreement between the Customer and the Provider, but is not a party to it and has no liability to the Customer in relation to it or any breach of it by the Provider;
- 3.1.2 the Network Services shall be supplied by the Provider in accordance with the terms of the Provider Agreement; and
- 3.1.3 the Services are separate from, and ancillary to, the Network Services.

3.2 If the Provider Agreement is terminated before the expiry of the Minimum Term, the Contract shall automatically terminate in accordance with clause 15.1 and the provisions of clause 16 shall apply.

3.3 In the event that the Customer fails to pay the first two invoices issued to it by the Provider, Dunedin IT may blacklist the Equipment on the Central Equipment Identity Database.

4 Additional Orders

- 4.1 By agreement with Dunedin IT, the Customer may (from time to time) provide Dunedin IT with the names, email addresses and telephone numbers of those individuals who are authorised by the Customer to make, and from whom Dunedin IT may accept, Orders for additional Network Services, Goods and/or Services.
- 4.2 Where the Customer requires additional Network Services (such as additional connections) under an existing Provider Agreement, and where agreed by Dunedin IT and accepted by the relevant Provider, an Order shall:
- 4.2.1 constitute authority for Dunedin IT, as agent for the Customer, to execute such documents and take such other steps as are necessary to give effect to such Order with the Provider;
 - 4.2.2 incorporate the terms of the applicable Provider Agreement as between the Customer and the Provider in relation to the additional Network Services; and
 - 4.2.3 as between the Customer and Dunedin IT, be on and subject to these Conditions (unless agreed otherwise in writing at the time).
- 4.3 The Customer may, at any time and by giving not less than 2 Business Days' written notice, notify Dunedin IT of changes to the individuals authorised under clause 4.1 or withdraw the authority given under clause 4.2.1. Such notification or withdrawal shall not affect the validity of any action taken by Dunedin IT prior to expiry of the relevant notice.

5 Goods – ordering and delivery

- 5.1 Where the Order is for the purchase of Goods only, clauses 3, 8 and 10 shall not apply.
- 5.2 The Customer is responsible for ensuring that the Goods are correct and appropriate for the Customer's intended use and requirements.
- 5.3 Dunedin IT reserves the right to amend the specification or model of any of the Goods if required by any applicable statutory or regulatory requirements, if the manufacturer changes such specification or discontinues such model, or if stock of such model becomes otherwise unavailable, between the date of the Order and the time of despatch. Dunedin IT will endeavour to ensure that any such substituted Goods will be of equal or better quality.
- 5.4 Dunedin IT shall deliver the Goods to the Shipping Address.
- 5.5 Any lead times or dates quoted for delivery of the Goods are approximate only, and time of delivery is not of the essence. The Goods may be delivered by Dunedin IT in advance of any dates quoted for delivery of the Goods.
- 5.6 Delivery of the Goods shall be completed on the arrival of the Goods at the Shipping Address.
- 5.7 The Customer is under a duty to inspect the Goods on delivery.
- 5.8 Delays in the delivery of Goods shall not entitle the Customer to:
- 5.8.1 refuse to take delivery of the Goods; or
 - 5.8.2 claim damages; or
 - 5.8.3 terminate all or part of the Contract, subject always to clause 20.2.

- 5.9 Dunedin IT shall have no liability for any failure to deliver, or delay in delivering, the Goods to the extent that any failure is caused by a Force Majeure Event, the Customer's failure to provide Dunedin IT with adequate delivery instructions for the Goods or the Customer's failure to comply with any reasonable instruction related to the delivery of the Goods.
- 5.10 If the Customer fails to take delivery of the Goods within 3 Business Days of Dunedin IT notifying the Customer that the Goods are ready and/or fails to provide any instructions, documents, licences, consents or authorisations required to enable the Goods to be delivered on the date quoted for delivery:
- 5.10.1 delivery of the Goods shall be deemed to have been completed at 9.00am on the fourth Business Day following the day on which Dunedin IT notified the Customer that the Goods were ready; and
- 5.10.2 Dunedin IT shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 5.11 If 5 Business Days after Dunedin IT notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, Dunedin IT may resell or otherwise dispose of part or all of the Goods.

6 Goods – warranties, replacements and returns

- 6.1 The Goods, where new, are provided with the benefit of and subject to the manufacturer's warranty and guarantee (Manufacturer's Warranty). Details of the Manufacturer's Warranty are set out on the relevant manufacturer's website or in the user guide or license relating to the Goods (including the duration of any warranty period).
- 6.2 Except as provided in this clause 6, Dunedin IT shall have no liability to the Customer in respect of the failure of Goods to comply with the applicable Manufacturer's Warranty.
- 6.3 Subject to clause 6.4 and any additional terms set out in a Schedule, Dunedin IT shall not be under any obligation to exchange, repair or replace Goods or provide any refunds.
- 6.4 Where Equipment supplied to the Customer is or becomes faulty during the Manufacturer's Warranty period and for a reason covered by the Manufacturer's Warranty (which excludes the Customer's acts, omissions or misuse):
- 6.4.1 The Customer should report the fault to Dunedin IT's customer services team on 0330 058 1701
- 6.4.2 The Customer must re-package the faulty Equipment and ensure that such Equipment and all original accessories are returned to Dunedin IT at the Customer's cost and risk by such post or courier service as shall ensure proof of delivery and sufficient insurance to cover the value of the Equipment to Dunedin IT Limited, 31 Dunedin Street, Edinburgh, EH7 4JD (or as otherwise directed by Dunedin IT).
- 6.4.3 Dunedin IT shall inspect the returned Equipment and may return it to the manufacturer.
- 6.4.4 Dunedin IT may, at its sole discretion and subject to inspection of the faulty Equipment, elect to either:

- (a) provide replacement Equipment (subject to clause 6.5); or
 - (b) refund such sum as Dunedin IT reasonably considers to be the current market value of the faulty Equipment.
- 6.5 The Customer acknowledges that, where it is determined (either by Dunedin IT acting reasonably, or by the manufacturer) that the fault is not covered by the Manufacturer's Warranty, the Customer remains liable for any sums outstanding in respect of such item of Equipment and:
 - 6.5.1 where the faulty Equipment can be repaired:
 - (a) the Customer shall return to Dunedin IT any replacement Equipment supplied pursuant to clause 6.4.4(a) (at the Customer's cost and risk) or pay Dunedin IT the full cost of such replacement Equipment; and
 - (b) at the Customer's option, Dunedin IT shall either (i) repair the faulty Equipment and the Customer shall pay the cost of repair or (ii) return the faulty Equipment to the Customer at the Customer's cost and risk;
 - 6.5.2 where the faulty Equipment cannot be repaired, the Customer shall pay Dunedin IT the full cost of any replacement Equipment supplied pursuant to clause 6.4.4(a).
- 6.6 The Customer acknowledges and accepts that it is solely responsible for ensuring the backup of any important or confidential data stored on the Equipment prior to its return to Dunedin IT and the Customer agrees that Dunedin IT will not be liable if any such data is lost or corrupted during any process set out in clauses 6.4 and 6.5.
- 6.7 Notwithstanding the foregoing provisions of this clause 6, no liability will be accepted under any Goods warranty or guarantee where any Customer invoice is overdue.

7 Risk and retention of title

- 7.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of the Contract, legal and beneficial title to the Goods shall not pass to the Customer until:
 - 7.2.1 in respect of Goods for which Dunedin IT has invoiced the Customer, Dunedin IT has received payment in full (in cash or cleared funds) for those Goods; or
 - 7.2.2 in respect of Goods which Dunedin IT has provided or paid for (in whole or in part) by way of Investment:
 - (a) the Provider has received payment in full (in cash or cleared funds) of all sums due from the Customer under the Provider Agreement in respect of the Minimum Term (including any Provider Recovery Charges); and
 - (b) where applicable, Dunedin IT has received payment in full (in cash or cleared funds) of any Investment Recovery Charge.

- 7.3 Title to subscriber identity module (SIM) cards provided to the Customer to enable use of the Provider shall not pass to the Customer and is governed by the terms of the Provider Agreement.
- 7.4 Until title to the Goods has passed to the Customer, the Customer shall:
- 7.4.1 keep accurate records of the location or keeper of the Goods;
 - 7.4.2 maintain the Goods in satisfactory condition and in accordance with the relevant manufacturer's warranty, guarantee and user guide;
 - 7.4.3 keep them insured against all risks for their full replacement value from the date of delivery;
 - 7.4.4 notify Dunedin IT immediately if it becomes subject to any of the events listed in clauses 15.2.3 to 15.2.12; and
 - 7.4.5 give Dunedin IT such information relating to the Goods as Dunedin IT may require from time to time.
- 7.5 If, before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clauses 15.2.3 to 15.2.12, or Dunedin IT reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, without limiting any other right or remedy Dunedin IT may have, Dunedin IT may at any time:
- 7.5.1 require the Customer at the Customer's own cost and expense to deliver up the Goods in its possession; or
 - 7.5.2 without further notice enter any premises of the Customer or of any third party where the Goods may be kept or stored in order to recover them.
- 7.6 The Customer shall at all times ensure that any and all parties that seek to assert any right or claim against the Customer are made fully aware that the Goods are subject to reservation of title by Dunedin IT and that the Goods are not the property of the Customer.
- 7.7 If, for whatever reason, any party seeks to assert any right or claim against the Customer or the Goods, the Customer shall at its own cost and expense defend any such right or claim such as to preserve the reservation of title of the Goods and/or at Dunedin IT's request join any proceedings brought by Dunedin IT in relation to the Goods.

8 Services

- 8.1 Where applicable, Dunedin IT shall provide the Services in all material respects in accordance with any specific terms and conditions set out in the Services Schedule.
- 8.2 Where Dunedin IT has agreed to dates, levels or standards in respect of the performance of any Services, such criteria must be detailed in writing on an Order Form or in the Services Schedule. Dunedin IT shall use reasonable endeavours to meet such performance criteria, but failure to do so shall not constitute a breach of Contract.
- 8.3 Dunedin IT shall have the right to make any changes to the Services which are necessary to comply with any Applicable Law or safety requirement or which do not materially affect the nature or quality of the Services.

9 Third party software

- 9.1 Third Party Software is licensed under and subject to the terms of any standard form end user license agreement (including shrink-wrap or click-through software licenses) and open source license provided with the Goods.
- 9.2 Dunedin IT shall not provide support services in relation to Third Party Software unless specified otherwise on the Order Form and/or Services Schedule.

10 Investment

- 10.1 In addition to the provisions set out in these Conditions, Investment is subject to the terms and conditions set out elsewhere in the Contract, including (without limitation) on the Order Form and in an Investment Schedule.
- 10.2 Investment accrues to the Customer's Investment Account in equal monthly amounts at the end of each completed month of the Minimum Term. The amount standing to the credit of the Customer's Investment Account is available for use as set out in the relative Order Form and/or Investment Schedule.
- 10.3 Notwithstanding clause 10.2, if Dunedin IT allows the Customer to draw down Investment in excess of the amount standing to the credit of its Investment Account:
 - 10.3.1 the amount and availability date of any such draw down must be agreed in writing;
 - 10.3.2 the Customer's Investment Account will be overdrawn as against the pro-rata entitlement pursuant to clause 10.2, and the balance of any Investment will only become available once a sufficient number of months has passed and the Investment Account is back in credit; and
 - 10.3.3 if the Customer's Provider Agreement is terminated in circumstances where the Provider determines that the Customer is not required to comply with its payment obligations, the Customer shall repay to Dunedin IT any Overdrawn Investment via the Investment Recovery Charge.
- 10.4 Dunedin IT reserves the right to:
 - 10.4.1 withhold payment or release of any Investment should the Customer fall into arrears under the Provider Agreement, the Contract or any other contract between Dunedin IT and the Customer; and/or
 - 10.4.2 use Investment pursuant to clause 12.7.2.
- 10.5 Where Investment takes the form of any payment to the Customer:
 - 10.5.1 if the Customer wishes any payment to include VAT, the Customer must provide Dunedin IT with a valid VAT invoice at least 30 days in advance of payment;
 - 10.5.2 Dunedin IT shall not provide the Customer with a credit note in respect of any payment; and
 - 10.5.3 any payment required by the Customer to be made by cheque will incur a processing fee.
- 10.6 One type of Investment is not transferable to another type of Investment.
- 10.7 The Customer shall pay an Investment Recovery Charge in the following circumstances:

10.7.1 Where:

- (a) the Provider Agreement is terminated before expiry of the Minimum Term; and
- (b) the Provider determines that the Customer is not required to pay Provider Recovery Charges; and
- (c) there is Overdrawn Investment, in which case the Investment Recovery Charge shall be a sum equal to the amount of Overdrawn Investment; and

10.7.2 Where:

- (a) a Minimum Spend has been agreed; and
- (b) the Customer has failed to achieve the Minimum Spend by expiry of the Minimum Term or earlier termination (for any reason) of the Provider Agreement, in which case the Investment Recovery Charge shall be a sum equal to the Minimum Spend minus the Actual Spend.

11 Price

- 11.1 Dunedin IT reserves the right, by giving written notice to the Customer at any time before delivery of the Goods or provision of the Services, to increase prices to reflect any increase in the cost to Dunedin IT which is due to any:
- 11.1.1 factor beyond the control of Dunedin IT (including any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture);
 - 11.1.2 change in delivery dates, quantities or specifications for the Goods and/or Services which are requested by the Customer; or
 - 11.1.3 delay caused by any instructions of the Customer or failure of the Customer to give Dunedin IT adequate information or instructions.
- 11.2 Unless otherwise stated on the Order Form, all prices are inclusive of Dunedin IT's charges for packaging and transport.
- 11.3 Unless otherwise stated on the Order Form, all prices are exclusive of any applicable value added tax, excise, sales taxes or levies of a similar nature and all other taxes and charges in respect of the Goods and/or Services, which shall be payable by the Customer in addition.
- 11.4 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Dunedin IT in order to justify withholding payment in whole or in part. Dunedin IT may, without limiting its other rights and remedies, set-off any amount owing to it by the Customer against any amount payable by Dunedin IT to the Customer (including any Investment).

12 Payment

- 12.1 Dunedin IT shall invoice the Customer on or at any time after acceptance of the Order, delivery of the Goods and/or the provision of the Services (as applicable) or as otherwise specified on the Order Form or Schedule.

- 12.2 For the avoidance of doubt, the Provider shall invoice the Customer in respect of Network Services.
- 12.3 If the Customer wrongfully fails to take delivery of Goods, Dunedin IT shall be entitled to invoice the Customer for the Goods at any time after Dunedin IT has tendered delivery of such Goods.
- 12.4 The Customer shall pay each invoice submitted by Dunedin IT within the number of days from the date of such invoice as set out on the Order Form (or if no such number is so set out then within 14 days), and in full and in cleared funds to a bank account nominated in writing by Dunedin IT.
- 12.5 Payment shall be made on or before the due date for payment (Due Date) notwithstanding that delivery or provision may not have taken place and/or that the title to the Goods has not passed to the Customer.
- 12.6 Dunedin IT may credit assess the Customer from time to time to determine the credit limit on the Customer's account. If Dunedin IT is not satisfied as to the creditworthiness of the Customer it may notify the Customer that no further credit will be allowed and may require all amounts owing by the Customer to Dunedin IT to be paid immediately in cash.
- 12.7 Without limiting any other right or remedy of Dunedin IT, if the Customer fails to make any payment due to Dunedin IT under the Contract or any other contract between Dunedin IT and the Customer by the relevant due date for payment, Dunedin IT shall be entitled to:
- 12.7.1 cancel any Order or suspend any further provision of Goods and/or Services to the Customer;
 - 12.7.2 deduct monies up to the value of the overdue amount from any sum standing to the credit of the Customer's account with Dunedin IT, including any Investment;
 - 12.7.3 suspend payment or availability to the Customer of any Investment; and
 - 12.7.4 charge interest on the overdue amount at the rate of 3% per annum above the then current Bank of England base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 12.8 In the event that the Customer disputes the amount of the invoice:
- 12.8.1 the Customer shall pay any undisputed portion of the invoice;
 - 12.8.2 the Customer shall write to Dunedin IT within 10 Business Days of the date of the invoice providing details of:
 - (a) the nature and reason for the dispute;
 - (b) the amount in dispute; and
 - (c) any evidence to support the disputed amount;
 - 12.8.3 if Dunedin IT can demonstrate that the invoice is correct Dunedin IT shall be entitled to charge interest in accordance with clause 12.7.4; and
 - 12.8.4 if Dunedin IT determines that the disputed invoice is incorrect Dunedin IT shall issue a corrected invoice and/or apply the relevant credit to the Customer's account.

13 Customer's obligations

13.1 The Customer shall:

- 13.1.1 ensure that the Order Form is complete and accurate;
- 13.1.2 co-operate with Dunedin IT in all matters relating to the Goods and/or Services;
- 13.1.3 follow all reasonable instructions from Dunedin IT from time to time in connection with the Services;
- 13.1.4 provide Dunedin IT with such information and materials as Dunedin IT may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- 13.1.5 provide the names and contact details of Authorised Contacts (and agree levels of authority where requested by Dunedin IT), but Dunedin IT may also accept instructions from a person who Dunedin IT reasonably believes is acting with Customer authority; and
- 13.1.6 authorise Dunedin IT to act on its behalf in all dealings with third parties in connection with any matter that enables Dunedin IT to provide or continue to provide the Customer with the Services.

13.2 If Dunedin IT's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):

- 13.2.1 Dunedin IT shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Dunedin IT's performance of any of its obligations;
- 13.2.2 Dunedin IT shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Dunedin IT's failure or delay to perform any of its obligations as set out in this clause 13.2; and
- 13.2.3 the Customer shall reimburse Dunedin IT on written demand for any costs or losses sustained or incurred by Dunedin IT arising directly or indirectly from the Customer Default.

14 Liability

14.1 Without prejudice to clause 13.2 and subject to clause 14.4:

- 14.1.1 neither party shall be liable under any circumstances to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
 - (a) any loss of profits, sales, business, or revenue;
 - (b) loss or corruption of data, information or software;
 - (c) loss of business opportunity;
 - (d) loss of anticipated savings;
 - (e) loss of or damage to goodwill; or
 - (f) any indirect or consequential loss; and

- 14.1.2 Dunedin IT's total liability to the Customer arising in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount paid by the Customer to Dunedin IT under the Contract as at the date the loss arose.
- 14.2 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 14.3 Dunedin IT shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of Dunedin IT's obligations if the delay or failure was due to any cause beyond Dunedin IT's reasonable control.
- 14.4 Nothing in these Conditions excludes or limits the liability of a party for:
 - 14.4.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 14.4.2 fraud or fraudulent misrepresentation; or
 - 14.4.3 any other matter for which it would be unenforceable or invalid to seek to limit or exclude liability.
- 14.5 To the extent that any of the Goods or Services are provided by third parties:
 - 14.5.1 notwithstanding the provisions of clause 6, the Customer acknowledges that it must rely entirely on the guarantees and warranties which may have been given by the third party manufacturer, software or service provider to Dunedin IT, which Dunedin IT will endeavour to pass on to the Customer;
 - 14.5.2 Dunedin IT's liability will be limited to such sums as it recovers from the relevant Provider; and
 - 14.5.3 Dunedin IT's obligations shall be limited to managing the provision of such services by such third party and Dunedin IT shall not be in breach of the Contract to the extent that such breach was caused, or contributed to, by the act or omission of such third party (and Dunedin IT shall be entitled to make a reasonable additional charge for any additional services it provides to rectify the effects of the act or omission).
- 14.6 This clause 14 shall survive termination of the Contract.

15 Term and termination

- 15.1 The Contract shall commence on the Commencement Date and shall continue until:
 - 15.1.1 the Provider Agreement is terminated in accordance with its terms, whereupon the Contract shall automatically terminate. Where there is more than one Provider Agreement, the Contract shall only terminate in respect of the terminated Provider Agreement and the

15.1.2 Goods and Services supplied in relation thereto, and shall continue in respect of any continuing Provider Agreement; or terminated pursuant to clause 15.2 or 20.2.

15.2 Without limiting its other rights or remedies, a party may terminate the Contract with immediate effect by giving Notice to the other party if:

15.2.1 the other party fails to pay any undisputed amount due under the Contract on the due date for payment and remains in default no less than 30 days after being notified in writing to make such payment;

15.2.2 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after being notified in writing to do so;

15.2.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

15.2.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

15.2.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;

15.2.6 the other party (being an individual) is the subject of a bankruptcy petition or order;

15.2.7 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

15.2.8 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

- 15.2.9 the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 15.2.10 a floating charge holder over the assets of the other party has become entitled to appoint or has appointed an administrative receiver;
- 15.2.11 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 15.2.12 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 15.2.3 to 15.2.11 (inclusive);
- 15.2.13 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- 15.2.14 the other party's financial position deteriorates to such an extent that in Dunedin IT's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

16 Consequences of termination

- 16.1 On termination of all or part of the Contract for any reason:
 - 16.1.1 Dunedin IT will issue an invoice to the Customer (Closing Invoice) in respect of:
 - (a) any Goods and Services supplied but not yet invoiced in full; and
 - (b) where applicable, the Investment Recovery Charge.The Closing Invoice will be payable by the Customer immediately on receipt;
 - 16.1.2 all payments payable to Dunedin IT by the Customer under this Contract shall become immediately due and payable;
 - 16.1.3 any remaining balance of Investment to which the Customer is entitled may be applied in settlement of sums due and payable to Dunedin IT and the remainder shall be forfeited;
 - 16.1.4 where any Goods are to be returned to Dunedin IT, the Customer shall upon request promptly (and in any case within 14 days of Dunedin IT's written request) pay to Dunedin IT a handling fee in respect of each unit of Goods;
 - 16.1.5 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 - 16.1.6 the following clauses shall continue in force: clause 2 (Interpretation), clause 14 (Liability), clause 16 (Consequences of termination), clause 18 (Data protection), clause 20.1 (Intellectual property), clause 20.4 (Confidentiality), clause 20.5 (Entire

agreement), clause 20.7 (Waiver), and clause 20.11 (Governing law and jurisdiction).

- 16.2 Without limiting its other rights or remedies, Dunedin IT may suspend provision of Goods and/or Services under the Contract or any other contract between Dunedin IT and the Customer if the Customer becomes subject to any of the events listed in clauses 15.2.3 to 15.2.12, or if the Customer fails to pay any amount due under the Contract on the due date for payment.

17 Complaints

If the Customer wishes to make a complaint about the Services, the Customer must follow the Dunedin IT Complaints Procedure https://cdn.prod.website-files.com/68add7db7c9c6ad23ad99c82/69612b3295336124e916d706_Code-of-Practice.pdf (or any other online address that Dunedin IT advises the Customer of).

18 Data protection

- 18.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 18 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 18.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and Dunedin IT is the data processor (where data controller and data processor have the meanings as defined in the Data Protection Legislation).
- 18.3 The Customer acknowledges and agrees with the Privacy Policy which sets out the scope, nature and purpose of processing by Dunedin IT, the types of Personal Data and categories of Data Subject being processed for the purposes of the Contract.
- 18.4 Without prejudice to the generality of clause 18.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of any Personal Data to Dunedin IT for the duration and purposes of the Contract, and will transfer to Dunedin IT only the Personal Data that Dunedin IT requires in order to perform its obligations under the Contract.
- 18.5 Without prejudice to the generality of clause 18.1, Dunedin IT shall, in relation to any Personal Data processed by Dunedin IT in connection with the Contract:
- 18.5.1 process the Personal Data only in accordance with the Privacy Policy unless Applicable Law requires Dunedin IT to process Personal Data. Where Dunedin IT is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, Dunedin IT shall promptly notify the Customer of this before performing the processing required by the Applicable Law unless that Applicable Law prohibits Dunedin IT from so notifying the Customer;
- 18.5.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the

- harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 18.5.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- 18.5.4 not transfer any Personal Data outside of the European Economic Area other than as set out in the Privacy Policy unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- (a) the Customer or Dunedin IT has provided appropriate safeguards in relation to the transfer;
 - (b) the Data Subject has enforceable rights and effective legal remedies;
 - (c) Dunedin IT complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (d) Dunedin IT complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 18.5.5 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 18.5.6 notify the Customer without undue delay on becoming aware of a Personal Data breach; and
- 18.5.7 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of Contract unless required by Applicable Law to store the Personal Data.
- 18.6 The Customer consents to Dunedin IT appointing third-party processors of Personal Data (Sub-Processors) as set out in the Privacy Policy. Dunedin IT confirms that it has entered or (as the case may be) will enter with each Sub-Processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 18. As between the Customer and Dunedin IT, Dunedin IT shall remain fully liable for all acts or omissions of any Sub-Processor appointed by it pursuant to this clause 18.6. The Customer acknowledges that for the purposes of this Contract the Provider is not a Sub-

Processor and the data processing activities of the Provider will be governed by the Provider Agreement.

18.7 Dunedin IT may, at any time on not less than 30 days' notice (pursuant to clause 20.6.2), revise this clause 18 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme.

18.8 Data Protection Liability and Indemnity

18.8.1 The Customer shall indemnify and keep indemnified Dunedin IT in respect of all Data Protection Losses suffered or incurred by, awarded against or agreed to be paid by, Dunedin IT and any Sub-Processor arising from or in connection with any:

- (a) non-compliance by the Customer with the Data Protection Legislation;
- (b) processing carried out by Dunedin IT or any Sub-Processor pursuant to the Privacy Policy or any changes requested to the Privacy Policy by the Customer that infringes any Data Protection Legislation; or
- (c) breach by the Customer of any of its obligations under clause 18, except to the extent Dunedin IT is liable under clause 18.8.2.

18.8.2 Dunedin IT shall be liable for Data Protection Losses (howsoever arising, whether in contract, tort (including negligence) or otherwise) under or in connection with this Contract:

- (a) only to the extent caused by the processing of Personal Data under the Contract and directly resulting from Dunedin IT's breach of clause 18; and
- (b) in no circumstances to the extent that any Data Protection Losses (or the circumstances giving rise to them) are contributed to or caused by any breach of the Contract by the Customer.

18.8.3 If a party receives a compensation claim from a person relating to processing of Personal Data, it shall promptly provide the other party with notice and full details of such claim. The party with conduct of the action shall:

- (a) make no admission of liability nor agree to any settlement or compromise of the relevant claim without the prior written consent of the other party (which shall not be unreasonably withheld or delayed); and
- (b) consult fully with the other party in relation to any such action, but the terms of any settlement or compromise of the claim will be exclusively the decision of the party that is responsible under the Contract for paying the compensation.

18.8.4 The parties agree that the Customer shall not be entitled to claim back from Dunedin IT any part of any compensation paid by the

Customer in respect of such damage to the extent that the Customer is liable to indemnify Dunedin IT in accordance with clause

- 18.8.5 This clause 18.8 is intended to apply to the allocation of liability for Data Protection Losses as between the parties, including with respect to compensation to Data Subjects, notwithstanding any provisions under Data Protection Legislation to the contrary, except:
- (a) to the extent not permitted by Applicable Law (including Data Protection Legislation); and
 - (b) that it does not affect the liability of either party to any Data Subject.

19 Anti-bribery

Each party will comply in all respects with the Bribery Act 2010 and other relevant Applicable Law, regulations and sanctions relating to anti-bribery and anti-corruption. Each party will maintain adequate procedures designed to prevent bribery and appropriate anti-bribery and corruption policies and procedures.

20 General

- 20.1 Intellectual property
All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Dunedin IT or its licensors.
- 20.2 Force majeure
Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for 2 months, the party not affected may terminate the Contract immediately by giving Notice to the affected party.
- 20.3 Assignment and other dealings
- 20.3.1 Dunedin IT may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
 - 20.3.2 The Customer shall not, without the prior written consent of Dunedin IT, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 20.4 Confidentiality
- 20.4.1 Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 20.4.2.
 - 20.4.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 20.4; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
 - 20.4.3 The provisions of this clause 20.4 shall continue in force in accordance with their terms, notwithstanding the termination of the Contract for any reason.
- 20.5 Entire agreement
 - 20.5.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
 - 20.5.2 The Customer acknowledges that it has not relied on, and shall have no remedies in respect of, any statement, promise, representation, assurance or warranty made or given (whether innocently or negligently) by or on behalf of Dunedin IT that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
 - 20.5.3 Any samples, drawings, descriptive matter or advertising issued by Dunedin IT and any illustrations or descriptions of the Goods or the Services on Dunedin IT's website are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or have any contractual force.
 - 20.5.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
 - 20.5.5 Dunedin IT's employees or agents are not authorised to make any representations concerning the Goods and/or Services unless confirmed by Dunedin IT in writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
 - 20.5.6 Any typographical, clerical or other accidental errors or omissions in Order Forms and/or any sales literature, quotation, price list, invoice or other document or information issued by Dunedin IT shall be subject to correction without any liability on the part of Dunedin IT.
- 20.6 Variation

- 20.6.1 The provisions in this clause 20.6 are without prejudice to the respective rights of the parties (including Dunedin IT's rights to make changes to Goods, Services and/or prices) as set out elsewhere in the Contract.
- 20.6.2 Dunedin IT may amend the Contract at any time as required by its suppliers or to take account of Applicable Law or licence, supplier terms, market changes or similar matter by publishing the amendment online at <https://Dunedin.IT.co.uk/terms-and-conditions/> (or any other online address that Dunedin IT advises the Customer of) and/or by giving Notice to the Customer,
- 20.6.3 No other variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 20.7 Waiver
A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:
- 20.7.1 waive that or any other right or remedy; or
- 20.7.2 prevent or restrict the further exercise of that or any other right or remedy.
- 20.8 Severance
If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 20.9 Notices
- 20.9.1 Save where specified otherwise, any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be:
- (a) delivered to the other party personally; or
 - (b) sent by prepaid post, recorded delivery or by commercial courier, at its registered office (where sent by the Customer) or the billing address set out in the Order Form (where sent by Dunedin IT); or
 - (c) sent by email to helpdesk@Dunedin.IT.co.uk (where sent by the Customer) or to the billing email address set out in the Order Form (where sent by Dunedin IT),
- or such other address or email address as a party may have specified to the other party in writing in accordance with this clause.
- 20.9.2 Any notice or other communication shall be deemed to have been duly received if delivered personally when left at such address or, if sent by prepaid post or recorded delivery at 9.00 am on the second Business Day after posting or, if delivered by commercial

courier, on the date and at the time that the courier's delivery receipt is signed. Notices sent by email will be deemed served one Business Day after transmission.

20.9.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

20.10 Third party rights

No one other than a party to the Contract shall have any right to enforce any of its terms.

20.11 Counterparts

The Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of the Contract but all the counterparts shall together constitute the same agreement.

20.12 Governing law and jurisdiction

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, Scottish law, and the parties submit to the exclusive jurisdiction of the courts of Scotland.