

Terms and Conditions

The client's attention is particularly drawn to the provisions of clause 15.

1. Definitions

Except to the extent expressly provided otherwise, in these Terms and Conditions:

1.1. "Charges" means the following amounts:

- 1.1.1. the amounts specified in the Quotation; and
- 1.1.2. such other amounts as may be agreed in writing by the parties from time to time;

1.2. "Client" means the person or entity who purchases the Services from the Company (as specified in the Quotation);

1.3. "Prerequisites Document" means, where applicable, any corresponding prerequisites document setting out additional particulars and Client responsibilities in connection with the Services and any Software which is (a) attached to the Quotation, (b) notified by the Company to the Client as part of the Service and Software setup process, or (c) otherwise agreed in writing between the parties from time to time;

1.4. "Company" means Cloud Design Box Ltd, a company incorporated in England and Wales (registration number 09655303) having its registered office at 36 Langdale Crescent, Cottingham, HU16 5DL;

1.5. "Contract" means the contract between the Company and the Client for the supply of Services in accordance with these Terms and Conditions, the Quotation, the Data Processing Agreement, the Service Level Agreement and any Prerequisites Document;

1.6. "Data Processing Agreement" means the separate data processing agreement entered into between the Company and the Client on the date of the Contract (as may be amended from time to time in accordance with clause 2.7 and including any connected data processing and technical details inventory document) relating to how the Company will process the Client's personal data in accordance with Data Protection Legislation in connection with the Contract;

1.7. "Data Protection Legislation" means all applicable legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including but without limitation: (i) any data

protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation; and (ii) the retained EU law version of the General Data Protection Regulation (Regulation (EU) 2016/679);

- 1.8. "Deliverables" means the agreed outputs of those Services specified in the Quotation that the Company has agreed to deliver to the Client under the Contract (as specified in the corresponding list accessible at <https://www.clouddesignbox.co.uk/sla> or otherwise set out in the Quotation);
- 1.9. "Environmental Information Regulations" means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
- 1.10. "FOIA" means the Freedom of Information Act 2000, and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
- 1.11. "FOI Legislation" means FOIA and the Environmental Information Regulations;
- 1.12. "Information" has the meaning given under section 84 of FOIA;
- 1.13. "Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, right to use and to protection the confidentiality of confidential information (including trade secrets and know-how), business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);
- 1.14. "Quotation" means the Client's order for Services as set out in the quotation form sent by the Company;
- 1.15. "Request for Information" means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
- 1.16. "Service Level Agreement" means, subject to clause 2.7, the Company's corresponding service level agreement for the Services (as stated in the Quotation and, except where otherwise stated in the Quotation, accessible via

<https://www.clouddesignbox.co.uk/sla>);

- 1.17. "Services" means the services specified in the Quotation and any other services otherwise agreed between the parties in writing;
- 1.18. "Software" means any software provided by the Company (pursuant to the Company's provision of the Services) in object code format licensed by the Company and Updates provided by the Company during the Term (including all other works and materials embodied in such software, including any audio and visual content);
- 1.19. "Term" means the term of a Contract under these Terms and Conditions, commencing in accordance with Clause 2.3 and (subject to earlier termination in accordance with its terms) being one calendar year in duration;
- 1.20. "Terms and Conditions" means these terms and conditions, including any amendments agreed in writing between the parties;
- 1.21. "Third Party Software" means any software comprised within the Software or otherwise provided or made available to the Client in connection with the Company's performance of the Services from time to time in respect of which the Company does not own the Intellectual Property Rights, including but not limited to any open source software as defined by the Open Source Initiative (<http://opensource.org>) or the Free Software Foundation (<http://www.fsf.org>);
- 1.22. "Updates" means any update to the Software released by the Company;
- 1.23. "Warranty Period" means 90 days from the date of installation of the Software;
- 1.24. Clause, Schedule and paragraph headings shall not affect the interpretation of this Contract;
- 1.25. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.26. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.27. Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular;
- 1.28. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.29. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all applicable subordinate legislation

made under that statute or statutory provision;

1.30. A reference to writing or written includes email.

2. Basis of sale

- 2.1. Any Quotation is valid for a period of 30 days only, and the Company may withdraw it at any time by notice to the Client.
- 2.2. Each order by the Client shall be deemed to be an offer by the Client subject to these Terms and Conditions, the Quotation, the Data Processing Agreement, the Service Level Agreement and any Prerequisites Document. The Client shall ensure that the Quotation is complete and accurate.
- 2.3. A binding Contract shall not come into existence between the Company and the Client until the Company issues written acceptance of the Client's order at which point and on which date a Contract shall come into existence.
- 2.4. Any samples, drawings, descriptive matter or advertising issued by the Company, and any descriptions or illustrations contained in the Company's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5. These Terms and Conditions, the Quotation, the Data Processing Agreement, the Service Level Agreement and any Prerequisites Document apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6. No addition to, variation, exclusion or attempted exclusion of any term of the Contract shall be binding on the Company unless in writing and signed by a duly authorised representative of the Company.
- 2.7. The Company shall have the right to make any changes to:
 - 2.7.1. the Services and/or the Software which are necessary to comply with any applicable law, or which do not have a material adverse effect on the nature, quality or functionality of the Services and the Software, and the Company shall notify the Client in any such event; and

- 2.7.2. the Service Level Agreement and/or the Data Processing Agreement which are necessary to comply with any applicable law, or which are necessary to reflect any changes to any relevant feature of the Services or Software (provided that such document change does not have a material adverse effect on the nature of the Company's related obligations under the relevant document), and the Company shall notify the Client in any such event.

3. Term

- 3.1. A Contract under these Terms and Conditions shall continue for the Term, upon the expiry of which it will terminate automatically (subject to earlier termination in accordance with its terms).

4. Services

- 4.1. The Company shall provide the Services to the Client in accordance with the Contract in all material respects.
- 4.2. The Company shall provide the Services with reasonable skill and care.
- 4.3. The Client acknowledges and agrees that:
 - 4.3.1. in respect of any training services which are comprised within the Services, the Client shall be required to utilise all such training services on or before the "Relevant Expiry Date" (being the end of the Term or such later date as may be agreed between the parties in writing);
 - 4.3.2. in the event that the Client does not utilise any such training services on or before the Relevant Expiry Date, the Client's right to utilise such training services shall cease; and
 - 4.3.3. the Company shall not have any liability to the Client for any failure by the Client to utilise any such training services on or before the Relevant Expiry Date (and for the avoidance of doubt shall not be required to refund any part of the Charges to the Client in respect of the same).

5. Deliverables

- 5.1. The Company shall deliver the Deliverables to the Client.
- 5.2. The Client must promptly, following receipt of a written request from the Company to do so, provide written feedback to the Company concerning the Company's proposals, plans, designs and/or preparatory materials relating to the Deliverables and made available to the Client with that written request.

- 5.3. The Company shall use reasonable endeavours to ensure that the Deliverables are delivered to the Client in accordance with the timetable agreed between the parties but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 5.4. The Company warrants to the Client that the Deliverables will conform in all material respects with the requirements of the Contract. The Company reserves the right to amend the Deliverables if necessary to comply with any applicable law or regulatory requirements, or if the amendment will not materially affect the nature or quality of the Services, and the Company shall notify the Client in any such event.
6. Licence
- 6.1. In consideration of the Charges paid by the Client, the Company grants to the Client a non-exclusive, non-transferrable licence to use the Software for the Term subject to these Terms and Conditions.

- 6.2. For the purposes of clause 6.1, use of the Software shall be restricted to use of the Software in object code form for the purpose of processing the Client's data for the normal business purposes of the Client (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee of the Client).
- 6.3. The Client shall:
- 6.3.1. not use the Software other than as specified in clause 6.1 and clause 6.2 without the prior written consent of the Company, and the Client acknowledges that additional fees may be payable on any change of use approved by the Company;
 - 6.3.2. make backup copies of the Software as may be necessary for its lawful use for convenience only. The Client shall record the number and location of all copies of the Software and use all reasonable endeavours to prevent unauthorised access or copying;
 - 6.3.3. except as expressly stated in this clause 6 or otherwise permitted by law, not (and shall not permit any of the Client's users to) copy, adapt, translate, make alterations to, reverse engineer, decompile, disassemble, modify, create derivative works from, or make error corrections to the Software in whole or in part (including any related source code), or permit the Software or any part of it to be combined with, or become incorporated in, any other website or Software (save that the Client shall be permitted to, for its own internal and non-commercial use only, integrate the operation of the Software with the operation of other software or systems used by the Client);
 - 6.3.4. ensure that the maximum number of users granted access to the Software or the Services by the Client does not exceed any corresponding maximum number set out in the Quotation or otherwise agreed in writing between the parties; and
 - 6.3.5. ensure that none of the Client's users access the Software or any Services from any Client site other than the corresponding Client site(s) listed in the Quotation.
- 6.4. The Third Party Software shall be deemed to be incorporated within the Software for the purposes of the Contract (except where expressly provided to the contrary).

6.5. The Client may not (and shall procure that none of its users shall) use any information provided by the Company or obtained by the Client or any user during any reduction permitted under clause 6.3.3 to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.

6.6. The Client shall not:

- 6.6.1. sub-license, assign or novate the benefit or burden of the Contract in whole or in part;
- 6.6.2. allow the Software or any of its rights and obligations under the Contract to become the subject of any charge, lien or encumbrance; or
- 6.6.3. deal in any other manner with any or all of its rights and obligations under the Contract,

without the prior written consent of the Company.

6.7. The Client shall:

- 6.7.1. ensure that the Software is only installed on designated equipment which is under the control of the Client and (a) is physically located at the relevant Client site(s) listed in the Quotation; (b) satisfies any relevant prerequisite requirements set out in the Contract or otherwise notified by the Company; and (c) in respect of which the Client has put in place appropriate technical and organisational security measures in accordance with best practice;
- 6.7.2. keep a complete, accurate and up-to-date record of the Client's copying and disclosure of the Software and its users, and produce such record to the Company on request from time to time; and
- 6.7.3. use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and the Services and shall notify the Company as soon as it becomes aware of any such unauthorised access or use.

6.8. The Client shall, and shall procure that each of the Client's users shall:

- 6.8.1. ensure that any images and personal information which they upload using the Software are uploaded in accordance with the Client's own policies and procedures governing such actions (a copy of which the Client agrees to provide to the Company upon request);
- 6.8.2. not reproduce all or any part of the Software (including printing any part of the Software or any document created using the Software) without proper attribution to the Company as notified by the Company from time to time; and
- 6.8.3. not use the Software or any of the Services to access, store, distribute or transmit any:
 - 6.8.3.1. viruses, worms, Trojan horses or any other file or program that is designed to disrupt, damage or limit the functioning of any software or hardware equipment;
 - 6.8.3.2. material which is unlawful, harmful, threatening, inaccurate, defamatory, abusive, offensive, pornographic, racist, sexist, threatening, vulgar, obscene, hateful, violent, promotes illegal activity or is otherwise inappropriate or which will constitute a criminal offence or give rise to civil liability or which may cause offence in relation to sexual orientation, age, nationality, religious belief, marital status, disability or working status; or

6.8.3.3. material which is protected by confidentiality, copyright, trade mark, database right or other proprietary right without the express permission of the third party owner.

6.9. The Client warrants and agrees that:

6.9.1. it shall have sole responsibility for the accuracy, quality, integrity, legality, reliability and appropriateness of any data, information or material that the Client or any of the Client's users processes or creates in the course of using the Software or the Services ("Client Data"); and

6.9.2. all information (including but not limited to Client Data) that the Client has or will provide to the Company in connection with the Contract is complete and accurate, and that the Company shall not be liable for any defect or failure in relation to the Software or the Services which results directly or indirectly from the Client providing incomplete or inaccurate information.

6.10. Without prejudice to any other right or remedy available to the Company, the Client shall pay to the Company, for broadening the scope of the licences granted under these Terms and Conditions to cover any unauthorised use pursuant to this clause 6, an amount equal to the fees which the Company would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced together with interest at the rate provided for in clause 10.3.2, from such date to the date of payment.

6.11. The Client shall permit the Company to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used under supervision, and have access to any records kept in connection with the Contract if the Company identifies any concerns regarding the client's compliance with the agreement for the purposes of ensuring that the Client is complying with the Contract, provided that the Company provides reasonable advance notice to the Client of such inspections, which shall take place at reasonable times.

6.12. The Company shall be entitled to monitor the use of the Software in respect of each Client user's account for the purposes of (i) establishing that the Client and the Client's users are complying with the Contract, (ii) developing the Company's systems and services, and (iii) creating anonymised reports based on the Client's users' usage of the Software.

6.13. The Company shall provide the Client with all Updates generally made available to its customers. The Company shall not be responsible for any adverse affect any Update (including any update to any Third Party Software) may have on the then existing facilities or functions of the Software.

7. Third Party Software

7.1. The Company shall procure for the Client relevant licence(s) for the Client to use any Third Party Software in connection with the Software, each and any such licence being under the standard licence terms provided by the relevant third party licensor (as updated from time to time), copies of which shall be provided to the Client.

7.2. The Client shall comply with any and all such Third Party Software licences and shall indemnify and hold harmless the Company against any loss or damage which the Company may suffer or incur as a result of the Client's breach of such terms howsoever arising.

7.3. The Company may treat the Client's breach of any such Third Party Software licence as a breach of the Contract.

7.4. The Client acknowledges that any Third Party Software provided by the Company is provided "as is" and is expressly subject to the disclaimer in clause 14.6.

8. Client's Obligations

8.1. The Client shall:

8.1.1. co-operate with the Company in all matters relating to the Services;

8.1.2. provide the Company, and the Company's employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by the Company;

8.1.3. provide the Company with such information and materials as and when the Company may reasonably require in order to supply the Services (including but not limited to when completing any relevant planning questionnaires and checklists), and ensure that such information is complete and accurate in all material respects;

8.1.4. keep all materials, equipment, documents and other property of the Company or any third party at the Client's premises ("Company Materials") in safe custody at its own risk, maintain such Company Materials in good condition until returned to the Company, and not dispose of or use any Company

Materials other than in accordance with the Company's written instructions or authorisation;

8.1.5. prepare the Client's premises for the supply of the Services;

8.1.6. comply with all applicable laws, including health and safety laws.

8.2. The Client shall be responsible for:

8.2.1. ensuring that all Client data, software and databases are backed up before the Company carries out the Services;

8.2.2. monitoring and paying all telecommunication charges resulting from any Services provided by the Company; and

8.2.3. preparing the Client's servers fully and to provide general on-site services as set out in the pre-requisite documentation provided by the Company by the agreed installation date; provided that if such conditions are not met, the Client agrees to pay such additional costs the Company may incur in preparing the servers.

- 8.3. The Client shall be responsible for creating user names and passwords for all Client users for the Software and the Services and for administering their related user accounts (and the Client shall perform all such responsibilities in a diligent manner).
- 8.4. The Client shall provide the Company with such evidence as the Company may require to verify that each Client user who accesses or requires access to any element of the Software which is installed on the Client's server is an employee of the Client (including prior to the Client creating a user name and password for that Client user pursuant to clause 8.3 above).
- 8.5. If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act, omission or failure by the Client to perform any obligation under the Contract ("Client Default") then:
- 8.5.1. without limiting or affecting any other right or remedy available to it, the Company shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve the Company from the performance of any of its obligations in each case to the extent the Client Default prevents or delays the Company's performance of any of its obligations;
 - 8.5.2. the Company shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 8.5; and
 - 8.5.3. the Client shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Client Default.
9. Charges
- 9.1. Subject to clause 9.2, all Charges shall be as stated in the Quotation or as otherwise agreed between the parties in writing. All Charges are exclusive of delivery, packaging, packing, shipping, carriage, insurance, VAT and other charges and duties.
- 9.2. The company reserves the right to increase the charges annually to reflect any increase in the cost to the company, the factor of any such increase to be capped at no more than the increase factor in the All Items index of the Consumer Prices Index over the corresponding period.
- 9.3. The Company shall issue invoices for the Charges in accordance with the corresponding

invoicing schedule set out in the Quotation or otherwise agreed between the parties in writing.

10. Payments

10.1. The Client must pay the Charges to the Company (without set-off, withholding or deduction) within the period of 30 days following the issue of an invoice in accordance with Clause 9.2. Time for payment shall be of the essence of the Contract.

10.2. The Client must pay the Charges in full and in cleared funds by debit card, credit card, direct debit or bank transfer using the details provided on the Quotation.

10.3. Without prejudice to any other right or remedy of the Company under the Contract, if the Client does not make any payment due to the Company under the Contract by the due date for payment, the Company may exercise any or all of the following rights:

10.3.1. suspend the Services to the Client (including the Client's access to the Software and any data stored by the Client using the Software) by giving the Client written notice until payment in full of the relevant sum and any interest due in accordance with clause 10.3.2 has been received in cleared funds by the Company; and/or

10.3.2. charge the Client interest on the overdue amount at the rate of 3% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); and/or

10.3.3. in the event that the Client fails to make any payment due to the Company within 7 days following the Company notifying the Client that the payment is overdue, the Company shall be entitled to terminate the Contract immediately by giving the Client written notice.

10.4. All sums payable to the Company under the Contract shall become due immediately on its termination, despite any other provision of the Contract. This condition 10.4 is without prejudice to any right to claim for interest under the law, or any right under the Contract.

10.5. The Client acknowledges and agrees that:

10.5.1. If the Client is based in China, the Charges are exclusive of tax and should there be any withholding of any taxes, these would be payable by the Client in addition to the amount of the Charges stated on the invoice; and

10.5.2. If the Client is based in the European Union or any other country which has a reserve charge agreement with the United Kingdom, the Services should be registered as reverse charge VAT.

11. Confidentiality and Publicity

11.1. Each party shall, during the Term and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of the Contract) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority), any information of a confidential nature (including trade secrets, information of commercial value and information relating to the business and affairs of the other party, which may become known to such party from the other party and which relates to the other party, unless that information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of the Contract, or subsequently comes lawfully into the possession of such party from a third party, or where required by law, any governmental or regulatory authority, any court or other authority of competent jurisdiction.

11.2. The Client agrees that the Company shall be entitled to publicise the fact that the Company has entered into the Contract with the Client, which shall include but not be limited to the Company being permitted to refer to the Client's name in any public announcements and discussions with prospective clients.

12. Data protection and data processing

12.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

12.2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the data controller and the Company is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation) and all data will be processed in accordance with the Data Processing Agreement.

13. Freedom of Information

13.1. In the event that the Client is subject to the requirements of the FOI Legislation, the Company shall, upon reasonable request by the Client, assist and co-operate with the Client (at the Client's expense) to enable the Client to comply with its obligations under the FOI Legislation.

13.2. If the Client receives a Request for Information:

13.2.1. the Client shall notify the Company as soon as reasonably practicable after receipt of a Request for Information which relates to Information held by the Company;

13.2.2. the Company shall provide the Client with a copy of all Information in its possession or power in the form that the Client reasonably requires within seven days (or such other period as the Client may reasonably specify) of the Client requesting that Information; and

13.2.3. the Company shall provide all necessary assistance as reasonably requested by the Client to enable the Client to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of the Environmental Information Regulations.

13.3. The Company shall be permitted to make representations to the Client regarding any Information requested under a Request for Information of the nature referred to in clause 13.2.1 as to any Information relating to the Company in respect of which the Company considers a statutory exemption to disclosure may apply. The Client shall, acting reasonably, consider any such representations provided that the Client shall be responsible for determining at its absolute discretion whether any Information:

13.3.1. is exempt from disclosure in accordance with the provisions of FOIA or the Environmental Information Regulations; and

13.3.2. is to be disclosed in response to a Request for Information.

14. Warranties

14.1. The Company warrants that the Software will, for the duration of the Warranty Period, possess materially the same functionality described by the Company in the Contract. Subject to clause 14.2, if within the Warranty Period, the Client notifies the Company in writing of any defect or fault in the Software in consequence of which the Software fails to materially possess such functionality, the Company shall, at the Company's option, do one of the following:

14.1.1. repair the Software;

14.1.2. replace the Software; or

14.1.3. terminate the Contract immediately by notice in writing to the Client and refund any Charges paid by the Client as at the date of termination (less a pro rata sum in respect of the Services provided by the Company and the Client's use of the Software prior to the date of termination) upon the Client's access to the Software being removed,

provided that, as soon as reasonably practicable, the Client shall give the Company notice of any breach of such warranty and provide to the Company all information that may be necessary to assist the Company in resolving the issue, including but not limited to a documented example of any defect or fault, or sufficient information to enable the Company to re-create the defect or fault.

14.2. The warranty in clause 14.1 above and the Company's obligations in respect of the Software and the Services shall not apply to or in respect of any defect or failure in the Software which arises wholly or partly as a result of:

14.2.1. the Client, or anyone acting with authority of the Client, having (i) amended the Software or used it in breach of these Terms and Conditions or negligently; or (ii) used the Software for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by the Company; or

14.2.2. the Client not loading the Software onto Company-specified or suitably configured equipment (as set out or otherwise referred to in the Contract); or

- 14.2.3. the Software being accessed using or in connection with equipment or products which do not have up-to-date anti-virus software installed upon them; or
 - 14.2.4. the use of a non-current release of the Software; or
 - 14.2.5. the Client failing to comply with any of its responsibilities under any part of the Contract.
- 14.3. The Company does not warrant that the use of the Software will be uninterrupted or error free.
- 14.4. The Client accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Client.
- 14.5. The Company warrants to the Client that:
- 14.5.1. the Company has the legal right and authority to enter into a contract under these Terms and Conditions and to perform its obligations under these Terms and Conditions;
 - 14.5.2. the Company will comply with all applicable legal and regulatory requirements relating to the Contract; and
 - 14.5.3. the Company has access to all necessary know-how, expertise and experience to perform its obligations under these Terms and Conditions.
- 14.6. All of the parties' respective warranties and representations in respect of the subject matter of a Contract under these Terms and Conditions are expressly set out in these Terms and Conditions and the applicable Quotation, Data Processing Agreement, Service Level Agreement and any Prerequisites Document. All other conditions, warranties, obligations or terms which might have effect between the parties or be implied or incorporated into the Contract or any collateral contract (whether by statute, common law or otherwise) are hereby excluded to the fullest extent permitted by law.
15. Limitation of liability: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

15.1. The following provisions set out the entire financial liability of the Company (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:

15.1.1. any breach of the Contract howsoever arising; and

15.1.2. any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising out of or in connection with the Contract.

15.2. Nothing in these conditions excludes or limits the liability of the Company for:

15.2.1. death or personal injury caused by the negligence of the Company or any of its officers, employees, contractors or agents;

15.2.2. fraud or fraudulent misrepresentation; or

15.2.3. any other liability which may not be excluded or limited by law.

15.3. Subject to condition 14.6 and condition 15.2:

15.3.1. the Company shall not in any circumstances be liable, whether in tort (including without limitation for negligence howsoever arising), breach of statutory duty, contract, misrepresentation (whether innocent or negligent) or otherwise, for any loss or damage which may be suffered by the Client which falls within any of the following categories:

15.3.1.1. loss of profits; or

15.3.1.2. loss of business; or

15.3.1.3. depletion of goodwill or similar losses; or

15.3.1.4. loss of anticipated savings; or

15.3.1.5. pure economic loss; or

15.3.1.6. loss of goods; or

15.3.1.7. loss of contract; or

15.3.1.8. loss of use; or

15.3.1.9. loss or corruption of data, database, software or information; or

15.3.1.10. any special, indirect or consequential loss, costs, damages, charges or expenses; and

15.3.2. the Company's total liability in respect of any and all claims made in connection with the Contract, whether in contract, tort (including without limitation negligence howsoever arising), breach of statutory duty, misrepresentation (whether innocent or negligent), restitution or otherwise, shall in no circumstances exceed a sum equal to 100% of the Charges.

16. Intellectual property rights

16.1. The Client acknowledges that all Intellectual Property Rights in the Software, any Updates and any related documentation issued by the Company belong and shall belong to the Company or the relevant third party owner (as the case may be) and that the Client shall have no rights in or to the Software, any Updates or any such documentation other than the right to use them in accordance with the Contract.

16.2. The Company undertakes at its own expense to defend the Client or, at the Company's option, settle any claim or action brought against the Client alleging that the Client's possession or use of the Software (or any part thereof) in accordance with the Contract infringes the UK Intellectual Property Rights of a third party ("Claim") and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Client as a result of or in connection with any such Claim. For the avoidance of doubt, this clause 16.2 is subject to clause 16.5 and shall not apply where the Claim in question is attributable to (i) possession or use of the Software (or any part thereof) by the Client other than in accordance with the Contract, (ii) use of the Software in combination with any hardware or software not supplied or specified by the Company if the infringement would have been avoided by the use of the Software not so combined, or (iii) use of a non-current release of the Software.

16.3. If any third party makes a Claim, or notifies an intention to make a Claim against the Client, the Company's obligations under clause 16.2 are conditional on the Client:

- 16.3.1. promptly giving written notice of the Claim to the Company, specifying the nature of the Claim in reasonable detail;
- 16.3.2. giving the Company sole authority to defend or settle the Claim and not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Company;

- 16.3.3. giving the Company and its professional advisers access at reasonable times (on reasonable prior notice) to the Client's premises and officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Client, so as to enable the Company and its professional advisers to examine them and to take copies (at the Company's expense) for the purpose of assessing the Claim; and
 - 16.3.4. taking such action as the Company may reasonably require to avoid, dispute, compromise or defend the Claim.
- 16.4. If any Claim is made, or in the Company's reasonable opinion is likely to be made, against the Client, the Company may at the Company's sole option and expense:
- 16.4.1. procure for the Client the right to continue to use the Software (or any part thereof) in accordance with the terms of the Contract;
 - 16.4.2. modify the Software so that it ceases to be infringing;
 - 16.4.3. replace the Software with non-infringing software; or
 - 16.4.4. terminate the Contract immediately by notice in writing to the Client and refund any of the Charges paid by the Client as at the date of termination (less a pro rata sum in respect of the Services provided by the Company and the Client's use of the Software prior to the date of termination) upon the Client's access to the Software being removed,
- provided that if the Company modifies or replaces the Software, the modified or replacement Software must comply with the warranties contained in clause 14.1 and the Client shall have the same rights in respect thereof.
- 16.5. Notwithstanding any other provision in these Terms and Conditions, clause 16.2 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession or use of any Third Party Software.
- 16.6. This clause 16 constitutes the Client's exclusive remedy and the Company's only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 15.3.
17. Termination
- 17.1. Either party may terminate a Contract under these Terms and Conditions by giving to the other party at least 30 days' written notice of termination (provided that only where the Company exercises such termination right, the Company shall refund any Charges

paid by the Client as at the date of termination, less a pro rata sum in respect of any Services provided by the Company and the Client's use of the Software prior to the date of termination).

17.2. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- 17.2.1. the other party commits a material breach of any term of the Contract (other than a breach by the Client of its obligations under clause 10) which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- 17.2.2. the other party is unable to pay its debts as they fall due, or the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors, or a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party, or an application is made to court, or an order is made, for the appointment of an administrator or a notice of intention to appoint an administrator is filed or an administrator is appointed in respect of the other party, or a floating charge holder over the assets of the other party has become entitled to appoint or has appointed an administrative receiver, or a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party, or a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days, or any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which the other party is subject that has an effect equivalent or similar to any of the events mentioned in this clause 17.2.2;
- 17.2.3. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business, or the other party's business is transferred to another provider; or
- 17.2.4. the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), becomes incapable of managing their own affairs or becomes a patient under any mental health legislation.

18. Effects of termination

18.1. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

18.2. Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of either party that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

18.3. On termination or expiry of the Contract:

18.3.1. the Client shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of any Services supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Client immediately on receipt;

18.3.2. the Client shall return any Company Materials. If the Client fails to do so, then the Company may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract; and

18.3.3. all rights granted to the Client under the Contract shall cease and the Client shall cease all activities previously authorised by the Contract (including but not limited to using the Software and any Third Party Software, the Client's access to which shall be removed by the Company).

19. General

19.1. Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

19.2. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Client will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

19.3. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability,

unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

19.4. A Contract under these Terms and Conditions may not be varied except by a written document signed by or on behalf of each of the parties.

19.5. A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

19.6. The Contract is comprised of these Terms and Conditions, the Quotation, the Data Processing Agreement, the Service Level Agreement and any Prerequisites Document, which together shall constitute the entire agreement between the parties and shall supersede and extinguish all previous agreements, promises, assurances, warranties, representations, arrangements and understandings whether written or oral in relation to its subject matter.

19.7. In the event of any conflict or inconsistency between any component part of the Contract, then the following order of precedence shall apply to the extent of such conflict or inconsistency: (1) the Quotation; (2) any Prerequisites Document; (3) these Terms and Conditions; (4) the Service Level Agreement; (5) the Data Processing Agreement.

19.8. Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In the event that either party is so prevented or delayed in performing any of its obligations under the Contract, that party's time for performance of the relevant obligation shall be extended by a period equivalent to the period during which performance of the obligation has been so delayed or failed to be performed.

19.9. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture, constitute either party the agent of the other party, or authorise either party to make or enter into commitments for or on behalf of the other party.

19.10. Any notice or other communication:

19.10.1. required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first class post or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by email. For the purposes of this clause 19.10.1, the email address shall be

(a) for the Company, info@clouddesignbox.co.uk, and (b) for the Client, as set out in the Quotation or otherwise notified by the Client to the Company in writing; and

19.10.2. shall be deemed to have been duly received if delivered personally, when left at the address referred to in clause 19.10.1 above, or if sent by pre-paid first class post, at 9:00am on the second working day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by email, on the next working day after transmission,

provided that it shall not be possible for a party to serve notice of termination of the Contract, or notice of any proceedings or other documents in any legal action, by email.

19.11. Without prejudice to the rights and remedies of either party pursuant to the Contract or by law, the parties agree in the first instance to attempt to resolve any dispute in relation to the Contract by good faith negotiations between a director (or equivalent) of each party within 10 days of request from either party.

19.12. A Contract under these Terms and Conditions (and any dispute arising out of or in connection with it) shall be governed by and construed in accordance with English law.

19.13. The courts of England shall have exclusive jurisdiction to adjudicate any dispute or claim arising under or in connection with a Contract under these Terms and Conditions, save that nothing in this clause 19.13 shall limit the right of the Company to bring proceedings in any other court of competent jurisdiction.