

1 Interpretation

- 1.1 The definitions and rules of interpretation in this Condition 1 apply in these terms and conditions ("Conditions").
- "8020" 8020 Ltd (company number SC278646) and/or 8020 IT Ltd (company number SC376215) whose registered office is at 38 George Street, Dumfries, DG1 1EH;
- "Business Day" any day except a Saturday or Sunday or public holiday in Scotland, England and Wales;
- "Contract" the Customer's order and 8020's acceptance of it, or the Customer's acceptance of a quotation for Services and/or Goods by 8020 under Condition 2.2, or if applicable, an IT Services Contract;
- "Customer" the person, firm or company who purchases the Services and/or Goods;
- "Customer's Equipment" any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services and/or Goods;
- "Goods" any goods (including, except where expressly set out otherwise, Third Party Goods) to be supplied to the Customer under the Contract;
- "Intellectual Property Rights" any patents, copyright and related rights, trade marks, domain names, rights in designs, rights in computer software, database rights, rights in goodwill or, without limitation any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection anywhere in the world;
- "IT Services Contract" a contract between the Customer and 8020 relating to IT Services (as defined therein) on 8020's standard terms and incorporating these Conditions (on the terms set out therein);
- "Minimum Price" the minimum aggregate price that the Customer has agreed to pay under a Contract set out in the Order Confirmation, or if otherwise, as notified by 8020 to the Customer;
- "Minimum Term" the minimum term of the Contract set out in the Order Confirmation or, if otherwise, as notified by 8020 to the Customer;
- "Order Confirmation" 8020's order confirmation setting out the Goods and/or Services to be supplied under the Contract (but absence of an Order Confirmation will not affect the validity of any Contract);
- "Services" services to be provided by 8020 under the Contract including (a) advising about products and services offered by Suppliers ("Information Services") (b) procuring services and/or products for the Customer from Suppliers (including migration, product ordering and installation) ("Product Services") and (c) technical support relating to Product Services (the "Support Services") and (d) IT Services, as defined in an IT Services Contract;
- "Supplier" any third party supplier of Product Services (or any other goods or services) from time to time;
- "Supplier's Equipment" any equipment, tools, systems, cabling or facilities, provided by a Supplier or its subcontractors and used in the supply of the Product Services;
- "Third Party Goods" any goods supplied from time to time to a Customer by a Supplier (whether directly or via 8020);
- "Unauthorised Access" unauthorised, unlawful or illegal access, or use of or interference by a third party with (i) any Goods and Services, (ii) the Customer's Equipment, (iii) the Customer's data, networks or resources (including theft, hacking, fraud, the transmission of anything intended to adversely affect the operation of any programme or data, including viruses) or any accidental or unauthorised loss or disclosure of the Customer's data; and
- "VAT" value added tax and any replacement tax or similar tax in any jurisdiction.
- 1.2 A "person" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and words in the singular include the plural and vice versa.
- 1.3 Any reference to an enactment includes references to such enactment as re-enacted, amended or extended from time to time and includes any subordinate legislation for the time being in force made under it.
- 1.4 A reference to "writing" or "written" includes faxes and e-mail.
- 1.5 "Include(s)", "including" or "in particular" are illustrative and do not limit the sense of words preceding them.
- 1.6 Any obligation in the Contract on the Customer not to do something includes an obligation not to agree or allow that thing to be done.

2 Application of Conditions

- 2.1 These Conditions will apply to:
- 2.1.1 and are incorporated into any Contract from time to time entered into between 8020 and the Customer; and
- 2.1.2 the exclusion of any other terms or conditions (whether contained or referred to in a Customer's purchase order, order confirmation, acceptance, specification, or other document, or implied by custom or a course of dealing).

- 2.2 The Customer's purchase order, the Customer's acceptance of 8020's quotation for Services and/or Goods by 8020, or the signature of an order form, IT Services Contract or summary by or for the Customer, constitutes an offer by the Customer to purchase the Services and/or Goods on these Conditions. No offer placed by the Customer will be accepted by 8020 other than:
- 2.2.1 by an Order Confirmation or written acknowledgement issued by 8020; or
- 2.2.2 8020's signature and dating of an IT Services Contract; or
- 2.2.3 (if earlier) by 8020 starting to provide the Services and/or Goods, when the Contract on these Conditions will be formed (the "Start Date").
- 2.3 8020 gives quotations on the basis that no Contract will come into existence except under Condition 2.2. Any quotation is valid for 30 days unless 8020 withdraws it within that period.

3 Commencement and duration

- 3.1 The Information Services will be supplied to the Customer from the Start Date in accordance with Condition 4 and will end on the date on which the Support Services are terminated.
- 3.2 The Support Services will be supplied to the Customer from the Start Date in accordance with Condition 6 and will, subject to Conditions 3.3 and 18, continue for the minimum period of any relevant contract between the Customer and a Supplier (including a contract which is deemed to be in force between the Customer and Supplier by virtue of clause 5.1) and, after that, will continue to be supplied unless terminated by one of the parties giving to the other not less than 30 days' notice.
- 3.3 If the contract between the Customer and Supplier to which Support Services relate is terminated for any reason:
- 3.3.1 the Customer must notify 8020 immediately; and
- 3.3.2 8020 may terminate the Support Services at any time without notice and Conditions 18.2 and/or 19 will apply (as applicable); and
- 3.4 The Product Services will be supplied to the Customer in accordance with Condition 5 but are subject to the Supplier's terms and conditions.
- 3.5 Subject to Condition 18, rental of any Goods by the Customer will be for the Minimum Term and after that, will continue unless terminated by one of the parties giving to the other not less than 90 days' notice.

4 Information Services

- 4.1 In supplying Information Services 8020 will use reasonable endeavours to make recommendations about Product Services and/or Goods after receipt of a request from the Customer to advise.
- 4.2 8020 selects products and services from a range of Suppliers, although for certain products, 8020 may only deal with a single Supplier or select from a limited number of Suppliers. 8020 is not obliged to update its recommendations from time to time. 8020 will update its recommendations if it is aware of a material change in the ability of a Supplier to properly service the Customer before that Supplier has been selected.
- 4.3 The Customer acknowledges that in recommending certain products and services to the Customer, 8020 may rely on information provided by the Suppliers and other third parties. 8020 does not warrant, and excludes all liability in respect of, the accuracy, completeness, fitness for purpose or legality of any information provided by any Supplier or third party and the Customer agrees that sole responsibility for the accuracy, completeness, fitness for purpose or legality of information supplied by any Supplier rests with the Customer.

5 Product Services

- 5.1 In providing Product Services, 8020 will be the Customer's disclosed agent and will liaise with Suppliers on the Customer's behalf. This means that even if 8020 sets up a contract in its name on a Customer's behalf, the contract will be deemed to be between the Supplier and the Customer and the Customer will be bound to honour that contract's minimum term.
- 5.2 8020 will not be held responsible at any time if any Third Party Goods or services provided by Suppliers from time to time are not available to the Customer for any reason.
- 5.3 The Customer acknowledges that:
- 5.3.1 Third Party Goods, where applicable, may be supplied on the Supplier's terms and conditions. 8020 will provide the Customer with copies of all contracts together with terms and conditions applicable, where contracts are executed on the Customer's behalf with any supplier.
- 5.3.2 Unless otherwise agreed in writing by 8020, the Customer is responsible for paying Suppliers directly for any services or Third Party Goods supplied by Suppliers; and
- 5.3.3 8020 will not enter any contractual arrangements on behalf of or in the name of the Customer relating to the supply of products or services.
- 5.4 8020 strongly recommends that the Customer reads the Supplier's terms and conditions or other relevant contracts or documents relating to the services or Third Party Goods supplied by a Supplier.

- 5.5 8020 will liaise with Suppliers and the Customer in relation to the delivery of Third Party Goods and services to the Customer and will use reasonable endeavours to arrange delivery at such times and dates as the Customer reasonably requests provided always that the Customer acknowledges that 8020 has no control over the Suppliers and can give no warranty in this regard.

6 Support Services

- 6.1 The Customer should note that Support Services relate to technical support relating to Product Services provided under Condition 5. Condition 6 will not apply to any IT Services except as expressly set out in an IT Services Contract.
- 6.2 In providing the Support Services, 8020 will be the Customer's disclosed agent for the purposes of liaising and negotiating with Suppliers, obtaining quotations or advice or any products or services as may be required from any Supplier or other third party from time to time.
- 6.3 8020 will, between 8:30 a.m. and 5:30 p.m. on every Business Day during the term of the Support Services Contract upon request by the Customer give reasonable advice and assistance by telephone in relation to the Goods or products supplied by Suppliers, including in relation to fault queries, billing enquiries and general customer service issues.
- 6.4 8020 will use reasonable endeavours to respond to any fault report by no later than the following Business Day following a written report from the Customer setting out full details of any fault and will use all reasonable endeavours to liaise with Suppliers as it considers necessary.
- 6.4.1 Support Services will not include diagnosis and rectification of any fault with any Goods arising out of:
- 6.4.2 the improper use, operation or neglect, or modification of Goods; or
- 6.4.3 the Customer's Equipment; or
- 6.4.4 the failure by the Customer to implement 8020's recommendations in relation to solutions to any faults previously notified to 8020.
- 6.5 Support Services do not include any services outside of the normal scope of the Support Services set out above, including:
- 6.5.1 expedited advice or assistance (including responding to or dealing with matters in shorter timescales than outlined in Condition 6.4);
- 6.5.2 matters outside of ordinary fault, billing or general customer service issues.
- 6.6 8020 will notify the Customer of any Support Services outside its normal scope and provide a quotation to the Customer for dealing with such matters.

7 Service changes

- 7.1 8020 may (acting in its capacity as agent for the Customer) from time to time and with a minimum of 30 days prior notice, change:
- 7.1.1 the Services and/or Goods;
- 7.1.2 the product and service lines made available by 8020 from time to time;
- 7.1.3 the Suppliers providing services to the Customer;
- 7.1.4 the terms of any contract between the Customer and Supplier, provided that such changes do not materially affect the nature, scope or cost of the Services or materially reduce the core functionality of Goods available to the Customer under the Contract.

8 Customer's obligations

- 8.1 The Customer will:
- 8.1.1 co-operate with 8020 in all matters relating to the Services and/or Goods (including any rented Goods);
- 8.1.2 provide, for 8020, the Suppliers, their agents, sub-contractors and employees, in a timely manner and at no charge, access to the Customer's premises, Customer's Equipment, office accommodation, network, data and other facilities as requested by 8020 or the Supplier;
- 8.1.3 provide, in a timely manner, such relevant information or documents (in any form) as 8020 or the Supplier may reasonably request and ensure that it is accurate in all material respects;
- 8.1.4 be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services and/or Goods, including managing any hazardous materials to prevent any risk to 8020, the Supplier, or their respective employees, contractors or agents;
- 8.1.5 inform 8020 and the Supplier of any health and safety rules and regulations or security requirements that apply at any of the Customer's premises;
- 8.1.6 ensure that all Customer's Equipment is in reasonable working order;

- 8.1.7 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services and/or Goods, the installation of the Supplier's Equipment, the use the Customer's Equipment in relation to the Services before the date on which the Services are to start;
- 8.1.8 keep, maintain and insure the Supplier's Equipment in good condition and not dispose of or use the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation; and
- 8.1.9 not at any time breach any agreement which the Customer has with any Supplier.
- 8.2 If 8020's performance of its obligations under the Contract is prevented or delayed by any act or omission of a Supplier or the Customer, their agents, contractors or employees, 8020 will not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.
- 8.3 The Customer will be liable to pay to 8020 all reasonable costs, charges or losses sustained or incurred by 8020 (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person) arising directly or indirectly from the Customer's fraud or willful misconduct, subject to 8020 confirming such costs, charges and losses to the Customer in writing. Likewise, 8020 will be liable to pay to Customer all reasonable costs, charges or losses sustained or incurred by Customer (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person) arising directly or indirectly from the 8020's fraud, negligence, or willful misconduct, subject to Customer confirming such costs, charges and losses to 8020 in writing.
- 8.4 Neither of the parties will, without the prior written consent of the other party, at any time from the date of the Contract to the expiry of 12 months after the last date of supply of the Services, solicit or entice away from a party or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of such party in the provision of the Services.

9 Supply and rental of Goods

- 9.1 8020 may from time to time supply or rent Goods to the Customer.
- 9.2 The quality and description of such Goods will be as set out in 8020's quotation. All samples, drawings, descriptive matter, specifications and advertising issued by 8020 are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of the Contract and this is not sale by sample.
- 9.3 In this Condition 9 and in Conditions 10 and 11, reference to 'Goods' will not include Third Party Goods.

10 Delivery and installation of Goods

- 10.1 Unless otherwise agreed in writing by 8020, delivery of the Goods will take place at the address notified to 8020 by the Customer in the relevant purchase order (the "Delivery Point").
- 10.2 8020 may use a third party contractor to install Goods. The Goods will be deemed delivered at the point when 8020 delivers the Goods to, or the Goods are collected by the third party contractor for transmission to the Customer. Otherwise, delivery will be ex works in accordance with Incoterms 2000.
- 10.3 The Customer will (at its own cost) prepare the Delivery Point for delivery of the Goods and for the provision of all necessary access and facilities reasonably required to deliver and install the Goods (as the case may be).
- 10.4 8020 will endeavour to deliver the Goods within the time agreed and if no time is agreed within a reasonable time, but 8020 will not be liable for loss or damage caused by any delay in the delivery of the Goods, nor unless such delay exceeds 90 days will any delay entitle the Customer to decline delivery of the goods.
- 10.5 If the Customer fails to accept delivery of any Goods when they are ready for delivery, or 8020 (or its contractor) is prevented or delayed from delivering and/or installing Goods due to the Customer's failure to comply with Condition 10.3 or because the Customer has not provided appropriate instructions, documents, licences, authorisations or access to premises, then (without prejudice to Condition 10.2):
- 10.5.1 8020 may store the Goods until the Customer takes possession of them and the Customer will be liable for all related costs and expenses (including, without limitation, storage and insurance);
- 10.5.2 any sums due for payment by the Customer in relation to the supply or rental of Goods will continue to be payable as if the Customer had taken possession of the Goods; and
- 10.5.3 8020 may levy further charges to recover its losses arising from this event.
- 10.6 The Customer will provide at the Delivery Point and at its expense:
- 10.6.1 adequate and appropriate equipment and manual labour for unloading the Goods; and
- 10.6.2 appropriate assistance and instructions for the installation of any Goods.
- 10.7 No claim for damage or shortages will be considered unless 8020 is notified in writing within 21 days of delivery, failing which, the Customer will be deemed to have accepted the Goods. No claim for non-delivery or failure to install or faulty installations will be considered unless 8020 is notified in writing within 45 days of the date of 8020's invoice, failing which any claim will be deemed to have been waived and will be absolutely barred.

- 10.8 Any liability of 8020 for non-delivery and/or failure to install, or faulty installation of the Goods will be limited to replacing the Goods and/or re-installing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
- 10.9 8020 may deliver the Goods by separate instalments. Each separate instalment will be invoiced and paid for in accordance with the provisions of these Conditions.
- 10.10 Each delivery and instalment will be a separate Contract and no cancellation or termination of any one Contract relating to delivery or instalment will entitle the Customer to repudiate or cancel any other Contract or instalment.

11 Risk/title in the goods

- 11.1 The Goods are at the risk of the Customer from the time of delivery.
- 11.2 Ownership of the Goods (except Goods that have been rented) will not pass to the Customer until 8020 has received in full (in cash or cleared funds) all sums due to it in respect of:
- 11.2.1 the Goods; and
- 11.2.2 all other non-disputed sums which are or which become due to 8020 from the Customer on any account.
- 11.3 Ownership of Goods that have been rented to the Customer will never pass to the Customer and will remain under the ownership of 8020 at all times.
- 11.4 Until ownership of the Goods has passed to the Customer and during any rental of Goods, the Customer will:
- 11.4.1 hold the Goods on a fiduciary basis as 8020's bailee.
- 11.4.2 subject to Condition 11.5, store the Goods (at no cost to 8020) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as 8020's property.
- 11.4.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 11.4.4 maintain the Goods in satisfactory Condition and keep them insured on the 8020's behalf for their full price against all risks to the reasonable satisfaction of 8020. On request the Customer will produce the policy of insurance to 8020.
- 11.5 The Customer will be able to use Goods that have been rented for the purpose for which they were rented.
- 11.6 The Customer's right to possession of the Goods will terminate immediately if:
- 11.6.1 any of the events listed in Condition 18.1 occurs; or
- 11.6.2 the Customer encumbers or in any way charges any of the Goods; or
- 11.6.3 the Customer fails to make any payment due in accordance with Condition 12; or
- 11.6.4 the Customer damages (or allows damage to be done) any Goods rented to the Customer.
- 11.7 8020 may recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from 8020.
- 11.8 The Customer grants 8020, its agents and employees an irrevocable licence at any time, with prior notice of at least 5 working days to enter any business premises where the Goods are or may be stored, during business hours, in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.
- 11.9 If the Customer's right to possession has terminated and any Goods cannot be readily recovered, the Customer will indemnify 8020 for the full reinstatement value of such Goods together with all costs associated with obtaining such reinstatement.
- 11.10 Where 8020 is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer will be deemed to have sold all goods of the kind sold by 8020 to the Customer in the order in which they were invoiced to the Customer.
- 11.11 On termination of the Contract, howsoever caused, each party's rights contained in this Condition 11 will remain in effect.

12 Security, hacking and fraud prevention

- 12.1 8020 does not warrant that the Goods and Services and related networks or resources will be free from Unauthorised Access. 8020 cannot police or be responsible for any loss or damage suffered by the Customer or any third party arising as a result of any Unauthorised Access. This is not affected by 8020 providing (as part of or in connection with the Services) any security, anti-virus, anti-malware or similar software or hardware or any security systems 8020 may put in place.
- 12.2 Any business can be vulnerable to excessive charges as a result of telecommunication system hacking. As such hacking is a criminal activity the Customer must note that liability for any resulting call charges remains with the Customer.
- 12.3 The Customer will promptly inform 8020 if it suspects or uncovers any Unauthorised Access and will use all reasonable endeavours promptly to remedy such Unauthorised Access.
- 12.4 The Customer acknowledges that it is the Customer's responsibility to have in place (to be maintained and engaged at its own cost):
- 12.4.1 appropriate technical and organisational measures to protect the Customer against Unauthorised Access;

12.4.2 an appropriate disaster recovery plan with procedures and measures intended to protect against, and support recovery from, any disaster or event affecting the Goods and Services or any Unauthorised Access; and

12.4.3 adequate insurance against loss or damage arising as a result of Unauthorised Access or any disaster.

13 Charges and payment

13.1 Subject to Condition 13.3, the price for any Goods and/or Services supplied to the Customer will be the price set out in:

13.1.1 the IT Services Contract; or

13.1.2 the Order Confirmation; or,

13.1.3 subject to the above, 8020's quotation; or if not applicable, the price confirmed by 8020.

13.2 All 8020's prices are exclusive of any VAT which shall be chargeable in addition to the price.

13.3 8020 may reasonably and with cause, increase, upon 1 month's written notice to the Customer at any time, the price payable for any:

13.3.1 of the Services; or

13.3.2 rented Goods; or

13.3.3 to reflect any annual RPI increase in its base costs incurred for the purposes of, or the charges payable by us on the Customer's behalf in connection with, providing the Services. In case the Customer cannot agree to such price increase, other than an annual RPI increase, the Customer may terminate this Contract within a further 1 months' notice period without incurring any liability.

13.4 The Customer acknowledges that the Supplier may pay 8020 certain monies in consideration for introducing the Customer and/or in relation to 8020 providing the Support Services. Those monies belong to 8020. The Customer acknowledges that 8020 may calculate prices taking into account such monies. 8020 may increase its prices at any time by giving notice to the Customer if any Supplier ceases to pay or reduces the amount it pays to 8020. This may happen, in particular, if the fixed term of the Customer's contract with the Supplier expires and the Customer does not enter into a new fixed term with the Supplier.

13.5 8020 may (entirely at its own discretion), use any funds received from a Supplier (or otherwise) how it sees fit, including to provide the Customer with:

13.5.1 Goods (at no cost); or

13.5.2 an amount of credit (an "Equipment Fund") which can be utilised by the Customer towards purchasing Goods and/or Services on reasonable notice to 8020.

13.6 The Customer agrees and acknowledges that any Equipment Fund:

13.6.1 is made available by 8020 entirely at its discretion and as a gesture of goodwill only.

13.6.2 may be changed, withdrawn or suspended, by 8020 at any time for any reason whatsoever.

13.6.3 may, in particular, be changed from time to time to reflect an increase or decrease in the Customer's spend with 8020.

13.6.4 will cease to be available on termination of the Contract in any event; and

13.6.5 is the exclusive property of 8020.

13.7 Notwithstanding the content of any Order Confirmation, or any other documentation whatsoever, the Customer will have no entitlement to the Equipment Fund whatsoever including but not limited to on termination or expiry (at any time) of the Contract for any reason.

13.8 If a Contract is terminated for any reason whatsoever and in relation to that Contract at the time of its termination, the Customer has not paid to 8020 the Minimum Price, 8020 may:

13.8.1 invoice the Customer for the full price of any Goods provided under Condition 13.5.1;

13.8.2 invoice the Customer for the full price of any Goods and/or Services purchased using the Equipment Fund.

13.8.3 invoice the Customer for the balance of the sum that would have been received from the Customer if the Minimum Price had been achieved, discounted at a rate of 5%; and/or

13.8.4 invoice the Customer for any sums that would have been received from a Supplier in accordance with Condition 13.4, discounted at a rate of 5%.

13.9 Condition 13.6 will apply to each Contract as a separate obligation.

13.10 8020 may at any time require payment in advance of providing Goods and/or Services.

13.11 If 8020 has agreed to waive its rights to receive payment in advance in accordance with Condition 13.10, the Customer will pay each invoice submitted to it by 8020, in full and in cleared funds, within 45 days of receipt (without deduction or set-off).

13.12 8020 reserves the right to request the Customer to set up direct debits in relation to its charges where it feels this is appropriate.

- 13.13 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay 8020 on the due date, 8020 may:
- 13.13.1 charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of The Royal Bank of Scotland, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment providing always that 8020 reserves its right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998;
- 13.13.2 suspend all Services and/or the delivery of Goods until payment has been made in full; and
- 13.13.3 seek to recover any Goods that are in the Customer's possession.
- 13.14 Time for payment will be of the essence of the Contract.
- 13.15 8020 may, without prejudice to any other rights it may have, set off any liability of the Customer to 8020 against any liability of 8020 to the Customer including the right to reduce the credit available to the Customer in and/or appropriate out of or pay any sums owed to 8020 out of the Equipment Fund or any other account.

14 Lien

8020 will (without prejudice to any other remedy available to 8020) have in respect of all unpaid debts due from the Customer a general lien on all property of the Customer in 8020's possession for whatever purpose and whether worked upon or not and may on the expiration of not less than 14 days' notice in writing to the Customer to dispose of such property and to apply the proceeds towards the satisfaction of such debts.

15 8020's property

- 15.1 All rights in any documents and materials developed or provided by 8020 (including Intellectual Property Rights) will be owned by 8020. 8020 licenses to the Customer free of charge and on a non-exclusive, worldwide basis such rights and to such extent as is necessary to enable the Customer to make reasonable use of the Services. If the Contract is terminated, this licence will automatically terminate.

16 Limitation of liability

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF THIS CONDITION

- 16.1 This Condition 16 sets out the entire financial liability of each party (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the other party in respect of any breach of these Conditions or any representation, statement or tortious act or omission of each party (including negligence) arising under or in connection with these Conditions at any time.
- 16.2 Where the Customer is not dealing as a consumer for the purposes of these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these Conditions.
- 16.3 Where the Customer is dealing as a consumer for the purposes of these Conditions, neither of 8020 or the Customer will be responsible for any losses that the other suffers as a result, except for those losses which are a foreseeable consequence of the failure to comply with the provisions of these Conditions.
- 16.4 Nothing in these Conditions limits or excludes the liability of a party for death or personal injury resulting from negligence, or, for any damage or liability incurred by the other party as a result of fraud or fraudulent misrepresentation by the defaulting party or in relation to any goods supplied by 8020 in the course of the Services for any breach of the obligations implied by section 12 of the Sale of Goods Act 1979, section 2 of the Supply of Goods and Services Act 1982 or for losses for which it is prohibited by section 7 of the Consumer Protection Act 1987 to limit liability.
- 16.5 None of the parties will be liable for:
- 16.5.1 loss of profits;
- 16.5.2 loss of business;
- 16.5.3 depletion of goodwill and/or similar losses;
- 16.5.4 loss of anticipated savings;
- 16.5.5 loss of goods;
- 16.5.6 loss of contract;
- 16.5.7 loss of use;
- 16.5.8 loss or corruption of data or information;
- 16.5.9 or any special, indirect or pure economic loss, costs, damages, charges or expenses, provided that where the Customer is dealing as a consumer, nothing in these Conditions will prevent any claim hereunder for foreseeable loss of, or damage to, physical property.
- 16.6 If at any time 8020 provides Services which are unsatisfactory to the Customer, and it would be reasonably possible for 8020 to re-perform such Services, 8020 undertakes to re-perform such Services expeditiously and with all due care and if it does so re-perform such Services this will be in settlement of any claim that the Services in question were unsatisfactory.

- 16.7 Subject to Conditions 16.2, 16.3, 16.4 and 16.5, 8020's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Services and/or supply of the Goods pursuant to these Conditions at any time will be limited the lower of (i) 3 times the aggregate amount payable by the Customer to 8020 under the Contract in the 12 month period ending on the date on which the liability arises (ii) the limit of any applicable insurance policy.
- 16.8 Subject to the other provisions of these Conditions, 8020 will not be liable for any direct, indirect or consequential loss (including pure economic loss, loss of profits, loss of business, depletion of goodwill or any similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery:
- 16.8.1 of any products and/or services by any Supplier; or
- 16.8.2 of any Third Party Goods; or
- 16.8.3 of any Support Services arising as a result of any default, neglect or delay by any Supplier or by the Customer; or
- 16.8.4 of any Services and/or Goods arising as a result of any failure, default, neglect or delay by any third party or any third party equipment, goods or services, telephone line or communication equipment providers or utilities providers.

17 Data protection

- 17.1 8020 will comply with all applicable Data Protection Legislation and will only to use, process, share and transfer the Customer's data in accordance with, and for the purposes set out in, 8020's privacy policy [here](#).
- 17.2 8020 may make changes to the privacy policy and will notify the Customer if it does so. 8020 will ensure that any changes to the privacy policy comply with Data Protection Legislation.

18 Termination

- 18.1 Without prejudice to any other rights or remedies which the parties may have, each party may terminate any Contracts without liability to the other party immediately on giving notice to such party if:
- 18.1.1 a party commits a material breach of any of the terms of any Contract and (if such a breach is in the opinion of the other party remediable) fails to remedy that breach within 14 days of the breaching party being notified in writing of the breach; or
- 18.1.2 an administration order is made against a party, or an order is made for its winding-up or dissolution (save for the purposes of a solvent reorganisation), or
- 18.1.3 a resolution is passed for a party's winding-up or for the appointment of an administrator (save for the purposes of a solvent reorganisation), or
- 18.1.4 a moratorium is declared in respect of any of a party's indebtedness, or
- 18.1.5 a party enters into any composition or arrangement with one or more of its creditors, or
- 18.1.6 an administrator or other receiver, manager or other similar official is appointed in relation to it in relation to the whole or a substantial part of a party's undertaking or assets, or
- 18.1.7 an encumbrancer takes possession of the whole or a substantial part of the Customer's undertaking or assets, or
- 18.1.8 (other than frivolous or vexatious proceedings for the purposes of a solvent reorganisation) an application is made for the appointment of a liquidator, administrative or other receiver, manager, administrator or other similar official (which is not discharged, stayed or dismissed within 28 days of commencement), or
- 18.1.9 proceedings (other than frivolous or vexatious proceedings) are initiated against a party under any applicable liquidation, insolvency, composition, reorganisation, or other similar laws (which are not discharged, stayed or dismissed within 28 days of commencement), or
- 18.1.10 any notice of an intention to appoint an administrator is given by a party's directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 of the IA 86); or
- 18.1.11 a party ceases, or threatens to cease, to trade; or
- 18.1.12 there is a change of control of a party; or
- 18.1.13 a party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt; or
- 18.1.14 any of the events listed in Condition 11.6 occur.
- 18.2 On termination of the Contract for any reason:
- 18.2.1 the Customer will immediately pay 8020 all of 8020's outstanding unpaid invoices and interest and, in respect of Goods and/or Services supplied but for which no invoice has been submitted, 8020 may submit an invoice, which will be payable immediately on receipt;
- 18.2.2 the Customer will, within a reasonable time, return all of 8020's equipment. If the Customer fails to do so, then 8020 may enter the Customer's premises and take possession of it. Until it has been returned or repossessed, the Customer will be solely responsible for their safe keeping; and

- 18.2.3 the accrued rights of the parties at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, will not be affected.
- 18.3 The Customer acknowledges that notwithstanding the termination of the Contract for any reason, any products or services to be supplied by a Supplier (including Third Party Goods) will continue.

19 Termination payment

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF THIS CONDITION

- 19.1 If a Contract in relation to the rental of Goods is terminated (for any reason) prior to the end of the Minimum Term, the Customer must pay the greater of:
- 19.1.1 the Minimum Price; or
- 19.1.2 all sums the Customer would have paid had the rental continued for the full Minimum Term.
- 19.2 The Customer's attention is particularly drawn to Condition 13.6 in relation to failure of the Customer to achieve the Minimum Price and termination of any contract with a Supplier before the end of the minimum term of such contract.

20 Force Majeure

8020 will have no liability to the customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of 8020 or any other party), failure of a utility service or transport network, act of god, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

21 Assignment

The Customer will not, without the prior written consent of 8020, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract. 8020 may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

22 General

- 22.1 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force. If any provision (or part of a provision) is found to be invalid, unenforceable or illegal, the parties agree that they will substitute provisions in a form as similar to the offending provisions as is possible without thereby rendering them invalid, unenforceable or illegal.
- 22.2 Each of the parties acknowledges and agrees that, in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.
- 22.3 Nothing in the Contract is will or is intended to create a partnership or agency between the parties.
- 22.4 No person who is not a party to the Contract will have any rights under it.
- 22.5 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- 22.6 8020 reserve the right to amend the Contract from time to time provided that 8020 has given the Customer one month's written notice of such changes. Subject to that, and clause 7 no variation to the Contract will be effective unless signed by or on behalf of the parties to it.

23 Notices

Notices given under the Contract will be in writing, sent for the attention of the person, and to the address, email or fax number, given in the Contract (or such other address, email, fax number or person as the relevant party may notify to the other party) and will be delivered personally, sent by email, fax or sent by pre-paid, first-class post or recorded delivery.

24 Governing law and jurisdiction

The Contract will be governed by Scottish law. The parties irrevocably agree that the Scottish courts will have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter.