

TERMS AND CONDITIONS

Gcloud13 submission

Version 1.0

The logo for CompanyNet, featuring the word "CompanyNet" in a white serif font. The text is centered within a dark gray rectangular background. The background of the entire page is a light blue and white halftone pattern.

CompanyNet

TERMS & CONDITIONS

1. Interpretation

1.1 In this Agreement the following words shall have the meanings set opposite (unless stated otherwise), namely:-

"Agreement"	means these Conditions together with the CED and/or support agreement and/or hosting agreement;
"Background IPR"	means any and all Intellectual Property Rights existing prior to the Commencement Date or subsequently generated outside the Services belonging to a party that are provided by that party to the other for use in the Services, but specifically excluding Foreground IPR and Generic IPR;
"Change Process"	means the process by which the parties will assess and consider a Change Request as detailed in the CED;
"Change Request"	means a request by either party for a change to be made to the Specification;
"Charges"	means the charges (exclusive of VAT), whether on a fixed price or time and materials basis, to be paid by the Client to Company Net for the Services as detailed in the Invoice Schedule;
"Client Equipment"	means any equipment, systems, cabling or facilities provided by the Client and used directly or indirectly in the supply of the Services;
"Client Material"	means all Documents, information and materials provided by the Client relating to the Services including (but not limited to), computer programs, source code, object code, data, reports and specifications, together with any other materials as specified in the CED;
"Client"	means the party (being a natural or legal entity) who purchases Services from Company Net, as detailed in the CED;
"Commencement Date"	means the date specified in the CED;
"Commercial Engagement Document" or "CED"	means the document issued by Company Net to the Client which contains details of the Services to be undertaken by Company Net on behalf of the Client;

"Company Net"	means Company Net Limited, a company incorporated under the Companies Acts (Registered Company Number SC167440) and having its registered office at Clarence House, 133 George Street, Edinburgh, EH2 4JS;
"Company Net Equipment"	means any equipment, including (but not limited to) hardware, tools, systems, cabling or facilities, provided by Company Net or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Client;
"Company Net Materials"	means all Documents, information and materials provided by Company Net relating to the Services which existed prior to the commencement of the Agreement including [computer programs, data, reports and specifications];
"Conditions"	means these terms and conditions (as varied in accordance with these Conditions);
"Confidential Information"	means information of a confidential or proprietary nature (whether in oral, written or electronic form) belonging or relating to either party, its business affairs or activities which (i) either party has marked as confidential or proprietary, or (ii) either party, orally or in writing, has advised the other party is of a confidential nature, or (iii) due its character or nature, a reasonable person in a like position and under the circumstances would treat such information as confidential;
"Consultancy Services"	means the consultancy services provided by Company Net to the client as detailed in the CED;
"DPA"	means the Data Protection Act 1998 (as amended);
"Deliverables"	means all Documents, products and materials developed by Company Net in relation to the Services in any form and which are required under the Agreement to be delivered to the Client, including the deliverables specified in the CED;
"Documents"	means any and all documents, including, but not limited to, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form;

"Foreground IPR"	means any Intellectual Property Rights generated by either party during the provision of the Services;
"Generic IPR"	means any and all Intellectual Property Rights used by Company Net in providing the Services, but which are also used or capable of being used in other areas of Company Net's business;
"Hosting Services"	means the hosting services to be provided by Company Net to the Client to host the Client's website or websites as set out in the CED;
"Intellectual Property Rights"	means patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, trade names, domain names, rights to goodwill, rights in designs, rights in computer software (including source code and object code), database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and similar or equivalent rights which subsist or will subsist now or in the future in any part of the world;
"Invoice Schedule"	means the invoice schedule within the CED which details the Charges and payment of the Services;
"Joint Project Finalisation"	means the process whereby Company Net and Client will work together to complete the Deliverables and finalise sign off of the Solution Services as detailed in Clause 4.6 of the Conditions;
"Milestone"	means the milestones for the performance and/or delivery of the Services and/or delivery of the Deliverables as set out in the CED;
"Product Enhancements"	means any changes whether after Joint Project Finalisation or outwith the scope of the Specification to the software delivered as part of the Solution Services including but not limited to any change to functionality of or enhancements to the software;
"Project Manager"	means the person appointed by the Client who will assume overall responsibility for liaising with Company Net during delivery of the Services in accordance with Clause 6.1.5. The Project Manager shall be named in the CED;
"Project Start Date"	means the date upon which Company Net will commence delivery of the Services to the Client as set out in the CED;
"Services"	means the Consultancy Services, Hosting Services, Solution Services and Support Services;

"Solution Services"	means the service under which Company Net will provide a software or other solution to the Client as part of the Deliverables, as detailed in the CED together with any Product Enhancements;
"Specification"	means the specification document created as part of the Consultancy Services which sets out the scope of what is proposed to be delivered in the Solution Service as agreed between the parties, or in the circumstance where Company Net has not delivered Consultancy Services, the specification for the delivery of Solution Services as developed by the Client and provided to Company Net;
"Specification Sign-Off"	means the sign-off by Company Net and the Client of the Specification;
"Support Services"	means the ongoing maintenance and support services provided by Company Net to the Client;
"Term"	means the term of the Agreement as set out in the CED;
"Third Party Software"	means any and all software belonging to a third party and as licensed to Company Net and/or the Client for use in providing the Services to the Client.

- 1.2 In this Agreement, unless the context otherwise requires words denoting the singular shall include the plural and *vice versa* and references to the masculine shall include the feminine; words denoting persons shall include corporations, partnerships and unincorporated associations; and headings are included for convenience only and shall not be used in the interpretation of any provision of this Agreement.
- 1.3 In the event that the terms of the Conditions are inconsistent with the terms of the CED, the terms of the CED shall prevail.

2. Commencement Date and Duration

- 2.1 This Agreement shall commence on the Commencement Date and shall continue in force to the later of either:-
- 2.1.1 the Term; or
 - 2.1.2 Specification Sign-Off; or
 - 2.1.3 the completion of the Solution Services as determined by Joint Project Finalisation; or
 - 2.1.4 as set out in the support agreement as detailed in Clause [5.3] for Support Services; or
 - 2.1.5 as set out in the hosting agreement as detailed in Clause [5.2] for Hosting Services;
- unless otherwise terminated in accordance with this Agreement.

3. Consultancy Services

In addition to Clauses 6-26 below, Clauses 3.1-3.5 below apply where Company Net has agreed to provide Consultancy Services to the Client.

- 3.1 Company Net shall provide the Consultancy Services to the Client in accordance with the CED.
- 3.2 Company Net shall commence providing the Consultancy Services on the Project Start Date and shall continue providing the Consultancy Services to either the later of (i) the Term; or (ii) completion of Specification Sign-Off, unless terminated earlier in accordance with Clause 14 of these Conditions.
- 3.3 In carrying out the Consultancy Services, Company Net shall comply with all lawful and (in so far as they relate to the scope of work as agreed between the parties as detailed in the CED) reasonable directions given by the Client.
- 3.4 Company Net warrants and represents to the Client that its relationship to the Client will be that of independent contractor. Nothing in this Agreement shall create the relationship of agency or partnership or employer and employee between the Client and Company Net.
- 3.5 Nothing in this Agreement will prevent Company Net from supplying similar Consultancy Services to any third party during the duration of this Agreement, in all cases that such third party supply shall not or be likely to:-
 - 3.5.1 lead to the breach of Company Net's confidentiality obligations to the Client as set out in Clause 9 hereof; or
 - 3.5.2 interfere in any way with the reasonable performance by Company Net of its obligations to the Client in respect of the Consultancy Services.

4. Solution Services

In addition to Clauses 6-26 below, Clauses 4.1 – 4.6 shall apply where Company Net has agreed to provide Solution Services to the Client.

Company Net's Obligations in providing the Solution Services

- 4.1 Company Net shall use reasonable endeavours to provide Solution Services, and to deliver the Deliverables to the Client in accordance in with the CED and/or agreed Specification.
- 4.2 Either party may request a deviation from or change to the Specification by submitting a Change Request to the other party. Such Change Requests shall be processed by the parties in accordance with the Change Process. Change Requests may result in a change in the overall cost and timescales.
- 4.3 Company Net shall use reasonable endeavours to meet the Milestones specified in the CED, but any such Milestones shall be estimates only and time shall not be of the essence for performance of the Solution Services.
- 4.4 Where, due to the fault of either party:-
 - 4.4.1 there is a delay in the delivery of a Deliverable by a Milestone; or

4.4.2 there is a delay in Joint Project Finalisation,

the parties agree that any Milestones and/or Joint Project Finalisation will be extended by a period equivalent to the period of delay directly arising from the fault of that party. Company Net shall use reasonable endeavours to achieve any revised dates for Milestones and/or Joint Project Finalisation.

4.5 Company Net shall use reasonable endeavours to observe all health and safety rules and regulations, and any other reasonable security requirements that apply at [any of] the Client's premises and that have been communicated to it under Clause 6.1.8, provided that it shall not be liable under the Agreement if, as a result of such observation, it is in breach of any of its obligations under the Agreement.

4.6 Joint Project Finalisation

4.6.1 The parties agree that Joint Project Finalisation is for Company Net and the Client to work together to verify the completeness and robustness of the Deliverables and to sign-off the Solution Services as completed.

4.6.2 The Client shall participate in Joint Project Finalisation and shall sign-off on Joint Project Finalisation within seven (7) days of being invited by Company Net to participate.

4.6.3 Joint Project Finalisation shall include:-

4.6.3.1 working through any perceived issues of variance from the Specification, which may include, but is not limited to, matters of interpretation of the Specification and the resolution of some bugs and/or faults;

4.6.3.2 working through with a view to agreeing how to address such issues and then addressing the issues;

4.6.3.3 sign-off of Joint Project Finalisation, indicating both parties acceptance that the Deliverables are complete and robust, and ready for its production environment. This is the effective end-point for Solution Services delivery, where both Company Net and the Client sign-off to indicate their acceptance of the Deliverables delivered as part of the Solution Services.

4.6.4 Once the Client accepts any or all of the Deliverables, any bugs or faults in the Deliverables shall be repaired or amended in accordance with the Support Services or shall be a Product Enhancement.

5. **Hosting Services and Support Services**

In addition to Clauses 6-26 below, Clauses 5.1 – 5.3 shall apply where Company Net has agreed to provide Hosting Services and/or Support Services to the Client.

5.1 Company Net shall provide the Hosting Services and/or Support Services to the Client as detailed in the appropriate CED.

- 5.2 Company Net and the Client agree that the parties will enter into a separate hosting agreement, on the terms of this Agreement, which will govern the delivery of the Hosting Services.
- 5.3 Company Net and the Client agree the parties will enter into a separate support agreement, on the terms of this Agreement, which will govern the delivery of the Support Services.

6. Client's Obligations Relating to the provision of the Services

6.1 The Client shall:

- 6.1.1 sign and date (i) the CED; (ii) Specification Sign-Off; (iii) Joint Project Finalisation sign-off; (iv) any hosting agreements and/or support agreement; (v) any other documentation as reasonably required by Company Net to provide the Services;
- 6.1.2 provide Company Net with a purchase order for the Services, in accordance with this Agreement;
- 6.1.3 work in collaboration with Company Net in all matters relating to the Services;
- 6.1.4 provide Company Net, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Client's premises, office accommodation, applicable personnel (including but not limited to the Project Manager as set out in Clause 6.1.5 below), data and other facilities or attend Company Net's premises as reasonably required by Company Net to enable it to carry out the Services and in particular during Joint Project Finalisation;
- 6.1.5 provide Company Net with details of the Project Manager. The Client shall ensure that the Project Manager is:-
 - 6.1.5.1 available for the duration of the Services;
 - 6.1.5.2 authorised to act on behalf of the Client, including taking decisions on behalf of the Client where necessary;
 - 6.1.5.3 responsible for co-ordinating all Client input, together with any of the Client's sub-contractors, agents, consultants or third party representatives into the Services and at Joint Project Finalisation. Any input requested by Company Net shall be provided in a timely manner following such request;
- 6.1.6 provide to Company Net, in a timely manner, such Client Material, Background IPR and other information as Company Net may reasonably require to enable Company Net to provide the Services and ensure that such information provided is accurate in all material respects;
- 6.1.7 where Company Net is required to work at the Client's premises, be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services;
- 6.1.8 inform Company Net of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Client's premises;

- 6.1.9 ensure that all Client's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Solution Services and conforms to all relevant United Kingdom standards or requirements;
- 6.1.10 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the use of Client Material, use of any Third Party Software and the use of the Client's Equipment in relation to the Services (insofar as such licences, consents and legislation relate to the Client's business, premises, staff and equipment), in all cases before the Project Start Date;
- 6.1.11 where Company Net has provided Company Net Equipment, keep, maintain [and insure] Company Net's Equipment [in good condition **OR** in accordance with Company Net's instructions as notified in writing from time to time], and shall not dispose of or use Company Net's Equipment other than in accordance with Company Net's written instructions or authorisation;
- 6.1.12 pay all invoices in accordance with Clause 8 of these Conditions; and
- 6.1.13 reimburse all reasonable expenses properly and necessarily incurred by Company Net in the course of the Services (including but not limited to travel and accommodation), subject to the production of receipts or other appropriate evidence of payment. Company Net shall invoice the Client for such expenses, in accordance with the Invoice Schedule.
- 6.2 In the event that delay to the provision of the Services is due to the fault of the Client failing to abide by its obligations set out in Clause 6.1 above, the parties agree that the Services may be extended by a period equivalent to the period of delay directly arising from the fault of the Client.
- 6.3 Any costs, expenses or charges reasonably incurred as a result of a delay under Clause 6.2 shall be the responsibility of the Client.
- 7. Sub-Contractors**
 - 7.1 Neither party shall be entitled to sub-contract any or all of its obligations under this Agreement without the prior written consent of the other party. Such consent shall not be unreasonably withheld.
 - 7.2 Each party shall be liable and shall remain liable for all acts and omissions of its sub-contractors and those employed or engaged by the sub-contractors.
- 8. Payment of Invoices**
 - 8.1 In consideration of the provision of the Services by Company Net, the Client shall pay to Company Net the Charges as set out in the Invoice Schedule and in accordance with Clauses 8.2-8.5 of these Conditions.
 - 8.2 All Charges quoted to the Client shall be exclusive of VAT, which the Company Net shall add to its invoices at the appropriate rate.

- 8.3 All invoices rendered by Company Net to the Client are payable within seven (7) days of the date of such invoice unless stated otherwise in the Invoice Schedule. Time shall be of the essence in relation to payment.
- 8.4 In the event that any amount payable under this Agreement remains outstanding, Company Net shall be entitled to:-
- 8.4.1 either suspend the availability of the Services to the Client or terminate the Agreement in accordance with Clause 14; and
 - 8.4.2 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 [eight percent (8%)] per annum above the base rate from time to time being of the Royal Bank of Scotland Plc until the date of payment.
- 8.5 Once any part of the Services has been completed in accordance with this Agreement, the Client shall have no right to withhold or retain any payments or charges which relate to that part of the Services.

9. Confidentiality

- 9.1 Subject to Clause 9.2 below, each party undertakes at all times to keep confidential and not to disclose to any third party without the other party's prior written consent any Confidential Information belonging to the other. Each party shall procure that its officers, employees, agents and contractors who have access to Confidential Information of the other party help keep such Confidential Information confidential at all times and shall be made aware of the fact that such Confidential Information or other information is held subject to these obligations.
- 9.2 Nothing in this Clause 9 shall prevent either party from disclosing any information which:-
- 9.2.1 is properly a matter of public knowledge at the time of disclosure;
 - 9.2.2 becomes a matter of public knowledge through no fault of the receiving party after disclosure;
 - 9.2.3 was rightfully in the receiving party's possession before disclosure;
 - 9.2.4 is rightfully received from a third party by the receiving party without a duty of confidentiality after disclosure; and
 - 9.2.5 is required to be disclosed by law.
- 9.3 In the event that Company Net has contracted with a Client who is a Public Authority for the purposes of the Freedom of Information Act 2000 or the Freedom of Information (Scotland) Act 2002 ("FOI"), and where the Client receives an information request under FOI relating to this Agreement or in any way relating to Company Net ("FOI Request"), the Client acknowledges that all or part of the requested information may, at any time when the FOI Request is received, constitute a trade secret and/or Confidential Information belonging to Company Net and/or may be detrimental to the commercial interests of Company Net if disclosed. In the event that the Client receives a FOI Request it shall be obliged to:-

- 9.3.1 consult with Company Net in advance of making a disclosure pursuant to the FOI Request;
 - 9.3.2 consider, when deciding upon its response to any FOI Request, any representations that are made by Company Net to the Client; and
 - 9.3.3 where possible and appropriate, apply exemptions under FOI to prevent disclosure of the information referred to in the FOI Request.
- 9.4 On receipt of notice from the Client of an FOI Request to the Client, Company Net shall provide the Client with its full cooperation to ensure that the Client can meet its obligations under the provisions of the FOI. In particular Company Net shall ensure that the Client is able to respond to the FOI request in a timely manner and provide the Client with its input, views and comments within **[7]** days of notification of the FOI Request.
- 9.5 In the event that the Client and Company Net are unable to agree on the disclosure arising from an FOI Request to the Client, or any aspect thereof, the Client (acting reasonably) shall have the final decision on how to deal with the FOI Request, such being without prejudice to any right or remedy Company Net may have against the Client, including, without prejudice to the foregoing generality for breach of confidentiality.

10. Intellectual Property

- 10.1 All Background IPR used in connection with the Services will remain the property of the party introducing such Background IPR.
- 10.2 Each party grants the other a royalty-free, non-exclusive licence to use its Background IPR for the purposes of carrying out the Services and for no other purpose.
- 10.3 Company Net hereby grants to the Client a non-exclusive, royalty-free, irrevocable, non-transferable, worldwide licence to use the Generic IPR.
- 10.4 Company Net shall be entitled, on a non-exclusive, royalty-free, irrevocable, non-transferable basis, to re-use any Foreground IPR which is generated during the provision of the Services.

11. Warranties

Client Warranties

- 11.1 The Client warrants that:-
- 11.1.1 it is free to enter into this Agreement and is not under any obligations to any third party which would or might conflict or interfere with the full and proper render of its obligations under this Agreement; and

- 11.1.2 any and all Intellectual Property Rights in any and all Client Materials and Background IPR supplied by the Client to Company Net, for use by Company Net to provide the Services is the exclusive property of the Client or that the Client has the express permission of the beneficial owner of the Intellectual Property Rights in such materials to use same (including, but not limited to any licence required to use Third Party Software) and that use of the Client Materials and/or Background IPR will not infringe the Intellectual Property Rights or other rights of any third party; and
- 11.1.3 where the Client or Company Net uses or is required to use Third Party Software in the provision of the Services, the Client has obtained a written licence (or sub-licence) from the relevant third party licensor or licensors on such terms as will entitle the Client or Company Net to use the Third Party Software in the Services.

Company Net's Warranties

- 11.2 Company Net warrants that:-
- 11.2.1 it shall provide the Services with reasonable care, skill and diligence and in accordance with the terms of this Agreement; and

- 11.2.2 any and all Intellectual Property Rights used by Company Net in providing the Services are the exclusive property of Company Net or that Company Net has the express permission of the beneficial owner of the Intellectual Property Rights to use such Intellectual Property Rights (including, but not limited to any licence required to use Third Party Software).
- 11.3 Company Net undertakes that it will use all reasonable efforts to comply with all legal requirements and regulations relating to the provision of the Services.
- 11.4 Company Net does not warrant that:-
 - 11.4.1 the Services shall be uninterrupted or error free;
 - 11.4.2 Third Party Software will be error, virus or bug free.
- 11.5 This Agreement sets out the full extent of Company Net's obligations and liabilities in respect of the provision of Services. All conditions, warranties or other terms concerning the Services which might otherwise be implied into this Agreement, to the fullest extent of the law, are hereby expressly excluded.

12. Indemnity

- 12.1 The Client agrees to indemnify and hold Company Net each of its directors, employees, officers, agents and contractors harmless from and against any and all loss, claims, proceedings, damages, costs and expenses, including legal costs arising out of or in connection with:-
 - 12.1.1 any negligent act or omission of the Client, including any information provided by the Client which is material to the Services; or
 - 12.1.2 breach by the Client of this Agreement, including any breach of warranty; or
 - 12.1.3 if any third party makes a claim which if substantiated would constitute a breach of this Agreement, including, but not limited to, any claim by a third party for breach of Intellectual Property Rights and breach of Data Protection.

13. Liability

- 13.1 Neither party shall be liable to the other for any loss of profit, loss or corruption of data, loss of income, loss of goodwill, loss of business or loss of anticipatory savings or for any indirect or consequential loss howsoever arising.
- 13.2 Neither party excludes its liability to the other party for death or personal injury arising from its own negligence.
- 13.3 Company Net's entire aggregate liability to the Client, whether arising under this Agreement or otherwise (including under the laws of negligence) shall not exceed 50 [fifty] per cent of the Charges paid by the Client to Company Net under the terms of this Agreement.

14. Termination

14.1 Either party may terminate this Agreement forthwith (without prejudice to any other right or remedy available):-

14.1.1 on giving written notice to either party if the other party is in breach of any of its obligations hereunder (the "Defaulting Party") and, in the case of a breach capable of remedy, such breach shall not have been remedied by the Defaulting Party within **[twenty eight (28)]** days of written notice specifying the breach and requiring its remedy by the non-defaulting party; or

14.1.2 on giving written notice to either party if the other party becomes apparently insolvent, bankrupt, has a receiver or administrator or similar officer appointed over the whole or any part of its assets, enters into any compound with its creditors, or has an order made or resolution passed for it to be wound up (otherwise than for the purpose of solvent amalgamation or reconstruction).

14.2 Upon termination of this Agreement:-

14.2.1 Any and all sums, including the Charges due to Company Net hereunder shall become immediately payable;

14.2.2 the provision of Clauses 3.4, 6.1.12, 6.1.13, 8, 9, 10, 11, 12, 13, 14.2.2, 15, 16, 17, 18, 19, 20, 21, 23 and 26 shall continue and remain in full force and effect.

15. Data Protection

15.1 In performing the Services; under this Agreement Company Net undertakes that it will use reasonable efforts to at all times comply with the provisions of all data protection legislation and relevant jurisdictions, including DPA and any subordinate legislation enacted under such legislation. This shall include, without limitation:-

15.1.1 maintaining a valid and up to date registration or (where applicable) notification under such legislation as required for the purposes of carrying out the Services; and

15.1.2 only undertaking processing of Personal Data (as defined in DPA) as is reasonably required for the performance of the Services and in accordance with the written instructions of the Client.

15.2 Company Net shall not disclose any Personal Data to any third parties other than:-

15.3.1 to employees and sub-contractors to whom such a disclosure is reasonably necessary in order for Company Net to carry out the Services; or

15.3.2 to the extent required under a court order.

16. Notices

- 16.1 Any notice given under this Agreement requires to be sent by registered delivery mail to the following address/email address:-

Company Net

Company Net Ltd., Clarence House, 133 George Street, Edinburgh, EH2 4JS.

Iain.McIntyre@company-net.com

Client

<<Client address>>

<<Client email address>>

- 16.2 Notices sent by registered mail will be deemed served on receipt of a signature for acceptance and notices sent by email will be deemed to be served on transmission subject to evidence of a valid email transmission receipt.

17. Force Majeure

- 17.1 Neither party shall be in breach of this Agreement, nor liable for any failure or delay in performance of its obligations (other than the obligation to make payment) under this Agreement arising from or attributable to acts, events, omissions or circumstances beyond its control, including but not limited to, acts of God, perils of the sea or air, fire, flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion or civil authority including acts of local government and parliamentary authority; breakdown of equipment; epidemic; telecommunications failures; war; terrorism; extreme adverse weather conditions; and labour disputes of whatever nature and for whatever cause arising including, without prejudice to the generality of the foregoing, work to rule, overtime, strikes and lockouts ("Force Majeure").
- 17.2 If either party is prevented or delayed in the performance of any of its obligations under this Agreement by reason of Force Majeure, then the defaulting party shall be excused the performance or the punctual performance as the case may be from the date of such notice for so long as such cause of prevention or delay shall continue.

18. Assignment

Neither party shall be entitled to assign, novate or transfer any of its rights or obligations under this Agreement to any third party without the prior written consent of the other party.

19. Variation

No variation or amendment of this Agreement shall be effective unless it is in writing and executed by authorised representatives of both parties.

20. Waiver

A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement, nor will it prevent a party from subsequently requiring compliance with the waived obligation.

21. Severability

In the event that any of these terms, conditions or provisions shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall to that extent be severed from the remaining terms, conditions and provisions, which shall continue to be valid to the fullest extent permitted by law.

22. Entire Agreement

- 22.1 This Agreement constitutes the entire agreement and understanding between the parties and supersedes any previous agreements, arrangements or understandings, between the parties relating to the subject matter of this Agreement and may only be amended by the written agreement of both parties hereto.
- 22.2 Each of the parties acknowledge and agree that in entering into this Agreement, (and the documents referred to in it) that both parties shall not rely on, and shall have no remedy in respect of, any statement, representation, or understanding whether negligently or innocently made prior to entering into this Agreement.
- 22.3 Nothing in this Clause 22 shall operate to limit or exclude any liability for fraud.

23. Non-Solicitation

The Client shall not, without the prior written consent of Company Net, at any time from the date of the Agreement to the expiry of twelve (12) months after the last date of supply of the Services or termination of the Agreement, solicit or entice away from Company Net or employ (or attempt to employ) any person who is, or has been, engaged as an employee, consultant or subcontractor of Company Net in the provision of the Services.

24. Agency

Nothing in this Agreement is intended to or shall operate to create a partnership (or joint venture of any kind) between the parties. Neither party is the agent of the other and neither party shall give any undertaking on behalf of the other or otherwise bind the other in any way.

25. Publicity and Promotion

25.1 The Client acknowledges that Company Net is a Microsoft Partner and that as such, Company Net has specific obligations to ensure that its partnership status is retained, which may require Client input and approval. The Client shall use its reasonable endeavours to provide such input and approval as reasonably requested by Company Net.

25.2 With reference to 25.1, the Client agrees, to participate in:-

25.2.1 quarterly customer satisfaction surveys issued by Company Net; and/or

25.2.2 customer references,

as reasonably requested by Company Net.

25.3 It is acknowledged that Company Net may wish to include details of the Services provided to the Client within Company Net's promotional, demonstration and marketing material. The Client agrees and consents to the inclusion of its name and details of the Services provided to the Client being included within such promotional, demonstration and marketing materials.

26. Governing Law and Jurisdiction

In the event of a dispute arising between the parties, the parties hereby agree that this Agreement shall be governed by and construed in accordance with Scots law and hereby submit to the exclusive jurisdiction of the Scottish courts.