

PHOREST TERMS AND CONDITIONS

NDEVOR SYSTEMS LIMITED (reg. no. 369210) having its registered address at 100 Capel Street, Dublin 1, Ireland (trading as **PHOREST** under registered business name no. 241895) ("**Phorest**", "**we**", "**our**", "**us**") designed and developed a software based service which (i) enables our customers to manage bookings and sales at their salon or spa; and (ii) enables them to create a customised mobile application for use by their clients in connection with their bookings system (the "**Services**").

1. ACCEPTANCE OF TERMS AND CONDITIONS

1.1 By completing our online registration form or signing our order form (as applicable) (an "**Order**"), paying (i) the initial subscription amount relating to our Services; and (ii) where applicable, the agreed purchase price (or, where agreed, a deposit) in relation to any Hardware (each as stated in your Order) and clicking "**I AGREE**" you ("**Customer**" or "**you**" or "**your**") submit an offer to access and use our Services and, where applicable, purchase Hardware, subject to and in accordance with these terms and conditions at which time an agreement between us will be deemed to exist.

1.2 These terms and conditions and the terms of your Order will form your agreement with us and will constitute the entire agreement between us in relation to their subject matter and supersede and extinguish all previous drafts, agreements, arrangements and understandings between us, whether written or oral.

2. SUPPLY OF SERVICES

2.1 We will provide the Services to you as stated in your Order and accepted by us and hereby grant you a non-exclusive, non-transferrable personal right to access and use the Services.

2.2 We will use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week.

2.3 You may only allow your employees to use the Services.

2.4 We will also make documentation relating to our Services available to you (the "**Documentation**").

2.5 Our mobile app is customised to suit the design of your salon or spa as close as is possible within the parameters of mobile app design. The icons must be designed from Phorest templates. Any logos provided by you to Phorest for inclusion in the app must be of a high enough resolution to be acceptable by Apple's guidelines. The home screen button choices are set by Phorest and are not customisable. The app will be disabled if the service contract falls into arrears. Phorest can hold no liability in terms of the performance of the app as it is provided through a third party mobile device. For the Android version of the salon branded app, please be aware that this app is optimised for the Samsung S4 and S5 and HTC One. Quality of appearance may not be consistent across other Android devices.

2.6 By submitting any design material to us, including any logos, you give us a worldwide, non-exclusive, royalty free, non-transferrable right to access and use them for an agreed purpose, including the provision of the Services to you.

2.7 You will not access, store, distribute or transmit any virus or other device (including, but not limited to, any worms or trojans) or any material during the course of your use of the Services that:

- (a) are unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitate illegal activity;
- (c) depict sexually explicit images;
- (d) promote unlawful violence;
- (e) are discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) are otherwise illegal or cause damage or injury to any person or property;

and we reserve the right, without liability or prejudice to our other rights, to disable your access to any material that breaches the provisions of this clause.

2.8 Except as permitted by these terms and conditions you will not:

- (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of our Services and/or Documentation (as applicable) in any form or media or by any means; or
- (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of our Services; or
- (c) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- (d) use the Services and/or Documentation to provide services to third parties; or
- (e) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party; or
- (f) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation.

2.9 You will use all reasonable endeavours to prevent any unauthorised access to, or use of, our software, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify us.

3. CUSTOMER SUPPORT SERVICES

3.1 We will, subject to payment of relevant fees, provide you with customer support services as stated in your Order and accepted by us (the "**Customer Support Services**").

3.2 Phorest is not liable for malfunction of ancillary products and accessories provided by a third party including but not limited to software, internal computer parts, plotters, internet connection, printers and backup devices used for the operation of the equipment. If any third party equipment causes Phorest supplied equipment or software to malfunction, then all repair and replacement costs will be borne by the client. Similarly responsibility for the operation of such items lies with the client and/or the third party vendor.

3.3 Phorest will not be liable for the repair or replacement of any consumable items including Keyboards, Mouse, pens, tapes, ribbons, disks, toner, media, receipt printer thermal roll etc.

3.4 The customer shall allow Phorest employees or duly authorised agents full licence during the prime shift on any day subject to appointment with the customer to enter the customer's premises for the purposes of maintaining, or servicing the equipment and shall ensure that the equipment is readily accessible to such employees or agents for such purpose.

4. CUSTOMER DATA

4.1 You will own all right, title and interest in and to all data which you input for the purpose of using the Services, including any data relating to your clients (the "**Customer Data**"), and will have sole responsibility for the legality, reliability, integrity, accuracy and quality of Customer Data.

4.2 By submitting any data, including but not limited to Customer Data, to us for any purpose, particularly in relation to your use of the Services, you give us a worldwide, non-exclusive,

royalty free, non-transferrable right to access and use the relevant data for the stated purpose, including the provision of the Services to you.

4.3 In the event of any loss or damage to Customer Data, your sole and exclusive remedy will be for us to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by us. We will not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.

4.4 We will, comply with our privacy statement - phorest.com/privacy-statement.html. You grant permission to Phorest or our licensors use of your Customer Data to carry out direct marketing on your behalf.

4.5 If we process any personal data on your behalf when performing our obligations under these terms and conditions, it is our intention that you will be the data controller and we will be a data processor and in any such case:

- (a) you acknowledge and agree that the personal data may be transferred or stored outside the EEA or the country where you are located in order to carry out the Services and our other obligations under these terms and conditions;
- (b) you will ensure that you are entitled to transfer the relevant personal data to us so that we may lawfully use, process and transfer the personal data in accordance with these terms and conditions on your behalf; and
- (c) you will ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation.

4.6 Phorest's handling of customer-related information, including SMS message content, is subject to Irish and UK communication and privacy laws. The customer acknowledges that Phorest is obliged by law to store all message content and activity logs for six months, and that Phorest can be required by law to disclose details about a customer's activity and SMS transmissions to government and law enforcement officials on explicit request. The customer acknowledges that SMS message content is transmitted unencrypted and that eavesdropping of mobile phone communications, including SMS delivery, by third parties is possible.

4.7 If you are joint business owners or a partnership, we will regard each owner or partner as being equally entitled to the customer data.

5. THIRD PARTY PROVIDERS

5.1 The Services may enable or assist you to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites. You do so solely at your own risk. We make no representation or commitment and will have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by you, with any such third party. Any contract entered into and any transaction completed via any third-party website is between you and the relevant third party, and not us. We recommend that you refer to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. We do not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

5.2 You hereby acknowledge your understanding that access to the internet, GSM networks and other communication media is associated with risks concerning authentication, data security, privacy, availability of services and reliability of transmission. You agree to bear full and exclusive responsibility arising from such risks.

5.3 Phorest is not a mobile phone operator. You acknowledge that Phorest delivers SMS messages via major telecommunications companies and mobile network providers and therefore can only influence the delivery response transmission of SMS messages within the technical constraints imposed by the abovementioned providers. Phorest is thus not liable for any network related issues including latency, and late transmission.

5.4 SMS messages submitted via our software will be transferred to the addressed mobile recipients within seconds to minutes, provided that the recipient's phone is switched on and located in an area covered by their subscribed mobile network provider. You acknowledge that, depending on the recipient's mobile provider service, it may not be possible to transmit the message to the recipient successfully, particularly if the provider does not support SMS delivery at all.

5.5 Phorest is not an Internet Service Provider. In order to use the Services, you must obtain access to the world wide web, either directly or through devices that access web-based content, and pay any service fees associated with such access.

5.6 You acknowledge that transmission of large SMS or Email amounts (Greater than 10,000 messages per day) may be subject to restrictions and delays on the part of the mobile network providers affected. You agree to communicate your intent to transmit such volumes to Phorest at least 2 business days in advance in order to ensure that such delivery can take place without disruptions.

5.7 You acknowledge that you must obtain the positive consent of all mobile phone users to receive SMS data from you. The same applies for email. You must not send SMS messages or emails to recipients who have made clear that they do not wish to receive SMS messages or advertisements via SMS and/or emails. Phorest is not liable for SMS messages or emails delivered to a mobile phone user after he/she has requested to opt out from receiving any further SMS transmissions or emails by you.

5.8 SMS messages are assigned a life time of 72 hours. SMS messages which could not be delivered successfully to the recipient's mobile phone within this period will be discarded without notice. Phorest debits transmitted SMS messages from your Phorest SMS account according to its transmission logs. These logs are deemed correct and valid even if you have objected to the accuracy of these accounting records, but Phorest's investigations have not produced evidence of a technical problem or error.

5.9 The online bookings deposit charges are retained by our third party processor to cover the cost of securely storing the clients credit card details and processing no shows. These range from 0.50 to 1.50 depending on the cost of the service. These deposits are then removed from the price of the service that the client pays in the salon. These deposits are not paid to you.

6. OUR OBLIGATIONS

6.1 We undertake that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

6.2 The undertaking at clause 7.1 will not apply to the extent of any non-conformance which is caused by use of the Services contrary to our instructions, or modification or alteration of the Services by any party other than us or our duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, we will, at our expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide you with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes your sole and exclusive remedy for any breach of the undertaking set out in clause 7.1. Notwithstanding the foregoing, we:

- (a) do not warrant that your use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by you through the Services will meet your requirements; and
- (b) are not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and you acknowledge that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

6.3 These terms and conditions will not prevent us from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under these terms and conditions.

7. CUSTOMER'S OBLIGATIONS

You will:

- (a) provide us with:
- (i) all necessary co-operation in relation to these terms and conditions; and
- (ii) all necessary access to such information as may be required by us;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- (b) comply with all applicable laws and regulations with respect to your activities under these terms and conditions;
- (c) carry out all other Customer responsibilities set out in these terms and conditions in a timely and efficient manner. In the event of any delays in your provision of such assistance as agreed by the parties, we may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) obtain and will maintain all necessary licences, consents, and permissions necessary for us, our contractors and agents to perform their obligations under these terms and conditions, including without limitation the Services;
- (e) ensure that your network and systems comply with the relevant specifications provided by us from time to time; and
- (f) be solely responsible for procuring and maintaining your network connections and telecommunications links from your systems to our data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the internet; and
- (g) comply with all applicable taxation law in your jurisdiction without reliance on the software.

8. CHARGES AND PAYMENT

8.1 You will pay us:-

- (a) any customer support service fees, as stated in your Order;
- (b) the initial subscription amount, as stated in your Order, prior to accessing and using the Services; and
- (c) any recurring subscription amounts and/or any additional expenses or charges as and when they become payable, as stated in your Order.

8.2 If for any reason we do not receive any payment when it becomes payable, without prejudice to any other rights and remedies available to us we may, without liability to you, disable your password, account and access to all or part of the Services.

9. PROPRIETARY RIGHTS

You acknowledge and agree that we and/or our licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, these terms and conditions do not grant you any rights to, or in, patents, copyrights, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

10. CONFIDENTIALITY

- 10.1 We will each hold any information which is proprietary and/or confidential to the other (the "Confidential Information") in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of these terms and conditions.
- 10.2 This obligation will survive termination of these terms and conditions, however arising.

11. LIMITATION OF LIABILITY

11.1 This clause sets out our entire financial liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you:

- (a) arising under or in connection with these terms and conditions;
- (b) in respect of any use made by you of any Hardware, the Services and Documentation or any part of them;
- (c) the delivery by us of any Customer Support Services; and
- (d) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with these terms and conditions.

11.2 Except as expressly and specifically provided in these terms and conditions:

- (a) you assume sole responsibility for results obtained from the use of the Services and the Documentation by you, and for conclusions drawn from such use. We will have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to us by you in connection with the Services, or any actions taken by us at your direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these terms and conditions; and
- (c) the Hardware, Services and the Documentation are provided to you on an "as is" basis; and
- (d) you assume sole responsibility for ensuring the accuracy and compliance with taxation legislation in your jurisdiction of all output obtained from the use of the Software.

11.3 Nothing in these terms and conditions excludes our liability:

- (a) for death or personal injury caused by our negligence; or
- (b) for fraud or fraudulent misrepresentation.

11.4 Subject to clauses 12.2 and 12.3:

- (a) we will not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under these terms and conditions; and
- (b) our total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these terms and conditions will be limited to the value of the initial subscription amount paid to us in connection with your Order.

12. INDEMNITY

You will defend us, indemnify us and hold us harmless against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of any breach by you of these terms and conditions or in connection with your use of the Hardware, the Services and/or Documentation.

13. TERM AND TERMINATION

13.1 These terms and conditions will, unless otherwise terminated in accordance with this clause, commence on the date of acceptance by us of your Order and will continue for a period of one year and will thereafter be automatically renewed for succeeding one year periods unless written notice of termination is given by the Customer to Phorest, no less than two months before the end of any such one year period. Such termination will take effect from the next succeeding anniversary of the contract.

13.2 Without prejudice to any other rights or remedies to which the parties may be entitled, we may terminate these terms and conditions without liability to you if:

- (a) you commit a material breach of any of the terms of these terms and conditions and (if such a breach is remediable) fails to remedy that breach within 30 days of being notified in writing of the breach; or
- (b) an order is made or a resolution is passed for the winding up of the Customer, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the Customer; or
- (c) the Customer is adjudicated bankrupt; or
- (d) an order is made for the appointment of an examiner to manage the affairs, business and property of the Customer; or
- (e) a receiver is appointed of any of the Customer's assets or undertaking; or
- (f) the Customer makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- (g) the Customer ceases, or threatens to cease, to trade; or
- (h) there is a change of control of the Customer; or
- (i) the Customer takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

13.3 On termination of these terms and conditions for any reason:

- (a) all licences granted to the Customer under these terms and conditions will immediately terminate;
- (b) the Customer will return and make no further use of any equipment, property, Documentation and other items (and all copies of them);
- (c) we may destroy or otherwise dispose of any Customer Data in our possession unless we receive, no later than 30 days after the effective date of the termination of these terms and conditions, a written request for the delivery to you of the then most recent back-up of Customer Data. We will use reasonable commercial endeavours to deliver the back-up to you within 30 days of receipt of such a written request, provided that you have, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). You will pay all reasonable expenses incurred by us in returning or disposing of Customer Data; and
- (d) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, will not be affected or prejudiced.

14. MISCELLANEOUS PROVISIONS

- 14.1 **Assignment:** You may not assign any of your rights under these terms and conditions.
- 14.2 **Severability:** All the terms and provisions of these terms and conditions are distinct and severable, and if any term or provision is held or declared to be unenforceable, illegal or void in whole or in part by any court, regulatory authority or other competent authority it will to that extent only be deemed not to form part of these terms and conditions, and the enforceability, legality and validity of the remainder of these terms and conditions will not in any event be affected. However, if as a result of the operation of this clause the rights or obligations of a party are materially altered to the detriment of that party, that party may terminate these terms and conditions within 30 days from the date of the relevant decision of the relevant decision of the relevant Court, regulatory authority or other competent authority.
- 14.3 **Whole Agreement:** These terms and conditions and the terms of any related Order supersedes all prior representations, arrangements, understandings and agreements, and sets out the entire, complete and exclusive agreement and understanding between us. Our rights under these terms and conditions are independent, cumulative and without prejudice to all other rights available to it whether as a matter of common law, statute, custom or otherwise.
- 14.4 **Forbearance and Waiver:** No waiver by us in respect of any breach of these terms and conditions by you will operate as a waiver in respect of any subsequent breach. No failure or delay by us in exercising any right or remedy will operate as a waiver thereof, nor will any single or partial exercise or waiver of any right or remedy prejudice its further exercise of any other right or remedy.
- 14.5 **Governing Law:** These terms and conditions and all relationships created by it will in all respects be governed by and construed in accordance with Irish law.
- 14.6 **Jurisdiction:** The Irish courts will have exclusive jurisdiction to settle any dispute which may arise out of or in connection with these terms and conditions or its performance.