



Standard Terms & Conditions

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1 Definitions and interpretation

1.1 Definitions

In this Agreement:

Application Form	means all order forms, contracts and services agreements relating to the provision of the Services provided by KubeNet T/A Kube Networks Ltd and our telecommunications providers from time to time
Associated Company	means any subsidiary undertaking or parent undertaking of KubeNet (as defined by section 1162 of the Companies Act 2006).
Authorised Persons	means a party's and any Associated Company, officers, directors, members, partners, and any of their employees, consultants, agents, representatives or professional advisers;
Bribery Laws	means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and any similar or equivalent laws in any other relevant jurisdiction;
Business Day	means a day other than a Saturday, Sunday or bank or public holiday in England;
Cancellation Charges	means the charges (if any) set out in clauses 7.7-7.9 or in any Special Terms, Order Form or Price List payable by the Client to KubeNet as a result of cancelling a Contract or any Connection during the Contract Term
Client	means a person whose Application Form is accepted by KubeNet and for whom KubeNet has opened a Communications Account.
Communications Account	means the account opened by KubeNet in the name of the Client upon creation of the Contract and relating to the Services.
Confidential Information	has the meaning given in clause 12.1;
Contract	means the contract governed by these terms and conditions made between KubeNet and the Client created upon acceptance by KubeNet of the Client's Application Form and evidenced by the opening of a Communications Account for the Client.
Contract Term	means the duration of the number of months specified in the relevant Order Form;
Contract Year	means each consecutive period of 12 months commencing from the start of the Contract Term or any subsequent renewal;
Continuation Term	means where the Contract Term expires but where no written notice has been received in accordance with the provisions of clause 2.1 or clauses 7.1 or 7.2, the Agreement shall continue for a subsequent continuation term
Control	means the beneficial ownership of more than 50% of the issued share capital

of a company or the legal power to direct or cause the direction of the management of the company OR has the meaning given in the Corporation Tax Act 2010, s 1124 and Controls and Controlled shall be interpreted accordingly;

Force Majeure	has the meaning given in clause 17.1;
Indemnifying Party	has the meaning given in clause 13.1;
Intellectual Property Rights	means copyright, patents, rights in inventions, rights in confidential information, Know-how, trade secrets, trade marks, service marks, trade names, design rights, rights in get-up, database rights, rights in data, semi-conductor chip topography rights, mask works, utility models, domain names, rights in computer software and all similar rights of whatever nature and, in each case: (i) whether registered or not, (ii) including any applications to protect or register such rights, (iii) including all renewals and extensions of such rights or applications, (iv) whether vested, contingent or future and (v) wherever existing;
Know-how	means inventions, discoveries, improvements, processes, formulae, techniques, specifications, technical information, methods, tests, reports, component lists, manuals, instructions, drawings and information relating to Clients and suppliers (whether written or in any other form and whether confidential or not);
KubeNet	means KubeNet T/A Kube Networks Ltd which expression shall, where the context so requires, include its successors and assigns any Associated Company thereof.
KubeNet Access Equipment	means any apparatus supplied by KubeNet with is not associated with a DSL product such as ADSL or FTTC
Least Cost Routing	means software installed on a telephone system, which automatically enables the routing of, calls via different telephone operators.
Mobile Services	shall mean any services to be provided by KubeNet to the Client in connection with mobile phones, details of which shall be set out in the Order Form;
Notice of Election	has the meaning given in clause 13.4;
Order Form	means KubeNet's standard order form describing the Product(s) which the Client wishes to obtain from KubeNet, issued under and placed in accordance with the terms and conditions set out in this Agreement;
Representatives	has the meaning given in clause 12.2;
Services	means the services provided by KubeNet to the Client pursuant to a Contract as detailed in the Order Form;
Services Literature	means KubeNet's literature specific to the Services and other associated services existing from time to time.

SLA	means the Service Level Agreement setting out the requirements for the provision of the Service;
Standard Terms and Conditions	means the terms and conditions which are set out in this Agreement, as amended from time to time;
Term	means the Contract Term together with any Continuation Term during which this Agreement continues in force as determined in accordance with Clause 2.1;
Third Party Infrastructure	has the meaning set out in clause 2;
TP Claim	has the meaning given in clause 13.4;
User	means the Client and any individual or company permitted by the Client to use the Services
VAT	means value added tax, as defined by the Value Added Tax Act 1994.

1.2 Interpretation

In this Agreement:

- 1.2.1 a reference to this Agreement includes its schedules, appendices and annexes (if any);
- 1.2.2 the table of contents, background section and any clause, schedule or other headings in this Agreement are included for convenience only and shall have no effect on the interpretation of this Agreement;
- 1.2.3 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;
- 1.2.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns
- 1.2.5 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.6 a reference to a gender includes each other gender;
- 1.2.7 words in the singular include the plural and vice versa;
- 1.2.8 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.9 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form (excluding email);
- 1.2.10 a reference to legislation is a reference to that legislation as in force at the date of this Agreement or amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under this Agreement;

- 1.2.11 a reference to legislation includes all subordinate legislation made as at the date of this Agreement under that legislation; and
- 1.2.12 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.
- 1.2.13 In the case of conflict or ambiguity, the order of precedence for a Contract and any documents attached to or referred to in it will be as follows, in descending order of importance:
 - (a) the Order Form; then
 - (b) these Terms & Conditions; then
 - (c) documents attached or referred to in the Contract.

2 Commencement and term

- 2.1 This contract shall be for a minimum period of the initial Contract term mentioned in the Order Form and shall automatically renew for further periods of twelve months unless either party provides 90 days written notice of termination to the other party, such notice not to expire before the end of the minimum period or any subsequent renewal period.

3 The Services

3.1 General

- 3.1.1 The Client shall complete, sign and return to KubeNet an Application Form prior to KubeNet agreeing to provide the Service;
- 3.1.2 KubeNet may accept an Order Form, either electronically or by hand. Nothing in these Partner Account Terms will oblige KubeNet to accept any Order Form, nor to provide any Product, until KubeNet accepts an Order Form. Upon acceptance by KubeNet, an Order Form will become a Contract which commences on the date of acceptance by KubeNet;
- 3.1.3 KubeNet shall use all the reasonable care and skill of a competent telecommunications provider to provide the Client with the Services throughout the term of the Contract;
- 3.1.4 KubeNet shall be at liberty, where necessary, to improve, update or upgrade the Services or alter the provision of the Services;

3.2 The Client undertakes to KubeNet that:

- 3.2.1 The Services will only be used in accordance with the Contract;
- 3.2.2 Only the Client and Users authorised by the client shall use the Services and no other person shall be suffered or permitted to use the same;
- 3.2.3 The Services Literature and any other instructions regarding the use of the Services as may be notified to the Client by KubeNet from time to time shall be complied

with promptly and such literature and instructions shall be deemed to form part of the Contract.

3.3 The Client agrees that at all times during the term of the Contract it shall:

- 3.3.1 Provide access to all appropriate sites for any Authorised Persons during the Client's normal working hours and allow the removal, installation and maintenance of KubeNet Access Equipment;
- 3.3.2 Keep its telecommunications equipment in good working order and ensure that the equipment complies with all applicable standards and approvals so as to enable KubeNet to provide the Services;
- 3.3.3 Only use and connect the telephones, ducting, cables, sockets and other equipment to the Services that have been approved in advance by KubeNet in writing and comply with all the relevant legislation relating to the use of such equipment;
- 3.3.4 Provide all reasonable assistance required by KubeNet to enable it to provide the Services;
- 3.3.5 Inform KubeNet by no less than 2 month's prior notice in writing of any premises relocation or change of telephone numbers on which the Services are registered;
- 3.3.6 Provide a safe working environment for Authorised Persons working on the Client's premises;
- 3.3.7 Have a fully commissioned firewall device at its premises;
- 3.3.8 Indemnify KubeNet fully against all losses, liabilities, costs (including legal costs) and expenses which KubeNet may incur as a result of any breach of the Client's obligations under the Contract or misuse of the Services;
- 3.3.9 Pay KubeNet (at its then current published rates, which are available upon request) for all call-outs visits required from KubeNet where KubeNet determines that (i) the problem with the Services is not the fault of KubeNet or the KubeNet Access Equipment or (ii) the KubeNet Access Equipment has been damaged by the Client.

3.4 The Client undertakes to KubeNet to ensure that the services are not used:

- 3.4.1 For the transmission of any material which is intended to be a hoax call to emergency services or is of a defamatory, offensive, abusive, obscene or menacing character; or
- 3.4.2 Fraudulently or in connection with a criminal offence; or
- 3.4.3 Otherwise in a manner which constitutes a violation or infringement of the rights of any other party; or
- 3.4.4 Otherwise than for the purpose of a telecommunications system.

4 KubeNet's Rights

- 4.1 KubeNet shall be entitled to alter any access or authorisation number or method of accessing the Services from time to time and may reprogram the Client's equipment as a result.

- 4.2 KubeNet may suspend the Services to the Client at its sole discretion including but not limited to the following:
- 4.2.1 In the Interests of the quality of the Services;
 - 4.2.2 If any credit limit agreed between KubeNet and the Client from time to time is exceeded;
 - 4.2.3 If any term of the Contract is breached (Including, without limitation, In the event of a failure to make any payment or provide any deposit required to be made or provided under the Contract);
 - 4.2.4 In order to comply with an order, instruction or request of any government, emergency service organisation or other competent authority; or
 - 4.2.5 If fraud or attempted fraud is suspected by KubeNet (in its reasonable opinion) in connection with the use of the Services.
- 4.3 KubeNet may make changes to the Contract (including Charges) at any time provided that KubeNet notifies such changes to the Client in writing through either an insert into the Client's invoice or via an alternative written communication. Unless stated otherwise, such changes shall become immediately effective.
- 4.4 If KubeNet makes a change to this Contract and that change puts the Client at a material disadvantage or if KubeNet amends the prices and charges, KubeNet will, where possible, let the Client know at least thirty (30) days before the change or price amendment happens. KubeNet will only amend its prices if they are told to do so for legal, regulatory or commercial reasons.
- 4.5 Subject to clause 4.6, if the Client objects to the change to the Contract and KubeNet agrees that it is to the Client's material disadvantage, the Client may end the Contract early.
- 4.6 The Client cannot leave early if the change which KubeNet have had to make to the Contract is because they have been told they must make the relevant change by any legal or regulatory body.

5 Charges and Payment for the Services

- 5.1 All sums due to KubeNet under the Contract shall become due on the date of the relevant Invoice and must be paid within 14 days (including weekends and bank holidays) of the date of the relevant invoice.
- 5.2 The Client can request a monthly spend limit on any account for Mobile Services provided that it gives written notice to KubeNet of any such request at least thirty (30) days prior to when the Client requires any such spend limit to be applied ("**Spend Limit**"). Notwithstanding the Spend Limit request, the Client acknowledges that, if it uses the Mobile Services outside of the UK, any roaming charges or other charges arising from such use may exceed any Spend Limit put in place due to the delay in such charges being applied by the relevant network providers for non-UK based calls, it shall still remain liable to pay for any such charges, even if the Spend Limit is exceeded.
- 5.3 If the Client fails to make any payment within the 14-day period following the date of the relevant invoice, without prejudice to its other rights hereunder. KubeNet shall have the

right to require the Client to pay all sums due on demand. KubeNet reserves the right to apply a £25 charge per month of invoice arrears.

- 5.4 Time of payment of all sums due to KubeNet under the Contract shall be of the essence.
- 5.5 In accordance with clause 4.3, KubeNet reserves the right to amend its charges for the Services from time to time.
- 5.6 Without prejudice to KubeNet's rights to treat the non-payment as a repudiatory breach of the Contract, KubeNet reserves the right to charge interest on outstanding amounts until payment is received in full at a rate equal to 3% per annum above the Bank of England base lending rate as current from time to time whether before or after judgement. Interest shall continue to accrue notwithstanding termination of the Contract to, any cause whatsoever and is deemed to accrue on a day to day basis from and including the date for payment under Condition 4.1.
- 5.7 KubeNet reserves the right to charge for administrative costs incurred by KubeNet in pursuing late payers.
- 5.8 All sums due to KubeNet under the Contract are subject to Value Added Tax ("VAT") and any other applicable taxes levies or charges which may from time to time be introduced.
- 5.9 The Client shall be liable for all charges arising from use of the Services by any person utilising the Clients registered Services telephone number(s) including but not limited to entry into the BT Phone Book (with or without Client's authorisation) until such time as the Client has notified KubeNet of any unauthorised use of the Service.
- 5.10 Details of the Contract and the conduct of the account will be registered with a licensed Credit Reference Agency. Information thus registered may be used to help make credit decisions or, occasionally, fraud prevention or the tracing of debtors.
- 5.11 If the monthly call charges made by KubeNet to the Client fall below £50 per account, then KubeNet reserves the right to charge a minimum bill value of £50 per month, per account.
- 5.12 Unless otherwise stated KubeNet will charge a fee for the automatic entry of your telephone number and details in the local BT Phone Book unless you tell KubeNet not to and opt out by visiting the BT phone book site
www.thephonebook.bt.com/HelpAndSupport/HelpAndSupport
- 5.13 In the event that any amount payable under this Agreement remains outstanding, KubeNet shall be entitled to:
 - a) either suspend the availability of the Services to the Client or terminate the Agreement in accordance with Clause 7 (Termination); and
 - b) charge interest on the overdue amount from the due date for payment up to the date of receipt of cleared funds at a rate of three percent (3%) per annum above the base rate from time to time being of Bank of England base rate until the date of payment.

6 KubeNet Access Equipment

- 6.1 The Client shall provide without charge or cost to KubeNet appropriate equipment space, ducting, environment and continuous stable electrical power to install and maintain the KubeNet Access Equipment at its premises and to enable KubeNet to provide the Services.
- 6.2 It is deemed that title to any KubeNet Access Equipment shall remain with KubeNet and whilst the KubeNet Access Equipment is on the Client's premises, the Client shall ensure that it is kept safe and secure and is not interfered with by any person.
- 6.3 Upon termination of the Contract, the Client will ensure that they disconnect and return to KubeNet at its own cost the KubeNet Access Equipment.
- 1.1 Any DSL Access Equipment are exempt from clauses 6.1-6.2-6.3. The equipment will be supported by KubeNet for a period of 12 months from issuance and thereafter chargeable for any support calls made against the asset.

7 Termination

- 7.1 Either KubeNet or the Client may terminate the Contract Term of no less than 12 months, by giving notice in writing to the other (including weekends and bank holidays).
- 7.2 Voice and data connectivity (excluding ethernet) is subject to 3 calendar months' notice, which will take effect from the 1st of the following month from when we receive the request. Ethernet connections are subject to 4 calendar months' notice which will be taken from the 1st of the following month from when we receive the request.
- 7.3 KubeNet (without prejudice to its other rights) may terminate the Contract forthwith in the event that:
 - 7.3.1 The Client fails to make any payment when it becomes due to KubeNet; or
 - 7.3.2 The Client commits a material breach of this Agreement and such breach is not remediable;
 - 7.3.3 the Client commits a material breach of this Agreement which is not remedied within the timeframe specified by KubeNet in the written notice to the Client notifying them of such breach;
 - 7.3.4 the Client undergoes a change of control or if it is realistically anticipated that it will undergo a change of control within two months. For the purposes of this clause 7.3.4, 'control' shall mean beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of a company.

The right of KubeNet to terminate the Agreement pursuant to clause 7.3.4 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) where the amalgamated, reconstructed or merged party agrees to adhere to this Agreement.

- 7.4 Either party may terminate this Agreement at any time by giving notice in writing to the other party if that other party:

- 7.4.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
 - 7.4.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the non-defaulting party reasonably believes that to be the case;
 - 7.4.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
 - 7.4.4 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
 - 7.4.5 has a resolution passed for its winding up;
 - 7.4.6 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
 - 7.4.7 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within [seven] days of that procedure being commenced;
 - 7.4.8 has a freezing order made against it;
 - 7.4.9 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items;
- 7.5 Conditions 2.2 and 4 and 7 of the Contract shall survive termination of the Contract for any reason whatsoever.

Consequences of Termination

- 7.6 If the Contract is terminated by either, party hereto, the Client shall:
- 7.6.1 Pay to KubeNet all arrears of charges together with any interest payable under the Contract up to the date of termination, details of which are set out in clauses 7.7-7.9 inclusive;
 - 7.6.2 Return to KubeNet all equipment owned or provided by KubeNet and or allow KubeNet access forthwith to its Client's premises for the removal of any KubeNet Access Equipment.

Termination Charges (General)

- 7.7 All DSL connections (ADSL, FTTC & FTTP & G Fast) will be subject to a termination fee of £50.00 upon cessation of the connection.
- 7.8 Upon ending or suspension of the Contract with KubeNet, all amounts (including any Charges) relating to Services shall be due and payable in full and you shall have no right to withhold or set off any such amounts. These amounts shall include but, shall not be limited to, the following: Issue of a Porting Authority Code (PAC) will be subject to an administration charge of £25.00 per mobile telephone number. Landline number ranges 01, 02, 03, 08 will be subject to a charge of £25.00 per single number if exporting to an alternative provider. SIP/Hosted Services shall be subject to a charge of £25.00 per line.

Termination Charges (Early Termination)

7.9 If the Contract is terminated earlier than the expiry of the Contract Term a one-off cancellation fee of £25 per actual line (not telephone number) which will be charged on your last Invoice;

7.10 Termination or expiry of this Agreement will not affect any accrued rights and liabilities of either party at any time up to the date of termination.

8 Anti-bribery

8.1 For the purposes of clause 8 the expressions '**adequate procedures**' and '**associated with**' shall be construed in accordance with the Bribery Act 2010 and guidance published under it.

8.2 Each party shall ensure that it and each person referred to in clauses 8.2.1 to 8.2.3 (inclusive) does not, by any act or omission, place the other party in breach of any Bribery Laws. Each party shall comply with all applicable Bribery Laws, ensure that it has in place adequate procedures to prevent any breach of clause 8 and ensure that:

8.2.1 all of its personnel and all direct and indirect subcontractors, suppliers, agents and other intermediaries of it;

8.2.2 all others associated with it; and

8.2.3 each person employed by or acting for or on behalf of any of those persons referred to in clauses 8.2.1 and/or 8.2.2,

involved in connection with this Agreement, so comply.

8.3 Without limitation to clause 8.2, each party shall not make or receive any bribe (which term shall be construed in accordance with the Bribery Act 2010) or other improper payment or advantage, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and will implement and maintain adequate procedures to ensure that such bribes or improper payments or advantages are not made or received directly or indirectly on its behalf.

8.4 A party shall immediately notify the other as soon as it becomes aware of a breach or possible breach of any of the requirements in this clause 8.

8.5 Any breach of clause 8 by a party shall be deemed a material breach of this Agreement that is not remediable and shall entitle the other party to immediately terminate this Agreement by notice under clause 15.2.1.

9 Modern slavery

9.1 Each party undertakes, warrants and represents that:

9.1.1 neither it nor any of its officers, employees, agents or subcontractors has:

(a) committed an offence under the Modern Slavery Act 2015 (an MSA Offence); or

(b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

(c) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged Offence or prosecution under the Modern Slavery Act 2015;

- 9.1.2 it shall comply with the Modern Slavery Act 2015;
- 9.1.3 its responses to the other party's modern slavery and human trafficking due diligence questionnaire are complete and accurate; and
- 9.1.4 it shall notify the other party immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of its obligations under Clause 9. Such notice to set out full details of the circumstances concerning the breach or potential breach of the breaching party's obligations.

10 Data Protection

Data Controller	shall take the meaning as defined in the Data Protection Legislation;
Data Processor	shall take the meaning as defined in the Data Protection Legislation (Process and Processing shall be construed accordingly);
Data Protection Legislation	means GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time in the UK and then any successor legislation to GDPR or the Data Protection Act 1998 in the UK;
Data Subject	shall take the meaning as defined in the Data Protection Legislation;
GDPR	means EU Regulation 2016/679 General Data Protection Regulation;
Personal Data	shall take the meaning as defined in the Data Protection Legislation;
Personal Data Breach	means unauthorised or unlawful Processing of Personal Data or accidental loss or destruction of, or damage to, Personal Data.

- 10.1 This clause only applies to the extent that KubeNet is Processing Personal Data on behalf of the Client.
- 10.2 Both Parties will comply with all applicable requirements of the Data Protection Legislation.
- 10.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, Client is the Data Controller and KubeNet is the Data Processor.
- 10.4 The Personal Data Annex sets out the scope, nature and purpose of Processing by KubeNet, the duration of the Processing, the types of Personal Data and the categories of Data Subject.
- 10.5 Without prejudice to the generality of Clause 10.2:
 - 10.5.1 Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to KubeNet for the purposes of these Terms; and
 - 10.5.2 KubeNet will:
 - (i) Process Personal Data only on the written instructions of Client, including regarding transfers of Personal Data outside of the European Economic Area, unless KubeNet is required to do so by a

- legal obligation and, if so KubeNet will notify Client of this before such Processing, unless a legal obligation prohibits this;
- (ii) ensure that all personnel authorised by KubeNet to Process Personal Data are obliged to keep the Personal Data confidential;
 - (iii) ensure that it has in place appropriate technical and organisational measures designed to protect against a Personal Data Breach, appropriate to the harm that might result from such Personal Data Breach and the nature of the Personal Data to be protected KubeNet shall have regard to the state of technological development and the cost of implementing any measures, including, where appropriate:
 - (A) pseudonymising and encrypting Personal Data;
 - (B) ensuring confidentiality, integrity, availability and resilience of its systems and services;
 - (C) ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and
 - (D) regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it;
 - (iv) notify Client without undue delay if it becomes aware of a Personal Data Breach;
 - (v) assist Client in responding to any requests from Data Subjects 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, save that if this is not within the reasonable remit of the Services, this will be at Client's cost;
 - (vi) at Client's written direction, delete (or put beyond use) or return Personal Data to Client once provision of the Services has ceased, unless required by a legal obligation to store the Personal Data; and
 - (vii) maintain records and information to demonstrate its compliance with this clause 10 and, where this is not sufficient, allow for audits by Client or Client's auditor solely to demonstrate compliance, at Client's cost, provided that the Client:
 - (A) will not exercise its audit rights more than once in any three (3) year period, save where Client reasonably believes that a further audit is required due to Personal Data Breach;
 - (B) gives at least thirty (30) days' written notice of its intention to audit, including specific details on the scope of the audit and any required evidence;
 - (C) conducts its audit during normal business hours and limits its audit to a maximum of two (2) Business Days; and
 - (D) takes all reasonable measures to prevent material business interruption to KubeNet;

11 Intellectual Property

- 11.1 Intellectual property rights in all software supplied to the Client in connection with the Product(s) shall remain the property of KubeNet or any Associated Company or its relevant licensor and is granted to the Client on a non-exclusive basis for use in the United Kingdom. The Client agrees to comply with (and where so required, formally execute) any licence or agreement proposed by the owner or licensor of such intellectual property rights providing (inter alia) for the protection of rights in such software.

12 Confidential information

- 12.1 Each party undertakes that it shall keep any information that is confidential in nature concerning the other party and its Affiliates including, any details of its business, affairs, Clients, clients, suppliers, plans or strategy (**Confidential Information**) confidential and that it shall not use or disclose the other party's Confidential Information to any person, except as permitted by clause 12.2.
- 12.2 Subject to clause 12.3, a party may:
- 12.2.1 disclose any Confidential Information to any of its employees, officers, representatives or advisers (**Representatives**) who need to know the relevant Confidential Information for the purposes of the performance of any obligations under this Agreement, provided that such party must ensure that each of its Representative to whom Confidential Information is disclosed is aware of its confidential nature and agrees to comply with this clause as if it were a party;
 - 12.2.2 disclose any Confidential Information as may be required by law, any court, any governmental, regulatory or supervisory authority (including any securities exchange) or any other authority of competent jurisdiction to be disclosed; and
 - 12.2.3 use Confidential Information only to perform any obligations under this Agreement.
- 12.3 Each party recognises that any breach or threatened breach of this clause 12 may cause irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages, the parties agree that the non-defaulting party may be entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.
- 12.4 This clause 12 shall bind the parties during the Term and for a period of five (5) years following termination of this Agreement.

13 Deposit

- 13.1 KubeNet may, after consultation with the client, and at any time before or after the provision of the Service, request the payment of a sum to be held by way of a deposit to be used against any charges arising from use of the Service. KubeNet shall be entitled to offset such deposit against any sums due under this Contract from time to time including interest due or owing to KubeNet.

14 Limitation of Liability

- 14.1 The extent of the parties' liability under or in connection with this Agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 14.

- 14.2 KubeNet shall have no liability under this Contract for the acts and omissions of other public telecommunication operators.
- 14.3 To the extent that all or any part of the Services are faulty, unavailable or interrupted as a result of KubeNet's negligence the Client's sole and exclusive remedy shall be to compensation in accordance with compensation schemes that may be introduced from time to time by KubeNet.
- 14.4 KubeNet shall not be liable for faults in the Client's telecommunications equipment, which results in KubeNet being unable to provide the Services.
- 14.5 KubeNet shall not be liable for any damages whatsoever to property at the Client's premises resulting from (i) the installation, repair or removal of KubeNet Access Equipment or associated wiring carried out by KubeNet or by KubeNet's contractors or (ii) any re-programming of the Client's existing Least Cost Routing Software unless such damage is caused by KubeNet or its contractors wilful misconduct or negligence subject to condition.
- 14.6 Dates and times for provision of the Services shall be estimates only and no liability shall accrue to KubeNet for failure to meet any such dates or times.
- 14.7 KubeNet will not be held responsible for any loss due to programming errors or omissions made by Authorised persons.
- 14.8 In the event of any failure in the Services, KubeNet shall not be liable to the Client for any charges incurred by the Client should it direct its telecommunication traffic to another carrier.
- 14.9 KubeNet reserves the right not to provide the Services due to any technical limitations in the Client's telephone system, telephone exchange or KubeNet Access Equipment.
- 14.10 The parties agree that the limitations in this clause 14 are reasonable given each party's respective commercial positions and their ability to obtain insurance in respect of the risks arising under or in connection with this Agreement.
- 14.11 Subject to clauses 14.6 and 14.8, the liability of KubeNet shall not exceed the annual Charges for each Contract Year in respect of all claims.
- 14.12 Subject to clauses 14.6 and 14.8, neither party shall be liable for any consequential, indirect or special loss.
- 14.13 Subject to clauses 14.6 and 14.8, neither party shall be liable for any of the following (whether direct or indirect):
- 14.13.1 loss of profit;
 - 14.13.2 loss of or corruption to data;
 - 14.13.3 loss of use;
 - 14.13.4 loss of production;
 - 14.13.5 loss of contract;
 - 14.13.6 loss of commercial opportunity;
 - 14.13.7 loss of savings, discount or rebate (whether actual or anticipated);

- 14.13.8 harm to reputation or loss of goodwill.
- 14.14 The limitations of liability set out in clauses 14.3 to 14.5 shall not apply in respect of any indemnities given by either party under this Agreement.
- 14.15 Except as expressly stated in this Agreement, and subject to clause 14.16, all warranties and conditions whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.
- 14.16 Notwithstanding any other provision of this Agreement, the liability of the parties shall not be limited in any way in respect of the following:
- 14.16.1 death or personal injury caused by negligence;
- 14.16.2 fraud or fraudulent misrepresentation;
- 14.16.3 breach of any obligation as to title implied by:
- (a) section 12 of the Sale of Goods Act 1979; or
- (b) section 2 of the Supply of Goods and Services Act 1982;
- 14.16.4 breach of section 2 of the Consumer Protection Act 1987;
- 14.16.5 any other losses which cannot be excluded or limited by applicable law;
- 14.16.6 any losses caused by wilful misconduct.

15 Dispute Resolution

- 15.1 Any dispute arising between the parties out of or in connection with this Agreement shall be dealt with in accordance with the provisions of this clause 15.
- 15.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 15.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:
- 15.3.1 Within seven days of service of the notice, the Service Delivery Manager of the parties shall meet to discuss the dispute and attempt to resolve it.
- 15.3.2 If the dispute has not been resolved within seven days of the first meeting of the Service Delivery Manager, then the matter shall be referred to the Company Directors (or persons of equivalent seniority). The Company Directors (or equivalent) shall meet within seven days to discuss the dispute and attempt to resolve it.
- 15.4 The specific format for the resolution of the dispute under clause 16.3.1 and, if necessary, clause 15.3.2 shall be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or of position.
- 15.5 If the dispute has not been resolved within twenty eight (28) days of the first meeting of the Company Director (or equivalent) under clause 16.3.2, then the matter may be referred to Alternative Dispute Resolution.

- 15.6 Either party may issue formal legal proceedings or commence arbitration at any time whether or not the steps referred to in clauses 15.3 and 15.5 have been completed.

16 Force Majeure

- 16.1 In this clause, Force Majeure means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under this Agreement. Inability to pay is not Force Majeure.
- 16.2 A party shall not be liable if delayed in or prevented from performing its obligations under this Agreement due to Force Majeure, provided that it:
- 16.2.1 promptly notifies the other of the Force Majeure event and its expected duration; and
- 16.2.2 uses reasonable endeavours to minimise the effects of that event.
- 16.3 If, due to Force Majeure, a party:
- 16.3.1 is unable to perform a material obligation; or
- 16.3.2 is delayed in or prevented from performing its obligations for a continuous period of more than thirty (30) Business Days,
- the other party may terminate this Agreement on not less than four (4) weeks' written notice.

17 Conflicts within Agreement

- 17.1 In the event of any conflict or inconsistency between different parts of this Agreement, the following descending order of priority applies:
- 17.1.1 the terms and conditions in the main body of this Agreement;
- 17.1.2 any other special terms.
- 17.2 Subject to the above order of priority between documents, later versions of documents shall prevail over earlier ones if there is any conflict or inconsistency between them.

18 Entire Agreement

- 18.1 The parties agree that this Agreement and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 18.2 Each party acknowledges that it has not entered into this Agreement or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in this Agreement.
- 18.3 Nothing in this Agreement purports to limit or exclude any liability for fraud.

19 Notices

- 19.1 Any notice given by a party under this Agreement shall:

- 19.1.1 be in writing and in English;
 - 19.1.2 be signed by, or on behalf of, the party giving it; and
 - 19.1.3 be sent to the relevant party at the address set out in clause 19.2.5.
- 19.2 Notices may be given, and are deemed received:
- 19.2.1 by hand: on receipt of a signature at the time of delivery;
 - 19.2.2 by post: at 9.00 on the second Business Day after posting;
 - 19.2.3 by Royal Mail International Tracked & Signed post: at 9.00 am on the fourth Business Day after posting; and
 - 19.2.4 by fax: on receipt of a transmission report from the correct number confirming uninterrupted and error-free transmission.
 - 19.2.5 Any notice or invoice or other document which may be given under the Contract shall be deemed to have been duly given if left or sent by post (whether by letter or, by magnetic tape, or posted onto the KubeNet web site or any other form), telex or facsimile transmission (subject to the sender's machine producing confirmation that all pages have been sent) or, where the parties expressly agree, by electronic mail to the registered office of the party to be served to the other party in writing as an address to which notices, invoices and other documents may be sent.
- 19.3 Notices and other communications shall be sent to:
- 19.3.1 KubeNet for the attention of Account Management at: Unit 11000, Academy Park, Glasgow G51 1PR
 - 19.3.2 To the Client at the address set out in the Order Form unless the Client provides written notice to KubeNet of any change of their address.
- 19.4 Any change to the contact details of a party as set out in clause 20.3 shall be notified to the other party in accordance with clause 20.1 and shall be effective:
- 19.4.1 on the date specified in the notice as being the date of such change; or
 - 19.4.2 if no date is so specified, two (2) Business Days after the notice is deemed to be received.
- 19.5 All references to time are to the local time at the place of deemed receipt.
- 19.6 This clause does not apply to notices given in legal proceedings or arbitration.
- 19.7 A notice given under this Agreement is not validly served if sent by email, although a copy can be sent by email for reference only.

20 Announcements

- 20.1 Subject to clause 20.2, no announcement or other public disclosure concerning this Agreement or any of the matters contained in it shall be made by, or on behalf of, a party without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

- 20.2 If a party is required to make an announcement or other public disclosure concerning this Agreement or any of the matters contained in it by law, any court, any governmental, regulatory or supervisory authority (including any recognised investment exchange) or any other authority of competent jurisdiction, it may do so. Such a party shall:
- 20.2.1 notify the other party as soon as is reasonably practicable upon becoming aware of such requirement to the extent it is permitted to do so by law, by the court or by the authority requiring the relevant announcement or public disclosure;
 - 20.2.2 make the relevant announcement or public disclosure after consultation with the other party so far as is reasonably practicable; and
 - 20.2.3 make the relevant announcement or public disclosure after taking into account all reasonable requirements of the other party as to its form and content and the manner of its release, so far as is reasonably practicable.

21 Further Assurance

Each party shall at the request of the other, and at the cost of the requesting party, do all acts and execute all documents which are necessary to give full effect to this Agreement.

22 Variation

No variation of this Agreement shall be valid or effective unless it is in writing, refers to this Agreement and is duly signed or executed by, or on behalf of, each party.

23 Assignment

- 23.1 KubeNet shall have the right to assign or otherwise delegate all or any of its rights and obligations hereunder to an Associated Company or other person upon serving one month's notice in writing to the Client.
- 23.2 Subject to clause 24.1, no party may assign, subcontract or encumber any right or obligation under this Agreement, in whole or in part, without the other party's prior written consent.

24 Set off

Except as expressly set out in this Agreement, the Client shall pay all sums that it owes to the KubeNet under this Agreement but KubeNet shall have a right of set-off, counterclaim, deduction or withholding of any kind.

25 No partnership or agency

The parties are independent and are not partners, principal and agent or employer and employee and this Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

26 Language

- 26.1 The language of this Agreement is English. All documents, notices, waivers, variations and other written communications relating to this Agreement shall be in English.

- 26.2 If this Agreement and any document relating to it is translated, the English version shall prevail.

27 Equitable relief

Each party recognises that any breach or threatened breach of this Agreement may cause the other party irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the other party, each party acknowledges and agrees that the other party is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

28 Severance

- 28.1 If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected.
- 28.2 If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

29 Waiver

- 29.1 No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 29.2 No single or partial exercise of any right, power or remedy provided by law or under this Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.
- 29.3 A waiver of any term, provision, condition or breach of this Agreement shall only be effective if given in writing and signed by the waiving party, and then only in the instance and for the purpose for which it is given.

30 Compliance with law

Each party shall comply and shall (at its own expense unless expressly agreed otherwise) ensure that in the performance of its duties under this Agreement, its employees, agents and representatives will comply with all applicable laws and regulations, provided that neither party shall be liable for any breach of this clause 31 to the extent that such breach is directly caused or contributed to by any breach of this Agreement by the other party (or its employees, agents and representatives).

31 Counterparts

- 31.1 This Agreement may be signed in any number of separate counterparts, each of which when signed and dated shall be an original, and such counterparts taken together shall constitute one and the same agreement.

31.2 Each party may evidence their signature of this Agreement by transmitting by email a signed signature page of this Agreement in PDF format together with the final version of this Agreement in PDF or Word format, which shall constitute an original signed counterpart of this Agreement. Each party adopting this method of signing shall, following circulation by email, provide the original, hard copy signed signature page to the other parties as soon as reasonably practicable.

32 Costs and expenses

Each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of this Agreement (and any documents referred to in it).

33 Governing Law

This Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of Scotland.

34 Jurisdiction

The parties irrevocably agree that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).