

1. THE AGREEMENT

1.1 These Conditions apply to and form part of the Agreement between K3 and the Customer. If there is any conflict between an Order Confirmation, these Conditions, the Cloud Software Terms, the Data Processing Terms and/or any other document forming part of the Agreement, unless expressly stated otherwise, the following order of priority shall apply (i) the Order Confirmation (ii) Data Processing Terms (iii) the Cloud Software Terms (iv) these Conditions and (iv) any other document forming part of the Agreement.

2. DEFINITIONS AND INTERPRETATION

2.1 The definitions and rules of interpretation set out in Schedule 1 to these Conditions apply to the Agreement.

3. AGREEMENT DURATION

3.1 The Agreement shall commence on the Commencement Date and shall continue unless terminated earlier in accordance with Condition 4.

4. TERMINATION

4.1 The Agreement may be terminated by either party on not less than thirty (30) days' written notice to the other party which notice may be issued at any time or (where a minimum term is set out in the Order Confirmation or otherwise agreed) to expire at any time after such minimum term.

4.2 Without limiting its other rights or remedies, K3 may terminate the Agreement with immediate effect on written notice if the Customer (**defaulting party**):

- (a) commits a material breach of its obligations under the Agreement and (if such breach is remediable) fails to remedy it within 30 days of written notice requesting remedy; or
- (b) suffers an Insolvency Event.

For the purposes of this Condition 4.2, Customer non-payment of Fees as and when due shall be deemed a material breach capable of remedy.

4.3 Without limiting its other rights or remedies, K3 and its Affiliates may suspend all or any part performance of any or all agreements with the Customer (including the Agreement) and any and all Products or Services with immediate effect (i) if the Customer fails to pay any fees when due (including if payment is suspended) to K3 or its Affiliate or (ii) K3 or its Affiliate is otherwise entitled to terminate any agreement with the Customer (including the Agreement). K3 and its Affiliates shall have no liability for losses, liabilities or damages sustained by the Customer resulting from suspension or termination by K3 (or the relevant Affiliate) pursuant to this Condition 4. Where Cloud Software has been suspended in accordance with the Agreement reinstatement fees may apply.

4.4 Where the Cloud Software includes an integration or connection to payment services, the Customer shall (and it shall be the Customer's responsibility to) enter into and adhere to all necessary arrangements and agreements with the applicable payment services provider (and any acquirers and/or card providers, as applicable) including procuring any applicable merchant ID. K3 shall be entitled to nominate a specific payment service provider with which the Customer should contract in connection with the Cloud Software. K3 shall be entitled to terminate the Agreement with immediate effect on written notice to the Customer in the event that (i) the Customer no longer possesses a merchant number with the relevant payment provider; (ii) the Customer commits a breach of this Condition 4.4 and/or (iii) any applicable integration between the payment provider platform and the Cloud Software ceases. Unless payment services (and any payment software including any integration between a payment services platform and the Cloud Software) are expressly included in writing as forming part of the Cloud Software, K3 does not supply and is not responsible for any payment services or any integration to a payment services platform.

5. K3 OBLIGATIONS

5.1 The Customer shall purchase and (subject to payment of the Fees by the Customer in accordance with the Agreement) K3 shall use commercially reasonable endeavours to make available the Cloud Software specified on the Order Confirmation in accordance with the Agreement.

5.2 K3 shall use reasonable endeavours to meet any performance dates expressly agreed in writing by K3 for supply of Cloud Software, but any such dates shall be estimates only and time shall not be of the essence for the performance of K3's obligations under the Agreement.

6. CLOUD SOFTWARE SUPPLY

6.1 Cloud Software is made available as Subscription Software, on a non-exclusive basis and subject to the provisions of the Agreement (including the Cloud Software Terms).

6.2 Unless otherwise agreed in writing by K3, Cloud Software is made available on a single-premises basis and/or such other licence limits or units ("**Units**") as set out or referenced on the Order Confirmation or elsewhere in the Agreement or as otherwise notified by K3.

6.3 K3 does not provide any additional services or support as part of the Cloud Software but may (in its discretion and from time to time) provide a method for the Customer to log technical issues in respect of the Cloud Software and which may be by email or other method of communication. For the avoidance of doubt, nothing obliges K3 to update, upgrade, fix or otherwise modify its Cloud Software and any such updates, upgrades, fixes and modifications are at the discretion (including as to timing) of K3.

7. FEES AND PAYMENT

7.1 The Fees shall be paid to K3 by or on behalf the Customer in accordance with the Agreement. Where Cloud Software includes an integration or connection to payment services the Customer acknowledges that K3 may also receive fees related to the payment transactions from the payment services provider.

7.2 All Fees quoted on an Order Confirmation are for the Cloud Software specified on that Order Confirmation and are not automatically valid for additional purchases.

7.3 Fees may vary and any changes will be notified to the Customer in advance on at least 30 days' notice. The Customer is deemed to accept any such changes if it does not exercise the right to terminate the Agreement in accordance with Condition 4.1 within the 30 day notice period. Without prejudice to the generality of the foregoing and in addition, where K3 incurs additional or increased third party costs directly relating to the provision of Cloud Software K3 shall be entitled by notice to increase its Fees in proportion to such additional or increased costs.

7.4 Unless otherwise specified or agreed on the Order Confirmation the following payment and invoicing terms apply:

- (a) The Fees shall, in the absence of fraud or manifest error, be calculated using K3 (or its nominated third party) tools and records;
- (b) The Fees shall be invoiced monthly (or at such other invoicing intervals stated on the Order Confirmation) and in advance. Payment is required in advance of the relevant Cloud Software subscription period commencing;
- (c) Consumption Fees shall be invoiced monthly (or at such other invoicing intervals stated on the Order Confirmation) in arrears based on use/availability to use (dependant on license method) and/or per transaction (where applicable). K3 reserves the right to apply a credit limit to the Customer's account in respect of consumption-based Fees and suspend availability of Cloud Software if that credit limit is exceeded;
- (d) K3 is entitled to require payment of the Fees by direct debit, and direct debit documentation in the form issued by K3 must be signed and returned upon request. Orders may not be accepted and access to Cloud Software may be suspended without duly completed direct debit documentation or a direct debit mandate not being or remaining in place.

7.5 The Customer shall pay each invoice submitted by K3 in full, in the currency stated on the invoice, without set-off or deduction and in cleared funds within fourteen (14) days of the date of the invoice (or earlier if provided otherwise elsewhere in the Agreement or on the Order Confirmation).

7.6 All Fees or prices quoted or stated are exclusive of taxes, and any and all taxes and tariffs (including VAT, sales tax, export/import tariffs, duties and withholding tax) bank charges, commissions or deductions arising in connection with the Agreement shall be paid by the Customer in addition.

7.7 If the Customer disputes any invoice issued by K3 the Customer shall notify K3 in writing within 14 days of the invoice date with full details of the amount disputed and the reasons, and if no such notice is provided, the invoice is deemed accepted.

7.8 K3 may, without limiting its other rights or remedies, set off any amount owing to it or an Affiliate by the Customer against any amount payable by K3 to the Customer.

7.9 If the Customer fails to make any payment when due K3 shall be entitled to charge interest on the overdue amount at the rate of 4% per annum above Barclays Bank plc's base rate from time to time. Interest shall accrue on a daily basis from the due date until actual payment, whether before or after judgment.

7.10 The Customer acknowledges and agrees that Affiliates of K3 are entitled to invoice some or all of the Fees under the terms of the Agreement instead of K3, and any such Affiliates shall be entitled to collect and enforce payment as if they were K3.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 All IPR in the Cloud Software belong and shall belong to K3, its Affiliates or its third party suppliers and the Customer shall do and execute, or arrange for the doing and executing of, all reasonable acts, documents and things that K3 may reasonably consider necessary or desirable to perfect the right, title and interest of K3, its Affiliate or such third party in and to that IPR.

8.2 All K3 Materials (and any IPR in them) are the exclusive property of K3, its Affiliates or its licensors. The Customer grants K3 a non-exclusive, royalty free licence to use the Customer's IPR (and the IPR of third parties made available to K3 by the Customer) solely for the purpose of performing K3's obligations under the Agreement. The Customer warrants and represents that it has the necessary authorities and consents required to grant such licence.

8.3 Where (i) use or possession of the Cloud Software is determined in a court of law to infringe a third party right; (ii) K3 receives legal advice that use or possession by the Customer of the Cloud Software in accordance with the Agreement may constitute infringement of a third party's rights; or (iii) an injunction or similar order is granted in connection with any such infringement which prevents or restricts the use or possession by the Customer of the Cloud Software in accordance with the Agreement, K3 shall be entitled at its own expense and option to:

- (a) procure the Customer the right to continue using the Cloud Software;
- (b) modify or replace the Cloud Software to rectify the issue without material diminution in agreed functionality; or
- (c) terminate the Agreement (or relevant part of it) and refund the Customer a reasonable proportion of any pre-paid Fees in the context of the terminated Cloud Software and the use the Customer had of the Cloud Software before termination, and in which case the Customer shall cease use of the relevant Cloud Software.

8.4 The Customer shall notify K3 without delay on the Customer becoming aware of any claim made or threatened or any allegation that Cloud Software infringes any third party right.

8.5 This Condition 8 shall (subject to Condition 15.2(a)(iii)) survive any termination or expiry of the Agreement.

9. WARRANTIES

9.1 The Cloud Software is provided and made available "as is". To the fullest extent permitted by law, express terms of the Agreement are in lieu of all other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into the Agreement or any collateral contract, whether by statute, common law or otherwise, which are hereby excluded, including implied conditions, warranties or other terms as to satisfactory quality or fitness for purpose.

9.2 K3 shall have the right to make any changes to the Cloud Software which are necessary to comply with any Applicable Law, and shall be entitled to suspend the supply of Cloud Software where required (or K3 reasonably believes it is required) by (or to be in compliance with) any Applicable Law or by any applicable regulatory authority.

10. CONFIDENTIALITY

10.1 A party (**receiving party**) shall (i) keep in confidence (ii) use only for the purposes of the Agreement and/or the supply or use of the Cloud Software (iii) not disclose to any third party (iv) take reasonable security precautions to protect from disclosure (being no less than the receiving party applies to its own confidential information), all Confidential Information disclosed (or otherwise made available) to the receiving party by the other party (**disclosing party**) and its Affiliates (and in each case including its or their Representatives). The receiving party may disclose such Confidential Information (i) as is required to be disclosed by law, any governmental or

regulatory authority (including the rules of any stock exchange on which it or any Affiliate is listed) or by a court or tribunal of competent jurisdiction; and (ii) to its Representatives and its Affiliates (and their Representatives) (provided that such disclosure is subject to similar obligations of confidentiality as set out in this Condition 10 and the receiving party shall be responsible for procuring compliance with the provisions of this Condition 10 by that person); and (iii) in the case of K3, to third party suppliers and/or subcontractors, in connection with or as is reasonably necessary or desirable in order to perform the Agreement and/or provide the Cloud Software.

10.2 The provisions contained in Condition 10.1 shall not apply:

- (a) to any information which is in or enters the public domain other than as a result of a breach of the Agreement;
- (b) in respect of information the receiving party has obtained or obtains from a third party which is not under any obligation of confidence to the disclosing party;
- (c) where the information has been developed by the receiving party independently of the disclosure; and/or
- (d) to extend or increase the standards, warranties or obligations of K3 in connection with the provision of Cloud Software under the remainder of the Agreement.

10.3 On termination or expiry of the Agreement the receiving party will return or (at the request of the disclosing party) securely destroy all the Confidential Information of the disclosing party in its possession or control if not already destroyed. Save where prohibited by Applicable Law and subject to Condition 13 each party may retain one copy of the Confidential Information of the other party (or its Affiliates as applicable) but only to the extent that it needs to do so to ensure or evidence legal compliance with its obligations under the Agreement or Applicable Law.

10.4 Notwithstanding the Conditions above, K3 and its Affiliates may refer to the Customer (including in its publicity materials) as being a client of K3 and a user of its Cloud Software and the Customer shall (if requested by K3) not unreasonably withhold its consent to provide a written reference for K3.

10.5 The Customer may from time to time provide suggestions, comments or other feedback ("**Suggestions**") to K3 concerning the Cloud Software. Both parties agree that all Suggestions are and shall be given entirely voluntarily. Suggestions, even if designated as confidential by the Customer, shall not create any confidentiality obligation for K3 and K3 shall be free to use, disclose, reproduce, license or otherwise distribute, and exploit the Suggestions provided to it as it sees fit, entirely without obligation or restriction of any kind on account of IPR or otherwise and the Customer hereby transfers any IPR (if any) in Suggestions to K3.

11. CUSTOMER'S OBLIGATIONS

11.1 The Customer shall:

- (a) promptly provide reasonable co-operation and assistance to K3 in relation to the Agreement and the provision of the Cloud Software;
- (b) promptly provide K3 and its Representatives with such information and access to such equipment, systems, personnel, premises and facilities reasonably required by K3 in connection with the supply or delivery of the Cloud Software, and the Customer is responsible for ensuring the accuracy and completeness of all information provided;
- (c) comply with Applicable Laws in relation to the Agreement and its use of the Cloud Software and ensure that its use of the Cloud Software and the Customer Data does not infringe any Applicable Laws, regulations or third party rights and does not constitute Inappropriate Content (and K3 shall be entitled to suspend Cloud Software in the event of non-compliance with this Condition 11.1(c));
- (d) ensure it has sufficient licences and service rights for its use of the Cloud Software;
- (e) use the Cloud Software solely for its own internal business purposes and it shall not license, sublicense, sell, resell, rent, lease, transfer, distribute or commercially exploit or make the Cloud Software available to any third party and promptly notify K3 on becoming aware of any unauthorised use of the Cloud Software;
- (f) ensure its IT system is compatible with the Cloud Software;
- (g) be responsible for the inputting and/or migration of any data and the accuracy, completeness and reliability of that data;

- (h) use, throughout its IT network, reasonable security measures (including virus scanning software) and have in place appropriate security procedures and shall take reasonable steps to ensure that the Cloud Software are appropriately secure and protected from unauthorised use, malicious attacks and virus infection (and shall promptly notify K3 of the occurrence of any of the foregoing);
 - (i) ensure that all users comply with the Agreement in relation to their use of the Cloud Software, and be responsible for any such non-compliance
- 11.2 K3 shall not be liable for any delay or failure to perform the Agreement to the extent caused or contributed to by, and the Cloud Software do not include any service or requirement to the extent that such service or requirement is, or arises as a result of, ("**Excluded Causes**"):
- (a) any failure of the Customer to comply with its obligations under the Agreement or any other act, omission or neglect of the Customer or its Representatives, including any failure; (i) to ensure connectivity to its network and the internet including permitting remote support access, as applicable; (ii) (except to the extent an express obligation of K3 under the Agreement) to keep copies and back-ups of the Customer's data, software, programs, databases and IT records in accordance with generally accepted good practice (and sufficient to enable reinstallation or full recovery (as applicable) of the same); (iii) to ensure that Cloud Software is used only in accordance with any applicable instructions or recommendations (including in relation to use in conjunction with other supplies, components, materials, hardware, software and equipment); (iv) to ensure that the information and data it provides is and remains accurate and complete or (v) to notify K3 promptly upon becoming aware of any material error, defect or failing in the Cloud Software.
 - (b) any equipment, hardware, connections (including routers), software or services not forming part of the Cloud Software or any external factor or third party not under K3's reasonable control, including (i) public network internet and/or the transfer of data over communications networks and facilities; (ii) electrical issues (including fluctuation, interruption or surge in power); (iii) environmental issues (including air conditioning and humidity control); (iv) other matters affecting the Customer's IT environment (including viruses not introduced by K3).
- 12. SCOPE AND LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION**
- 12.1 Nothing in the Agreement (and notwithstanding anything in the Agreement to the contrary) shall limit or exclude K3's liability: (i) in respect of fraud or fraudulent misrepresentation; or (ii) to the extent not permitted by any Applicable Law (including in respect of death or personal injury caused by its negligence, or the negligence of its Representatives).
- 12.2 Subject to Condition 12.1 K3 shall under no circumstances be liable whether in contract, tort (including negligence), breach of statutory duty, misrepresentation (whether innocent or negligent), restitution or otherwise (and in each case howsoever arising) for (and in each case whether direct or indirect):
- (a) loss of profits, business, business opportunities, revenue, reputation and/or goodwill;
 - (b) loss of or corruption of or damage to data;
 - (c) anticipated savings or wasted expenditure (including management and operational time);
 - (d) any indirect or consequential loss or damage; and in each case irrespective of whether K3 was aware of the circumstances giving rise to such loss or damage.
- 12.3 Subject to Condition 12.1, K3's total aggregate liability in contract, tort (including negligence), breach of statutory duty, misrepresentation (whether innocent or negligent), restitution or otherwise arising under or in connection with the Agreement or any collateral contract (and in each case howsoever arising) in respect of all and any claims made in a Contract Year, shall not exceed the higher of: (a) 100% of the Fees paid by the Customer in that Contract Year (or, for claims made after expiry of the Term, the final Contract Year (or part thereof) of the Term) for the Cloud Software in respect of which the claim is made, or, if the claim does not relate to Cloud Software, 100% of the total Fees paid by the Customer to K3 in that Contract Year (or, for claims made after expiry of the Term, the final Contract Year (or part thereof) of the Term); and (b) £1,000.
- 12.4 The Customer acknowledges and agrees that:
- (a) K3 does not warrant or represent that the Cloud Software will be uninterrupted or error free or free of viruses or other harmful components. Cloud Software performance will vary depending on the hardware platform, software interactions, configuration, data usage, and other factors, and Cloud Software is neither fault tolerant nor free from errors, conflicts or interruptions. Accordingly, the existence of errors, conflicts or interruptions in Cloud Software shall not of itself constitute a breach of the Agreement;
 - (b) the Customer is solely responsible for ensuring that the Cloud Software functionality meets its requirements, and K3 does not warrant or represent that the Cloud Software meets, or has been developed to meet, the Customer's individual requirements;
 - (c) efficient use and operation of Cloud Software may be dependent on (i) end user training; and (ii) the volume of data being processed on or using the Cloud Software;
 - (d) the Customer shall indemnify, defend, and hold harmless K3 from any claims, including legal fees, related to modifications, customisations or developments (or use thereof) to Software made by or on behalf of the Customer;
 - (e) Cloud Software, or versions thereof, may at some time become 'end-of-life' and will cease to be maintained, supported, supplied and/or licensed and K3 does not and cannot guarantee the continued future availability of the Cloud Software whether during the Term or thereafter;
 - (f) the Customer is solely responsible for its use of the Cloud Software and the data generated or processed using the Cloud Software, and K3 is not responsible or liable for the same. The Customer shall perform reasonable checks to ensure the accuracy and integrity of data processed or generated from its use of the Cloud Software; and the Cloud Software Terms also apply.
 - (g) The parties have entered into the Agreement after fully understanding and considering that K3's liability under the Agreement has been set by reference to the Fees and that the Fees would have been higher without the exclusions and limitations on liability herein.
- 13. DATA PROTECTION**
- 13.1 The Data Processing Terms form part of the Agreement.
- 14. VERIFICATION AND AUDIT**
- 14.1 The Customer is required, during the Term and for 6 years thereafter, to maintain up-to-date, accurate records relating to its use of any Cloud Software (including the number of copies and Units of Cloud Software used, proof of purchase and the location of use of the Cloud Software) and upon request produce such records to K3.
- 14.2 The Cloud Software and servers on which Software is installed may, from time to time perform validation checks to verify that Cloud Software has been properly licensed and that no unauthorised changes have been made. The Customer agrees to K3 performing these validation checks and carrying out other reasonable audit activity.
- 14.3 K3 may use Customer related information (including, without limitation, device information, error reports, malware reports and usage information) in relation to its products and services and to verify the Customer's compliance with the Agreement and any relevant third party licenses or terms and may report the same to relevant third parties.
- 14.4 The Customer shall permit K3 and/or its Representatives on reasonable notice to perform such other audit and/or verification of Customer use of Cloud Software and to inspect and have access to the Customer premises as reasonably required by K3 to verify the Customer's compliance with the Agreement.
- 14.5 Without limiting any rights or remedies K3 may have, in respect of any unlicensed or unauthorised use of any Cloud Software (including as revealed by any verification or audit activity): (i) the Customer must promptly order sufficient licenses to cover the Customer's use; (ii) the Customer shall pay additional Fees as K3 reasonably requires in respect of the extent and period of the unauthorised or unlicensed use and (iii) K3 may share the under licensing (and related information) with any relevant third party. If material unlicensed

use is found, the Customer shall reimburse K3 for the costs K3 has incurred in verification or audit.

15. GENERAL

15.1 Assignment and other dealings. K3 may at any time assign, transfer, novate, mortgage, charge, subcontract or deal in any other manner with all or any of its rights and/or obligations under the Agreement (a "**Dealing**") including in connection with (i) its or any of its Affiliates banking or financing arrangements (ii) a sale or transfer of some or all of a business or asset (including any software or other IPR) or (iii) a Dealing with or to an Affiliate. Without limiting the generality of the foregoing, K3 shall also be entitled to use sub-contractors in connection with the provision of some or all of the Cloud Software. The Customer shall not, without the prior written consent of K3, sub-licence, rent, lend, assign, transfer, charge or otherwise encumber, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Agreement, including any Software and/or Software licences. Notwithstanding the provisions of Condition 10, K3 shall be entitled to disclose Confidential Information to a prospective assignee/transferee on a confidential basis in connection with a proposed Dealing.

15.2 Consequences of termination.

(a) On any expiry or termination of the Agreement for any reason:
 (i) the accrued rights of the parties as at termination or expiry shall not be affected by the termination or expiry;
 (ii) K3 may submit invoices for Fees not yet invoiced and the Customer shall pay these and all other unpaid invoices and amounts (together with any applicable accrued interest) in accordance with the Agreement payment terms. Fees are not refundable on any termination or expiry of the Agreement (howsoever arising); and
 (iii) the Customer shall cease use of the Cloud Software and any K3 Materials and shall delete the same from the Customer's (or applicable third party) systems and return (or destroy at K3's request) all copies of the same.
 (b) The Customer acknowledges that any right to use Cloud Software (being Subscription Software) is time-limited and subject to recurring fees and upon termination or expiry of the Agreement the Customer will no longer have the right to use Cloud Software.

15.3 Insurance. During the Term the Customer shall maintain in force with a reputable insurer such commercial risks insurance as a reasonable and prudent business of the nature of the Customer may reasonably be expected to maintain.

15.4 Force Majeure. Neither party shall be liable as a result of any delay or failure to perform its obligations under the Agreement as a result of a Force Majeure Event (save in respect of the Customer's obligations to pay Fees).

15.5 Severance. If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause or the existence of any invalid, illegal or unenforceable provision shall not affect the validity and enforceability of the rest of the Agreement.

15.6 Waiver. A waiver of any right under the Agreement or law is only effective if it is given expressly in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy.

15.7 Third parties. Other than as set out in Condition 15.8, a person who is not a party to the Agreement shall not have any rights to enforce its terms, provided always that Affiliates of K3 shall be entitled to enforce and benefit from the provisions of the Agreement as if they were K3.

15.8 No agency. The Agreement does not constitute, establish or imply any partnership, joint venture, agency, employment or fiduciary relationship between the parties. Neither Party shall have, nor represent that it has, any authority to make or enter into any commitments on the other's behalf or otherwise bind the other in any way.

15.9 Variation. Except as set out in the Agreement, no variation of the Agreement, including the introduction of any additional

terms and conditions shall be effective unless it is agreed in writing and signed by the parties.

15.10 Regulatory Compliance.

(a) Each party shall comply with all applicable laws relating to (i) anti-bribery and anti-corruption including but not limited to the UK Bribery Act 2010 (together "**Bribery Laws**"); and (ii) anti-slavery and human trafficking laws including the UK Modern Slavery Act 2015 ("**Slavery Laws**") and shall not do anything that shall place the other party in breach of such laws.
 (b) Neither party shall engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the UK Bribery Act 2010; or sections 1, 2 or 4 of the UK Modern Slavery Act 2015 in each case as if such activity, practice or conduct had been carried out in the UK.
 (c) Each party shall have and shall maintain in place throughout the term of the Agreement its own policies and procedures (including adequate procedures for the purposes of the UK Bribery Act 2010) to ensure compliance with Bribery Laws and Slavery Laws and will enforce them as appropriate.
 (d) K3 shall promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by K3 in connection with its performance of the Agreement.

15.11 Export. Neither party shall export, directly or indirectly, any item acquired under or in connection with the Agreement (or any products incorporating any such item) in breach of any Applicable Laws concerning export or import. The Customer shall be responsible for procuring any necessary import/export licenses required in connection with the delivery of the Cloud Software.

15.12 Authority. Each party warrants that it has full capacity, authority, and all necessary licences, permits and consents, to enter into and perform the Agreement, and that those signing the Agreement are duly authorised to bind the party for whom they sign.

15.13 Notices. Any notice required to be given under the Agreement, shall be in writing (not email unless expressly stated otherwise) and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier to a party's contact address (as provided under the Agreement) or registered office address. Any notice shall be deemed to have been duly received:

(a) if delivered personally, when left at the party's contact address (as provided under the Agreement) or registered office address;
 (b) if sent by pre-paid first-class post or recorded delivery, at 11.00 am on the second Business Day after posting; or
 (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

This Condition shall not apply to the service of any proceedings or other documents in any legal action.

15.14 Entire Agreement. The Agreement constitutes the entire agreement between the parties and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the other party which is not set out in the Agreement. To the extent permitted by law, the Agreement applies to the exclusion of any other terms that the Customer seeks to impose or incorporate (including any purchase order terms), or which would otherwise apply or be implied (whether by statute, common law (including, without limitation, in respect of termination rights) trade, custom, practice or course of dealing or otherwise). The Agreement may only be terminated and/or rescinded in accordance with its terms (including Condition 4) and all implied rights to terminate or rescind are hereby excluded.

15.15 Counterparts. The Agreement may be executed in counterparts or duplicates, each of which, when executed, shall constitute an original and such counterparts or duplicates together shall constitute one and the same instrument. No counterpart or duplicate shall be effective until each party has executed at least one counterpart or duplicate.

15.16 Survival. Provisions of the Agreement which expressly or by implication have effect after termination or expiry (including provisions necessary for the enforcement or interpretation of

the Agreement) shall survive its termination or expiry and continue in full force and effect (including pursuant to Condition 15.2, *intellectual property rights* (Condition 8); *confidentiality* (Condition 10); *liability* (Condition 12) and *Governing law* (Condition 15.18)).

- 15.17 **Language.** The Agreement is drafted in the English language. If any part of the Agreement is translated into any other language, the English language version shall prevail. Any notice or similar communication given under or in connection with the Agreement, shall be effective if in the English language.
- 15.18 **Governing law.** The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England (or as otherwise set out on the Order Confirmation) and each party irrevocably submits to the exclusive jurisdiction of the courts of that jurisdiction to settle any such dispute or claim, provided that nothing in the Agreement shall limit or prevent K3 or any of its Affiliates from taking any action in any jurisdiction in respect of the protection of its IPR or Confidential Information or in respect of any steps for interim relief or remedies (including injunctions) or in respect of enforcement of any award or order.

SCHEDULE 1- INTERPRETATION

This Schedule forms part of the Agreement between K3 and the Customer and the definitions and rules of interpretation set out in this Schedule 1 apply to the Agreement.

The following definitions apply:

Application Form: an application for Cloud Software submitted by the Customer via a website operated by K3 (or in such other manner as the parties may agree).

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 between K3 and the Customer for the supply of Product(s), consisting of: (i) the Order Confirmation (ii) these General Terms and Conditions; (iii) Cloud Software Terms; and (iv) any other document specifically referenced in any of the above documents and expressly stated as forming part of the Agreement.

Applicable Law: all applicable laws, regulations, directives, statutes, subordinate legislation and common law of any jurisdiction applicable to the performance of the Agreement.

Business Day: a day other than a Saturday, Sunday or public holiday in the jurisdiction of incorporation of K3.

Cloud Software or SaaS: any software made available as a hosted service supplied by K3 for the Customer as identified on the Order Confirmation and as further set out in the Cloud Software Terms.

Commencement Date: shall be either: (i) the date set out as such on the Order Confirmation; or (ii) where no date is set out on the date K3 starts performing the Agreement.

Confidential Information: confidential information concerning a party's and/or its Affiliates' business, customers, suppliers, employees, IPR or its products and services, pricing, financial position and/or strategy. For the avoidance of doubt, Cloud Software (including the source code of such software) is confidential information of K3 and/or its Affiliates.

Consumption Fees: Fees based on how many units used/available to use (dependant on license method, and which includes any transaction based fees) per month (or other period) as set out on the Order Confirmation, and as updated from time to time in accordance with the Agreement.

Contract Year: consecutive 12-month periods during the Term with the first such Contract Year commencing on the Commencement Date save that the final Contract Year shall end on the date of expiry or termination of the Agreement.

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 person identified as such on the Order Confirmation.

Customer Data: any data, content or other information inputted or provided by or on behalf of the Customer (including by any user) for incorporation into or as part of use of any Cloud Software, including any information derived from such information.

Data Processing Terms: the terms applicable to the processing of personal data by K3 available at https://www.k3btg.com/wp-content/uploads/docs/GDPR_Data_Processing_Terms.pdf or as otherwise referenced on the Order Confirmation or provided to the Customer.

Excluded Cause: has the meaning given in Condition 11.2.

Fees: the fees and charges payable by or on behalf of the Customer to K3 under the Agreement including as shown on the Order Confirmation and as may be amended in accordance with the Agreement.

Force Majeure Event: any event beyond the reasonable control of the party concerned.

General Terms and Conditions or Conditions: these general terms and conditions including this Schedule 1.

Group: (in respect of an entity) that entity and its Affiliates.

Inappropriate Content: any material which (in the opinion of K3) is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or religious hatred, menacing, or in breach of any third party IPR.

Intellectual Property Right or IPR: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Insolvency Event: any of the following occurring in relation to the Customer:

- (i) it suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or commences negotiations with or makes a quotation to all or any class of its creditors with a view to rescheduling any of its debts;
- (ii) it suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business (other than as part of a solvent reorganisation);
- (iii) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with its non-solvent winding up;
- (iv) 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 given or if an administrator is appointed over it; or a person has become entitled to appoint or has appointed an administrative receiver or receiver over any of its assets or a receiver is appointed over any of its assets;
- (v) a proposal is made for a voluntary arrangement or for any other composition, scheme, or arrangement with, or assignment for the benefit of its creditors (and not as part of a solvent re-organisation);
- (vi) it becomes insolvent within the meaning of s123 of the Insolvency Act 1986 or a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986;
- (vii) (being an individual) is the subject of a bankruptcy petition, application or order dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing their own affairs or becomes a patient under any mental health legislation;
- (viii) any event occurs, or proceeding is taken, with respect to it in any jurisdiction that has an effect substantially equivalent or similar to any of (iii) to (vii) above.

K3: the K3 entity set out on the Order Confirmation.

K3 Materials: any and all manuals, technical literature and other documentation provided or made available by K3 under the Agreement.

Order Confirmation: the K3 order confirmation issued by K3 in respect of Cloud Software (which may include confirmation

of quantities and Fees) following submission of an Application Form.

Cloud Software Terms: the Cloud Software Terms at Schedule 2 of these Conditions.

Representative: an employee, officer, agent, adviser or sub-contractor.

Subscription Software: software supplied for a specific period of time (and on the basis of recurring charges) and not on a perpetual basis.

Term: the duration of the Agreement from the Commencement Date until terminated.

Unit: has the meaning in Condition 6.2.

Construction. In these Conditions and the Agreement, 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 (except where stated otherwise) but does include 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.

SCHEDULE 2

1. CLOUD SOFTWARE TERMS

1.1 These Cloud Software Terms form part of the Agreement and set out additional terms on which K3 provides Cloud Software.

1.2 Cloud Software Service

(a) If stated on the Order Confirmation, then (subject to payment of the Fees and the other terms of the Agreement) K3 shall use commercially reasonable endeavours to make available (through connection to the internet) and the Customer shall have the right to access the Cloud Software for its internal business purposes during the Term.

(b) K3 may, where reasonably practicable, inform the Customer in advance of any scheduled maintenance which is anticipated to impact the availability of the Cloud Software. K3 does not warrant, represent or guarantee that the Cloud Software will be uninterrupted or error free.

(c) K3 may, in its discretion, apply mandatory updates, service packs, hot fixes, upgrades, and enhancements to the Cloud Software and otherwise may alter the Cloud Software from time to time, including in order to comply with Applicable Law.

(d) **Software Licence:** Where any element of the Cloud Software solution includes the requirement for any part of the Cloud Software to be installed on-premise (for example, on a local device), then (subject to payment of the Fees and the other terms of the Agreement) K3 grants to the Customer a non-exclusive, non-transferable, licence in object code format during the Term to use that element of the Cloud Software for its internal business purposes. The Agreement does not grant the Customer any right to access and/or use software source code and K3 shall be under no obligation at any time to make such source code available to the Customer.

(e) The Customer shall ensure that all users of the Cloud Software comply with the Agreement (including these Product Terms) in relation to their use of the Cloud Software. Where such on-premise Cloud Software is supplied on or for installation on any specific hardware or device then such Cloud Software may only be used on that hardware/device.

1.3 K3 Cloud Software Access:

(a) The Customer has a right to access the Cloud Software on a non-exclusive basis and on the basis of the number of users (named or concurrent), servers, devices, premises and/or such other licence/access limits or units ("**Units**") as set out on the Order Confirmation or as otherwise notified by K3.

(b) The Cloud Software may only be used with a compatible operating system, browser and hardware, and for the authorised number and type of Units.

(c) The Customer is solely responsible for ensuring that it has a suitable internet connection of the appropriate bandwidth and speed.

(d) Unless expressly agreed otherwise in writing by K3, access to the Cloud Software on a user basis is provided on the basis that all users are required to be named users.

1.4 Third Party Content and IPR

(a) Cloud Software may contain or be provided with third party content or IPR and the Customer shall comply with any terms provided to the Customer in respect of use of such IPR (including the licence terms applying to any open-source software).

1.5 **Restrictions:** The Customer shall not (and shall not permit any other person to):

(a) work around any technical limitations in the Cloud Software or circumvent the validations functions of the Cloud Software;

(b) use any part of the Cloud Software on behalf of or for the benefit of any third party, including without limitation any consulting, service-bureau, time-sharing, rental or services (including commercial software hosting services) of any other kind;

(c) separate out from the Cloud Software any software which forms part of it or attempt to use any such software other than as part of the Cloud Software;

(d) use the Cloud Software or any part of it (i) to develop and/or (ii) in conjunction with new applications, databases or tables other than those contained in the Cloud Software;

(e) publish any part of the Cloud Software for others to copy or give access to the Cloud Software to third parties;

(f) modify or remove any copyright or proprietary notices;

(g) except to the extent permitted by law, decompile, reverse engineer, disassemble or otherwise derive the source code of any part of the Cloud Software;

(h) unless expressly agreed otherwise in writing by K3, copy, make corrections to or otherwise modify or adapt the Cloud Software or create derivative works based on the Cloud Software or permit any part of Cloud Software to be distributed or combined with or become incorporated in any other computer programs;

(i) access the Cloud Software through any device not approved by K3.

1.6 The Customer acknowledges that:

(a) The Cloud Software may contain inactivated product modules or components not authorised for access or use. The Customer is only entitled to access and use the modules specified in the Order Confirmation.

(b) Upon termination of the right to access the Cloud Software or on termination or expiry of the Agreement, the Customer will no longer have a right to use the Cloud Software and any such use or access may violate copyright laws and constitute a material breach of the Agreement. If any Cloud Software is deployed on the Customer premises or third party premises on its behalf then on such expiration or termination the Customer shall allow K3 to remove all copies of the relevant Cloud Software. Upon termination or expiry of the Agreement or the Customer's right to access the Cloud Software, K3 may destroy or otherwise dispose of any Customer Data in its possession.

1.7 **Multiplexing:** Any device/website domain accessing the Cloud Software including through a multiplexed or pooled connection must be appropriately licensed/authorised together with the applicable Fees paid.

1.8 **Product/Access Keys:** The Cloud Software may require a key to access a particular version. The Customer is responsible for and liable for the installation and use of keys and must not copy or share the keys with third parties. Keys for Cloud Software are issued for a limited period. Multiple keys may be required during the Term (including for each Contract Year), and such keys may not be provided if all Fees have not been paid when due. The Customer's right to use the Cloud Software may be subject to receipt of the relevant key.

1.9 **Downgrade:** The Customer has no right to use or receive prior versions of the Cloud Software.

1.10 Liability for third party claims:

(a) K3 shall defend or, at its option, settle, any action brought or claim made against the Customer by any third party that the normal operation, possession or use (in accordance with the Agreement) by the Customer of the Cloud Software constitutes an infringement of such third party's IPR within the United Kingdom or EU (an "**IPR Infringement**") and K3 shall pay the associated damages and reasonable costs of the Customer if awarded or agreed (by K3) to be paid to such third party provided that the Customer: (i) notifies K3 without delay in writing (with full details) of such action or claim; (ii) gives K3 the right of exclusive conduct (at K3's expense) of the defence of such action or claim and/or negotiations for a settlement or compromise; (iii) gives K3 (at reasonable cost) all reasonable assistance as requested by K3 in the defence, settlement or compromise of such action or claim; (iv) allows K3 to receive and retain all amounts recovered from in connection with such action or claim and (v) does not compromise, settle or admit liability without the prior written consent of K3.

(b) K3 shall have no liability under (a) above or otherwise relating to any IPR Infringement to the extent it arises from:

- (i) alteration, modification or development made by or for the Customer or by any person other than K3 (even if made with K3 consent); (ii) the combination, connection, operation or use of Cloud Software with software, hardware or materials not supplied or approved for the same by K3; (iii) any third party or Customer act or omission (including breach of the Agreement); (iv) the possession, use, development, modification or maintenance of any open-source software or breach of the applicable licence terms; (v) use of a release of the Cloud Software which is not the current release or failure to install and use all available updates, service packs and hot fixes; or (vi) use after notification by K3 of infringement or potential infringement.
- (c) The Customer shall notify K3 without delay on the Customer becoming aware of any such action or claim as would fall under paragraph 1.10 above.
- 1.11 Customer's Obligations.** The Customer shall:
- (a) be entirely responsible for all activities conducted and charges incurred under its passwords and user-names whether authorised by it or not;
- (b) comply with any reasonable security policy and acceptable use policy notified to it by K3 from time to time.
- 1.12 Customer Data.** The Customer is solely responsible for the data that it inputs or uses with the Cloud Software, and K3 is not responsible for analysing that data. The Customer shall indemnify K3 against all claims, costs, damages, losses, liabilities and expenses arising as a result of (a) any action or claim that any Customer Data or other material posted to, or linked to, the Cloud Software or transmitted or hosted via the Cloud Software constitutes Inappropriate Content, and/or (b) the Customer's misuse of any of the Cloud Software.
- 1.13 Consequences of Termination of Services** Upon termination or expiry of the Cloud Software (howsoever arising) K3 may destroy or otherwise dispose of any Customer Data in its possession unless K3 receives, no later than the effective date of termination or expiry, a written request from the Customer for the most recent backup of the Customer Data. K3 shall use reasonable commercial efforts to deliver the backup to the Customer within 30 days of receipt of such request, provided that the Customer has, at the time, paid all Fees and charges outstanding as at and resulting from termination (whether or not due at the date of termination). The Customer shall pay (and in advance if required by K3) on a time and materials basis (plus expenses) for all effort incurred by K3 in returning or disposing of Customer Data. Otherwise, the Customer is solely responsible for extracting a copy of all Customer Data from the Cloud Software.
- 1.14 Suspension or Termination of Services**
- (a) K3 may suspend the Cloud Software without liability if:
- (i) Customer is in breach of any security policy or acceptable use policy notified to Customer by K3 from time to time or there is some other event of unauthorised use of the Cloud Software; or
- (ii) there is an event or circumstance for which K3 reasonably believes that the suspension of the Cloud Software is necessary to protect the K3 network, K3's other customers or some or all of K3's services generally or there appears in K3's reasonable opinion a significant legal, operational or security risk.
- (b) K3 will provide the Customer with as much advance warning of any suspension of Cloud Software as is reasonably possible in the circumstances, although the Customer acknowledges that advance warning may not be possible if immediate suspension is required.
- 1.15** K3's sole and exclusive liability (and the Customer's sole and exclusive remedy) in respect of any loss, damage or corruption to data to the extent caused solely by K3 default (whether by negligence or breach of the Agreement) and solely in connection with the Cloud Software shall be limited to using reasonable endeavours to restore such data to the last available back-up (where back-ups form part of the Cloud Software service).
- 1.16 Excluded Causes:** In addition to the Excluded Causes under Condition 11.2 of the General Terms and Conditions, K3 shall not be liable for any delay or failure to perform the Agreement (including the Cloud Software) to the extent caused or contributed to by, and the Cloud Software does not include any service or requirement to the extent that such service or requirement is, or arises as a result of:
- (a) maintenance relating to or affecting the Cloud Software;
- (b) archives or backups not specifically agreed in writing as forming part of the Cloud Software;
- (c) third party content, products or services accessed through the Cloud Software.
- 1.17 Cloud Software Warranties:** K3 warrants that for 90 days from the date of first delivery (or the date upon which K3 first makes available for delivery or downloading) ("**Warranty Period**"), the Cloud Software will be free from material errors when used in accordance with instructions.
- 1.18 Cloud Software Warranty Breach:** If there is a breach of the warranty in paragraph 1.17 (which has been notified to K3 by the Customer within the Warranty Period) then K3 shall (as the Customer's sole and exclusive remedy) and provided the Customer has provided all information reasonably required by K3 in connection with the warranty breach firstly seek to remedy the breach by repairing or replacing the relevant element of the Cloud Software and if K3 is unable to do so within a reasonable period of no more than 30 days it shall (at its discretion) either; (i) agree a reasonable rebate of Fees with the Customer (up to the amount actually paid by the Customer in respect of the relevant element of the Cloud Software); or (ii) terminate the Agreement in respect of the relevant Cloud Software and refund the Fee paid for the relevant Cloud Software provided the Customer deletes and returns all copies of the Cloud Software. K3 shall have no other liability for any defects or errors in the Cloud Software.
- 1.19 Warranty void:** There shall be no breach of the warranty in paragraph 1.17 to the extent caused or contributed to by (i) any Excluded Cause; (ii) if the Cloud Software is not the current version of the Cloud Software (iii) the connection, linking or combination of the Cloud Software with any other software or system; (iv) all available updates and/or fixes have not been installed or (v) to the extent that the Cloud Software has been modified by anyone other than K3. For the avoidance of doubt (i) the warranty is for initial delivery only and not for updates, upgrades, fixes or service packs; and (ii) the warranty only applies to the Cloud Software delivered/made available at that time and does not extend to cover previously delivered/made available Cloud Software.