

1 BACKGROUND

- 1.1 K3 and the Customer have previously entered into or are entering into an Agreement pursuant to which K3 has agreed to provide Products to the Customer.
- 1.2 The Products may currently or in future involve the processing by K3 of personal data for which the Customer is data controller or processor and for which K3 is a data processor or sub-processor (in each case for the purposes of Data Protection Law (as defined below)).
- 1.3 Data Protection Law requires the Customer and K3 to include certain principles in their contractual arrangements in relation to the processing of personal data and accordingly, the parties wish to amend and/or supplement the Agreement to include the terms set out in this document (the "**Data Processing Terms**"). In the event that the Customer has more than one Agreement with K3, these Data Processing Terms shall apply to each Agreement.

THE PARTIES AGREE THAT:

2 DEFINITIONS

- 2.1 The following definitions apply in these Data Processing Terms:
 - Affiliate:** any entity that directly or indirectly Controls, is Controlled by, or is under common Control with another entity, from time to time.
 - Agreement:** the agreement under which K3 has agreed to provide Products to the Customer, of which these Data Processing Terms form part.
 - Control:** the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company (whether direct or indirect), and controls, controlled and the expression change of control shall be construed accordingly.
 - Customer:** the entity party to the Agreement in relation to the supply by K3 of Products.
 - Data Protection Law:** (i) Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the "**General Data Protection Regulation**" or "**GDPR**") and any applicable national implementing laws, regulations and secondary legislation; and (ii) any applicable successor laws to the GDPR; and (iii) any other applicable laws regulating personal data processing in any applicable jurisdiction and which relates to the Agreement or Products including, where applicable, the UK Data Protection Act 2018. References to controller, processor, processing, personal data, personal data breach and data subject (and any other term used but not defined) shall each have the meaning attributed to such terms set out in Data Protection Law and "process" shall be construed accordingly. References to "the personal data" are references to the personal data provided or made available by the Customer to K3 pursuant to the Agreement. In respect of processing in or connected to the UK, references to Member State in paragraph 4 shall include the UK even where the UK ceases to be a member state of the EU.
 - K3:** the K3 Group company party to the Agreement with the Customer.
 - K3 Group:** K3 Business Technology Group plc (Co. no. 02641001) and its Affiliates.
 - Products:** the hardware, software, software as a service and services (or any one or more of them) supplied or agreed to be supplied by K3 to the Customer.
- 2.2 Construction. In these Data Processing Terms the following rules apply: a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); a reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established; a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted or the equivalent statute or statutory provision under the applicable law; any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; a reference to any document, agreement, policy, plan, procedure or similar is reference to the same as modified, updated or

replaced from time to time; a reference to **writing** or **written** does not include faxes or (except where stated otherwise) e-mails; a reference to software includes all updates, hot fixes and service packs as deployed in relation to that software; unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular; any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.

3 GENERAL OBLIGATIONS

- 3.1 Each party shall comply with all applicable requirements of Data Protection Law applicable to it in connection with the performance and operation of the Agreement. This paragraph is in addition to, and does not relieve, remove or replace, a party's obligations under Data Protection Law.
- 3.2 The parties acknowledge that for the purposes of Data Protection Law (where applicable), the Customer is the data controller and K3 is the data processor, except when the Customer acts as a processor of personal data, in which case K3 is a sub-processor.

4 K3 DATA PROTECTION OBLIGATIONS

- 4.1 The provisions of this paragraph 4 only apply in so far as K3 processes any personal data for the Customer which is subject to GDPR and/or the UK Data Protection Act 2018, and which requires the parties to conclude a processing contract (or other legal act).
- 4.2 The subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data, the categories of data subjects and the obligations and rights of the Customer are set out in these Data Processing Terms (including the Schedule) and the Agreement.
- 4.3 K3 shall:
 - (a) process the personal data only on documented instructions from Customer, including with regard to transfers of personal data to a third country or an international organisation, unless required to do so by Union or Member State law to which K3 is subject; in such a case, K3 shall inform the Customer of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
 - (b) ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - (c) take all measures required pursuant to Article 32 of the GDPR (*Security of Processing*);
 - (d) respect the conditions referred to in GDPR Article 28(2) and 28(4) for engaging another processor;
 - (e) taking into account the nature of the processing, assist the Customer by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of the GDPR;
 - (f) assist the Customer in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of processing and the information available to K3;
 - (g) at the choice of the Customer, delete or return all the personal data to the Customer after the end of the provision of services relating to processing, and delete existing copies unless Union or Member State law requires storage of the personal data;
 - (h) make available to the Customer all information necessary to demonstrate compliance with the obligations laid down in Article 28 of the GDPR and allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer; and
 - (i) immediately inform the Customer if, in its opinion, an instruction infringes the GDPR or other Union or Member State data protection provisions.
- 4.4 K3 shall:
 - (a) inform the Customer without undue delay after becoming aware of a personal data breach;
 - (b) subject to the provisions of any applicable law, notify the Customer:
 - (i) promptly if it receives or is notified of a request from an applicable data subject to have access to that person's personal data;
 - (ii) promptly if it receives or is notified of a complaint or request

relating to the Customer's obligations under Data Protection Law;
and shall provide the Customer with reasonable assistance in respect of the matters set out in (a) and (b) above.

5 CUSTOMER OBLIGATIONS

5.1 It is the sole responsibility of the Customer to satisfy itself that the Products enable the Customer to (in conjunction with the Customer's existing systems, processes, equipment and security) comply with its obligations under applicable laws, including Data Protection Law. K3 is not responsible for determining the requirements of Data Protection Law applicable to the Customer or the Customer's business or that the Products meet the requirements of Data Protection Law and K3 gives no warranties and makes no representations in this respect.

5.2 The Customer shall:

- (a) ensure that all instructions issued to K3 in respect of the processing of personal data shall be lawful, reasonable and in compliance with Data Protection Law, and shall act reasonably in exercising rights under these Data Processing Terms;
- (b) ensure that personal data made available to K3 is the minimum necessary in order for K3 to perform the Agreement, and the Customer shall not make available personal data to K3 unless strictly necessary for the performance of the Agreement; and
- (c) not use the Products in conjunction with personal data to the extent or in a manner that such use would be in breach of any applicable Data Protection Law.

5.3 Where K3 processes any personal data for the Customer, the Customer warrants and represents that the making available and/or transfer of personal data to K3 including for the processing contemplated by or required for the performance of the Agreement, including these Data Processing Terms, is lawful and in compliance with Data Protection Law, and that, where applicable, necessary data subject and/or data controller consents and/or notices are in place.

6 PRODUCT DELIVERY IMPLICATIONS

6.1 The parties agree that K3 shall not process personal data except for the purpose of or in connection with the performance and/or operation of the Products and/or the Agreement. The parties acknowledge that the Agreement and these Data Processing Terms constitute the documented instructions from the Customer to K3 for the processing of personal data by K3.

6.2 The Customer generally authorises and consents to K3 engaging other processors for the purpose of processing personal data in the performance of the Agreement provided that any such engagement shall at all times be in accordance with Data Protection Law. The Customer expressly consents to any K3 Affiliate being engaged as another processor.

6.3 The Customer consents (including pursuant to paragraph 4.3(a)) to K3 transferring personal data to a third country or international organisation provided that, where applicable, K3 complies with Article 44 of the GDPR. The Customer agrees and acknowledges that K3 may adopt or enter into standard data protection clauses (including for and on behalf of the Customer) as contemplated by Article 46 of the GDPR to ensure such compliance.

6.4 K3 shall not be liable for any failure to deliver the Products and/or comply with the other provisions of the Agreement as a result of the performance or implementation of these Data Processing Terms.

6.5 K3 shall be entitled to charge the Customer reasonable fees (calculated in accordance with K3's prevailing standard rates at the time) and costs and expenses reasonably incurred and the Customer shall pay such fees and costs and expenses on K3's payment terms:

- (a) if, as a result of the Customer's instructions, K3 (or its sub-processor) is required by Data Protection Law to process personal data outside of the agreed scope of the Products;
- (b) for any steps taken by K3 (or its sub-processor) under or in connection with paragraphs 4.3(e) to (h) and/or paragraph 4.4;
- (c) for any other assistance K3 (or its sub-processor) provides to the Customer in respect of Data Protection Law.

7 GENERAL

7.1 If there is any conflict or inconsistency between these Data Processing Terms and the remainder of the Agreement then the provisions of these Data Processing Terms shall prevail. These Data Processing Terms form part of the Agreement. Certain third party Products (which may include Microsoft on-line services) are subject to terms directly between the relevant third

party and the Customer, and which may include terms relating to Data Protection Law in respect of those Products.

- 7.2 K3 may amend these Data Processing Terms on written notice:
 - (a) if necessary to comply with applicable law;
 - (b) if required to do so by a supervisory authority or other regulatory entity;
 - (c) in order to implement standard contractual clauses adopted or approved by the European Commission or applicable supervisory authority; or
 - (d) in order to comply with an approved code of conduct or certification mechanism referred to under Articles 40, 42 and 43 of the GDPR.
- 7.3 The governing law and dispute resolution provision of the Agreement apply to these Data Processing Terms.
- 7.4 Where any Affiliate of the Customer receives or utilises and/or is entitled to receive or utilise the Products, and K3 processes personal data for that Customer Affiliate, these Data Processing Terms apply to any such processing, with K3 acting as the Customer's sub-processor. The Customer shall procure that any such Customer Affiliate complies with these Data Processing Terms as if named as the Customer, and any breach by a Customer Affiliate of a provision of these Data Processing Terms shall be deemed a breach of that provision by the Customer.

THE SCHEDULE

PROCESSING, PERSONAL DATA AND DATA SUBJECTS

If any section of this Schedule is unpopulated, details shall be as set out (or determined in accordance with) the Agreement.

1 PROCESSING BY K3

Scope

For or related to the provision of the Products, as may be further set out or determined in accordance with the Agreement.

Nature and Purpose of Processing

For or related to the provision of the Products, as may be further set out or determined in accordance with the Agreement, and which may include:

- (i) Access to and/or storage of systems on which personal data is held and/or processed; and
- (ii) Access to and/or receipt and/or storage of personal data.

Duration of the Processing

As set out or determined in accordance with the Agreement, and if not expressly set out, for the duration of the applicable Products.

2 TYPES OF PERSONAL DATA

Personal data provided or made accessible during the provision of the Products, including any one or more of the following (or as otherwise set out or determined in accordance with the Agreement):

- (i) Names
- (ii) Addresses and other contact information

3 CATEGORIES OF DATA SUBJECT

Data subjects, including any one or more of the following (or as otherwise set out or determined in accordance with the Agreement):

- (i) Employees of the Customer, or employees of the Customer's customers;
- (ii) Individual customers (or prospective customers) of the Customer;
- (iii) Employees of suppliers to the Customer;
- (iv) Other individual business contacts of the Customer.