1. THE AGREEMENT

1.1 These Conditions and the applicable Product Terms apply to and form part of any Agreement between K3 and the Customer. Multiple Agreements may be formed by the Customer and K3 and these Conditions shall apply to each one. If there is any conflict between an Order Form, these Conditions, the Product 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 Form (ii) Data Processing Terms (iii) the Product Terms (iv) these Conditions, and (iv) any other document forming part of the Agreement. In the event of conflict between an SoW and the Agreement, the provisions of the Agreement shall prevail.

1.2 Any additional terms and conditions not forming part of the Agreement that the Customer seeks to apply, including on any PO (or order confirmation, or similar), are specifically dis-applied, irrespective as to whether such PO (or other document) is provided before or after 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 for the Initial Term and each consecutively recurring Renewal Period unless terminated earlier in accordance with Condition 4. Where expressly stated on an Order Form, different Products may have different Commencement Dates, Initial Terms and/or Renewal Periods and the Agreement shall commence and continue in respect of each such Product accordingly.

3.2 Notwithstanding Condition 3.1, where Products to be supplied under an Agreement are non-recurring in nature (including the one-off supply of Hardware and/or Perpetual Software or Consultancy Services days/hours) the Agreement shall (unless terminated earlier in accordance with Condition 4) terminate in respect of those Products on delivery of the relevant Products.

4. TERMINATION

4.1 The Agreement or, where different Products are expressly stated on an Order Form to have different Commencement Dates, Initial Terms and/or Renewal Periods, the Agreement in respect of a Product, may be terminated by either party with effect at the expiry of the applicable Initial Term or any Renewal Period on not less than eighty (80) days' written notice to the other party.

4.2 Without limiting its other rights or remedies, either party may terminate the Agreement with immediate effect on written notice if the other party (**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 Products are suspended in accordance with the Agreement reinstatement fees may apply.

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 supply, licence and/or deliver (as applicable) the Products specified on the Order Form in accordance with the Agreement.

5.2 K3 shall use reasonable endeavours to meet any performance dates expressly agreed in writing by K3 for the delivery of any Products, 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. K3 may provide the Services from its own sites, third party sites or Customer premises.

6. SOFTWARE/HOSTING SERVICES SUPPLY

6.1 Subject to the terms of the Agreement, and unless otherwise set out on the Order Form (i) K3 Software is licensed and/or supplied subject to the provisions of the Agreement (including the applicable Product Terms); and (ii) Third Party Software and any third party Hosting Service is procured on and subject to the standard licence and/or service terms (including any applicable end user licence agreement) provided, notified or made available by the relevant third party or K3.

6.2 Software is supplied and/or licensed 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 limits or units ("**Units**") as set out or referenced on the Order Form or elsewhere in the Agreement or as otherwise notified by K3 and this volume cannot, for so long as the Agreement continues, be decreased during the Initial Term or during any Renewal Period. Software is supplied as Subscription Software (and not perpetual) unless expressly stated otherwise in writing by K3.

7. FEES AND PAYMENT

7.1 The Customer shall pay K3 the Fees and expenses in accordance with the Agreement.

7.2 The Fees for Products shall be as set out in the Order Form or, if no price is stated, K3's standard price as at the date of delivery. Expenses (including travel, accommodation and subsistence) shall be charged in addition to the Fees.

7.3 All prices quoted (on an Order Form or otherwise) are for the Products specified, and are not automatically valid for additional purchases (which may include additional units or licenses of the same Hardware or Software or additional Consultancy Services days/hours). Fees in respect of Support Services and Hosting Services are based on the Hardware, Software and/or Hosting Services (as applicable) specified and any changes (including as to quantities) may incur additional Fees.

7.4 For Recurring Fees:

(a) K3 shall be entitled to apply minimum annual inflationary increases to Recurring Fees. The amount of any such minimum increase shall be based on increases in the UK RPI (or any successor or replacement index nominated by K3) during a preceding 12 month period plus 2% (**Inflationary Increase**). K3 shall be entitled to select (i) a single date per annum for the purpose of measuring the Inflationary Increase; and (ii) the date upon which the Inflationary Increase takes effect with respect to the Recurring Fees.

(b) Fees for each Contract Year and/or Renewal Period after the first Contract Year (or, if shorter, Initial Term) may be subject to increases above any Inflationary Increase applied under Condition 7.4(a), provided that K3 informs the Customer of such increase not less than eighty (80) days in advance of the commencement of the relevant Contract Year or Renewal Period (as applicable).

(c) Without prejudice to Conditions 7.4(a) and 7.4(b), where K3 incurs additional or increased third party costs directly relating to the provision of Products (such as Third Party Software vendor costs) K3 shall be entitled, at any time, to increase its Fees with immediate effect in proportion to such additional or increased costs.

7.5 Unless otherwise specified or agreed on the Order Form or in the Product Terms, the following payment and invoicing terms apply:

(a) **Hardware and Perpetual Software:** shall be invoiced on or after the earlier of the date of the Order Form or applicable Commencement Date. Payment may be required before delivery.

(b) **Recurring Fees:** shall be invoiced annually (or at such other invoicing intervals stated on the Order Form) and in advance. K3 is entitled to require payment in advance of the relevant Service or subscription period commencing. The first payment shall be invoiced on or after the earlier of the Commencement Date or the date of the Order Form.

(c) **Consumption Fees:** shall be invoiced monthly or quarterly (or at such other invoicing intervals stated on the Order Form or Product Terms) in arrears based on Customer use/availability to use (as applicable). For the purpose of calculating the Consumption Fees, Customer's usage/availability to use shall,

in the absence of fraud or manifest error, be calculated using K3 tools and records. K3 reserves the right to apply a credit limit to the Customer's account in respect of consumption-based Products and suspend availability of consumption-based Products in excess of that credit limit.

(d) **Consultancy Services:** shall be invoiced in arrears, as consumed (and at the frequency as stated on the Order Form or, if not stated, at K3's discretion) unless pre-payment is agreed, in which case the Fees shall be invoiced on or after the earlier of the Commencement Date or the date of the Order Form.

(e) **Any Other Products**: shall be invoiced in accordance with the payment and invoicing terms set out on the Order Form or, if not set out, on the date of the Agreement or otherwise at K3's discretion.

7.6 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 Form or invoice). 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: (i) charge interest on the overdue amount at the rate of 4% per annum above Barclays Bank plc's base rate (or that of any successor or replacement bank nominated by K3) from time to time. Interest shall accrue on a daily basis from the due date until actual payment, whether before or after judgment; and (ii) recover from the Customer any fees, costs and/or charges incurred by K3 in recovering the overdue amount (including debt recovery agency fees, legal fees and court costs).

7.10 K3 is entitled to require payment of Recurring 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 Products may be suspended without duly completed direct debit documentation or a direct debit mandate not being or remaining in place.

7.11 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 in accordance with the Agreement as if they were K3.

8. **CONSULTANCY SERVICES**

8.1 Fees for Consultancy Services shall be calculated on a time and materials basis in accordance with K3's standard daily or hourly (as applicable) fee rates which apply at the date of delivery, unless different rates are agreed and set out or referenced on the Order Form, in which case the rates on the Order Form shall apply. If an agreed rate is set out or referenced on the Order Form, that rate shall be valid only for the number of Consultancy Services days or hours set out in that Order Form. If the number of Consultancy Services days or hours set out on the Order Form are not utilised within a period of 3 months from the Commencement Date, the rate shall revert to K3's standard rate.

8.2 Daily rates are calculated on the basis of a working day during K3's normal business hours (as determined by K3) worked on Business Days and hourly rates are based on Consultancy Services performed during these hours. K3 is entitled to charge travel time at a rate no higher than the applicable daily or hourly rate (pro-rated to actual travel time). K3 shall be entitled to charge (i) overtime at 150%; and (ii) weekend work and public holiday work at 200%, of the applicable rate on a pro-rata basis. Where daily rates apply and less than a full day of Consultancy Services is supplied, the applicable day rate shall be pro-rated, subject to K3 being entitled to apply a

minimum charge of half a day. K3 also reserves the right to charge full days for Consultancy Services provided from locations other than at K3 sites, which includes Consultancy Services at Customer sites. Where hourly rates apply the minimum charge is an hour.

8.3 Any number of Consultancy Services days or hours quoted (on an Order Form or otherwise) is an estimate only, and (without prejudice to Condition 8.4, Condition 8.5 or the minimum charges in Condition 8.2) (i) the Consultancy Services charges shall be based on the days or hours (as applicable) utilised and (ii) if the number of days or hours (as applicable) worked to deliver the agreed Consultancy Services is less than an estimate, then no charge will be made for days or hours (as applicable) not utilised.

8.4 Where the Customer requests to postpone Consultancy Services where a date has been agreed the Customer shall be obliged to pay for any expenses (including travel) already incurred or non-refundable, and K3 shall be entitled to charge the Customer a percentage of the Fee for the postponed time according to the following scale: where there is (i) less than 48 hours' notice, 100% of the Fee; (ii) less than 7 days' notice, 75% of the Fee; and (iii) more than 7 days' notice, 50% of the Fee. For the avoidance of doubt, this Condition 8.4 relates to postponement of Consultancy Services days, and there is no right for the Customer to cancel the Consultancy Services other than in accordance with Condition 4.

8.5 Where Consultancy Services are pre-paid, Fees are non-refundable in the event that the pre-paid Consultancy Services are not fully utilised.

9. **HARDWARE SUPPLY**

9.1 **Supply and Delivery of Hardware**

(a) Subject to the terms of the Agreement, K3 shall deliver Hardware to the location set out in the Order Form or such other location the parties agree in writing (**Delivery Location**). Delivery of Hardware shall be completed on its arrival at the Delivery Location. If no Delivery Location is expressly agreed in writing by K3, the Hardware will be delivered to the Customer ex works, at K3's site or chosen location.

(b) The Customer acknowledges that it is solely responsible for preparing and maintaining the Delivery Location (and any other location at which the Hardware will be located) as a proper and safe environment in which any Hardware is to operate.

(c) If K3 fails to deliver the Hardware, the Customer shall have no liability to pay for it and K3's sole liability for not delivering shall, subject always to Condition 14.1, be limited to a refund of Fees paid for the undelivered Hardware under the Agreement.

(d) K3 shall be entitled to make partial deliveries or deliveries by instalments and each instalment may be invoiced separately. Failure to deliver any one or more instalment shall not of itself constitute a breach of the Agreement.

(e) If the Customer fails to accept or take delivery of Hardware K3 shall store it until delivery takes place and charge the Customer for all related costs and expenses (including insurance). If the Customer fails to take delivery within 10 Business Days from the date the Hardware was first ready for delivery, the Customer remains liable to pay for the Hardware and K3 may resell or otherwise dispose of part or all of the Hardware (in which case the Customer's liability to pay for it shall be reduced by the amount received by K3 for the Hardware).

9.2 The price of Hardware is exclusive of all costs and charges of packaging, insurance, transport and installation, which K3 shall be entitled to charge in addition.

9.3 **Title and risk**

(a) The risk in the Hardware shall pass to the Customer on delivery. Title to the Hardware shall not pass to the Customer until K3 receives payment in full (in cash or cleared funds) for the relevant Hardware.

(b) Until title to the Hardware has passed to the Customer, the Customer shall store the Hardware for K3 separately in a fiduciary capacity, shall not remove, deface or obscure any identifying mark or packaging on or relating to the Hardware, shall maintain the Hardware in satisfactory condition and keep it fully insured, and shall notify K3 immediately if it becomes subject to an Insolvency Event.

(c) If before title to the Hardware passes to the Customer the Customer suffers an Insolvency Event then, without limiting any other right or remedy K3 may have, K3 may at any time: (i) require the Customer to deliver up all Hardware in its possession; and (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Hardware is stored in order to recover it.

(d) The Customer shall inspect all Hardware deliveries for potential missing items and defects no later than 14 days after delivery. The Customer shall notify K3 promptly of the discovery of the same. If the Customer fails to notify a defect the Hardware shall be deemed to have been approved without further recourse to K3 unless the defect was not reasonably capable of being discovered during the inspection in which case (e) below shall apply.

(e) Hardware from third party suppliers shall be subject to any applicable manufacturer warranty that may be provided by the manufacturer to the Customer. For K3 Hardware, in the event that any material defects in design, material and workmanship of the Hardware are notified to K3 within the period of 12 months after delivery, K3 shall (at its discretion, and as the Customer's sole and exclusive remedy) repair or replace the applicable hardware or terminate the Agreement in respect of that Hardware and refund any Fees paid for that Hardware. K3 shall have no liability for claims notified outside this 12 month period.

(f) K3 warrants that Hardware will be supplied free from any third party encumbrances (except in relation to third party retention of title in connection with payment).

10. INTELLECTUAL PROPERTY RIGHTS

10.1 All IPR in the Products (including the outputs of any Services) 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.

10.2 Subject to payment of the Fees and the terms of the Agreement K3 grants the Customer a non-exclusive, non-transferable licence to use any IPR created during the Consultancy Services for the Customer's own internal business purposes. Where that IPR is vested in software, such licence is granted on the provisions of this Agreement and the applicable Product Terms, and where such software is designed to work with or enhance K3 Standard Software or Third Party Software the Customer is only permitted to use such IPR in connection with its use of such Software and for no longer than the period that the Customer is validly licensed to use that Software. Condition 19.2(b) shall apply to the licenses granted in this Condition 10.2.

10.3 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.

10.4 Where (in relation to any Products proprietary to or licensed by K3) (i) use or possession of the Product 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 Product 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 Product 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 Product;

(b) modify or replace the Product 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 the Fee in the context of the terminated Product, the Fees paid and the use the Customer had of the Product before termination, and in which case the Customer shall cease use of the relevant Product.

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

10.6 This Condition 10 shall (subject to Condition 19.2(a)(iii)) survive any termination or expiry of the Agreement.

11. WARRANTIES

11.1 K3 warrants to the Customer that all Services will be performed:

(a) by appropriately qualified and experienced personnel;

(b) using reasonable care and skill; and

(c) materially in accordance with any specification expressly agreed in writing by K3 and set out or referenced in the Agreement.

11.2 The Products are 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.

11.3 To the fullest extent permitted by law, the only warranties in relation to any Third-Party Software, third party Software Maintenance, third party Hardware and third party Hosting Services are those provided to the Customer in the licence or other terms from the relevant third-party supplier.

11.4 K3 shall have the right to make any changes to the Products which are necessary to comply with any Applicable Law, and shall be entitled to suspend the supply of Products 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.

12. CONFIDENTIALITY

12.1 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 Products (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 12 and the receiving party shall be responsible for procuring compliance with the provisions of this Condition 12 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 Products.

12.2 The provisions contained in Condition 12.1 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;

(d) to any information which the receiving party needs to use or disclose in order to safeguard its interests or enforce its rights under the Agreement (in which case any such use or disclosure shall be limited to the extent necessary); and/or

(e) to extend or increase the standards, warranties or obligations of K3 in connection with the provision of Products under the remainder of the Agreement.

12.3 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 15 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.

12.4 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 Products and the Customer shall (if requested by K3) not unreasonably withhold its consent to provide a written reference for K3 or act as a reference site.

12.5 The Customer may from time to time provide suggestions, comments or other feedback ("**Suggestions**") to K3 concerning the Products. 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.

13. CUSTOMER'S OBLIGATIONS

13.1 The Customer shall:

(a) promptly provide reasonable co-operation and assistance (and procure the reasonable assistance and co-operation of any third party supplier to the Customer, including any third party hosting provider) to K3 in relation to the Agreement and the provision of the Products;

(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 Products, 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 Products and ensure that 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 Products in the event of non-compliance with this Condition 13.1(c));

(d) enter into and comply with any relevant third party agreements or service terms relating to Products (which may include hosting or end user licence arrangements) and ensure it has sufficient licences for its use of the Products;

(e) use the Products 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 Products available to any third party (other than to the extent permitted under Condition 19.16 or Condition 19.17) and promptly notify K3 on becoming aware of any unauthorised use of the Products;

(f) prepare the Customer's facilities and premises for the supply of the Products and ensure its IT system is compatible with the Products;

(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 Products 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), and comply with any reasonable security policy and acceptable use policy notified to it by K3 from time to time;

(i) where applicable to the Products, install and configure the Products (including updates, service packs and hot fixes) except to the extent the same is expressly stated to be an obligation of K3 under the Agreement;

(j) ensure that all users comply with the Agreement in relation to their use of the Products, and be responsible for any such non-compliance;

(k) be entirely responsible for all activities conducted and charges incurred under its passwords and user names whether authorised by it or not;

(l) 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 Products or transmitted or hosted via the Products constitutes Inappropriate Content, and/or (b) the

Customer's use of any of the Products other than in accordance with the Agreement; and

(m) promptly perform such other obligations or dependencies as are stated to be its responsibility in any SoW materially in accordance with such SoW.

13.2 K3 shall not be liable for any delay or failure to perform the Agreement to the extent caused or contributed to by, and the Products 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 the same is expressly stated to be an 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 Products are installed and kept in suitable premises and under suitable conditions (including as specified by K3 or in any applicable operating manuals or manufacturer's instructions or recommendations); (iv) to ensure that Products are used only in accordance with the applicable operating manuals or vendor/manufacturer's instructions or recommendations (including in relation to use in conjunction with other supplies, components, materials, hardware, software and equipment); (v) to implement any recommendations, maintenance or fixes advised by K3 or any applicable third party manufacturer or product supplier; (vi) to test all fixes, releases and updates before using any Software in live production; (vii) to ensure that the information and data it provides is and remains accurate and complete; or (viii) to notify K3 promptly upon becoming aware of any material error, defect or failing in a Product.

(b) any equipment, hardware, connections (including routers), software or services not forming part of a Product 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); and (v) scheduled maintenance.

13.3 If K3 (in its sole discretion) provides Products in respect of an Excluded Cause it shall be entitled to charge at its standard rates.

14. SCOPE AND LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

14.1 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).

14.2 Subject to Condition 14.1, 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.

14.3 Subject to Condition 14.1, 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 Year, shall not exceed the higher of: (a) 100% of the Fees paid by the Customer in that Year (or, for claims made after expiry of the Term, the final Year (or part thereof) of the Term) for the Product(s) in respect of which the claim is made, or, if the claim does not relate to a Product, 100% of the total Fees paid by the Customer to K3 in that Year (or, for claims made after expiry of the Term, the final Year (or part thereof) of the Term); and (b) £5,000.

14.4 The Customer acknowledges and agrees that:

(a) K3 does not warrant or represent that the Products will be uninterrupted or error free. Software, Hardware and Hosting Services are complex and performance will vary depending on the hardware platform, software interactions, configuration, data usage, and other factors, and Software, Hardware and Hosting Services are neither fault tolerant nor free from errors, conflicts or interruptions. Accordingly, the existence of errors, conflicts or interruptions in Products shall not of itself constitute a breach of the Agreement;

(b) the Customer is solely responsible for ensuring that the Product functionality meets its requirements, and K3 does not warrant or represent that the Products meet, or have been developed to meet, the Customer's individual requirements or are fit for purpose;

(c) efficient use and operation of Products may be dependent on (i) the Customer installing applicable upgrades and enhancements and provisioning sufficient end user training; and (ii) the volume of data being processed on or using the Products;

(d) when Products are delivered via the internet K3 cannot and does not guarantee or warrant that the Products will be uninterrupted, or free of viruses or other harmful components;

(e) successful completion of any acceptance testing/confirmation process agreed by the parties shall constitute acceptance by the Customer of the relevant Product for all purposes under the Agreement;

(f) K3 shall have no liability to the Customer if any Third Party Software or third party Hosting Service vendor refuses, disables, cancels or fails to renew the Customer's access to, or amends the functionality or specification of, Software or third party Hosting Services. K3 and/or a third party licensor/supplier may, from time to time, discontinue or change the subscription SKUs available, description, features and/or functionality for Subscription Software or Hosting Services;

(g) K3 is not liable or responsible for (and is not liable or responsible for any problems that result from) modifications, customisations or development not made by K3 to any Software, and K3 will not provide Support Services for any such modifications, customisations or development. 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;

(h) in the event that K3 provides the Customer with any "pre-release" or "beta" Software, the Customer may use such Software in a development or test environment only and not in a production environment. Software Support does not apply to any such Software;

(i) Products (including standard Software products), 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 such Products whether during the Term or thereafter;

(j) the Customer is solely responsible for its use of the Products and the data generated or processed using the Products, and K3 is not responsible or liable for the same. The Customer shall be responsible for performing reasonable checks to ensure the accuracy and integrity of data processed or generated from its use of the Products; and

(k) statements regarding K3's liability in respect of individual Products may also be set out in the Product Terms.

14.5 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.

15. DATA PROTECTION

15.1 The Data Processing Terms form part of the Agreement.

16. SUSPENSION OF SERVICES FOR SECURITY

(a) K3 may suspend Products without liability if: (i) the 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 Product; or (ii) there is an event or circumstance for which K3 reasonably believes that the suspension of the Product 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 Products as is reasonably possible in the circumstances, although the Customer acknowledges that advance warning may not be possible if immediate suspension is required.

17. PERSONNEL

17.1 Each party shall take reasonable precautions to ensure the health and safety of the other party's Representatives while such Representatives are at its premises and shall ensure that its own Representatives comply with the other party's health and safety policies (as made available) whilst on the other party's premises.

17.2 The Customer warrants and represents that there is no person (whether employed by the Customer or any other person) whose employment will transfer to K3 or any of its Affiliates under TUPE as a consequence of or related to the entry into of the Agreement or the provision of the Products.

17.3 **Non-solicitation**: During the Term and for a period of six months after its termination neither party shall, without the prior written consent of the other, solicit, or permit any Affiliate to solicit, the employment or services of any person who is employed or contracted as an independent contractor by the other party or any of its Affiliates and who has been involved in connection with the supply of the Products and/or the performance of the Agreement. This Condition does not apply to any employment or engagement resulting from a general recruitment advert or campaign or to the extent that this restriction is not lawful in accordance with Applicable Law.

18. VERIFICATION AND AUDIT

18.1 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 Software (including the number of copies and Units of Software used, proof of purchase and the location of the Software) and upon request produce such records to K3.

18.2 The Products and servers on which Software is installed may, from time to time perform validation checks to verify that Products (including Software) have been properly licensed and that no unauthorised changes have been made. The Customer agrees to K3 and/or third party licensors performing these validation checks and carrying out other reasonable audit activity. In addition to the above validation checks, the Customer agrees that K3 and the Products may use telemetry to provide data on (i) product metrics and performance; (ii) use and unauthorised use monitoring; and (iii) customer and partner management. K3 reserves the right to perform an annual licensing true-up and invoice for any under licensing (including on a historical basis) based on list pricing at the date of such invoice.

18.3 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.

18.4 The Customer shall permit K3 and/or its Representatives on reasonable notice to perform such other audit and/or verification of Customer use of Products and to inspect and have access to the Customer premises as reasonably required by K3 to verify the Customer's compliance with the Agreement.

18.5 Without limiting any rights or remedies K3 (or any third party licensor) may have, in respect of any unlicensed or unauthorised use of any Products (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 (plus interest) 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.

18.6 The Customer grants to K3 and its Affiliates a perpetual, irrevocable, transferable, non-exclusive, royalty-free, worldwide licence to aggregate, collate, copy, reproduce and analyse the data contained in, related to or derived from the Customer Data in anonymised form (**Anonymised Data**) and to use, copy, distribute, market, adapt, sub-licence and otherwise commercially exploit such Anonymised Data. To the extent any new Intellectual Property Rights or other rights arise in such Anonymised Data, K3 shall own full title to the same and the provisions of Condition 10.1 shall apply to any such IPR.

19. **GENERAL**

19.1 **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 Products. 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 12, K3 shall be entitled to disclose Confidential Information to a prospective assignee/transferee on a confidential basis in connection with a proposed Dealing.

19.2 **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) subject to Condition 19.2 (b) the Customer shall cease use of the Products and any IPR licensed to the Customer under Condition 10.2, 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) On termination or expiry of the Agreement (other than termination by K3 in accordance with Condition 4.2), subject to payment of all applicable Fees having been paid by the Customer to K3, the Customer shall continue to have the right to use (i) any IPR licensed under Condition 10.2 and/or (ii) K3 Software which is Perpetual Software, in accordance with the relevant terms of the Agreement (including the applicable Product Terms and Conditions 4.2, 13, 14, 18 and 19) such right continuing unless and until K3 terminates the surviving provisions of the Agreement in accordance with Condition 4.2.

(c) The Customer acknowledges that it may not always be possible for K3 to align the term or licence periods (including renewal dates) in respect of all third-party Products (such as Third Party Software) with the term of the Agreement and licence periods (including renewal dates) of other Products provided under it.

(d) The Customer acknowledges that any right to use 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 Subscription Software.

(e) Upon any termination or expiry of SaaS or Hosting Services (howsoever arising) it shall be the Customer's responsibility to extract and retain any Customer Data from the applicable Service and K3 may destroy or otherwise dispose of any Customer Data in its possession or control.

19.3 **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. The Customer shall also insure (i) any property belonging to Customer (including, without limitation, information or data) supplied to K3 and required for the provision of the Products or in connection with the Agreement; and (ii) keep safely and insure for full replacement value any K3 property in the Customer's control or possession at any time.

19.4 **SLA achievement**. Any service level agreement or guidance issued from time to time by K3 and relating to the Products does not constitute a separate contractual agreement, and is not, and is not intended to create, a legally binding obligation on K3. In respect of K3's compliance with any applicable service levels (whether applying to Support Services, Hosting Services or otherwise) K3's measurement shall be binding save in the case of fraud or manifest error. Any service levels quoted are targets only and do not constitute a guaranteed service level and failure to meet targets shall not, of itself, constitute a breach of the Agreement or a default on the part of K3.

19.5 **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).

19.6 **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.

19.7 **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.

19.8 **Third parties.** Other than as set out in Condition 19.9**,** 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.

19.9 **Third Party Partners.**

(a) To the extent K3 is required in accordance with its (or any Affiliate's) agreements with a third party vendor or supplier of Third Party Software or other Products to include a provision to this effect, such vendor or supplier (including Microsoft and its affiliates) has the right to enforce the Agreement, has the right to verify the Customer's compliance with the Agreement and may contact the Customer directly.

(b) Notwithstanding this Condition 19.9 and any other provision of the Agreement, the parties may agree to vary, rescind or terminate the Agreement in accordance with its terms and without the consent of any third party.

(c) Where any Products are supplied from third party suppliers (including Third Party Software), K3's ability and obligation to deliver (including at any renewal) is subject to acceptance of the order by the relevant third party.

(d) To the extent that the Products are Microsoft Products, the Customer shall, unless K3 informs the Customer otherwise, maintain K3 as Microsoft "Partner of Record" or, as applicable and confirmed by K3, Microsoft "Consulting Partner", for the duration of the Agreement, and shall only change such status with the prior written approval of K3.

(e) Any applicable third party terms (including those referenced at Condition 6.1) only apply to that third party's Software or service and not to any other Software or service and each such third party disclaims liability for any other Software or service (including K3 Software and K3 Services) or any effect the same has on its own software or own service, or the Customer's systems, business or operations.

(f) Unless otherwise expressly agreed in writing or expressly notified in writing by K3, the Customer is required, as a

minimum, to have and maintain at least the same number and type of licenses for the K3 Software as the Customer has for any Third Party Software (including Microsoft Dynamics Software) in conjunction with which the K3 Software operates (including where the K3 Software is embedded with the Third Party Software). K3 may invoice for all and any under-licensing (plus interest), including on an historical catch-up basis. If the Customer has contracted with K3 for a higher number of K3 licenses, the higher number shall continue to be invoiced. K3 is entitled to determine and confirm which K3 licence corresponds to the applicable Third Party Software (including Microsoft) licence.

19.10 **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.

19.11 **Variation.** The Customer acknowledges that these terms and conditions also apply or may or will apply to other K3 customers, and that it may be necessary or desirable for the Conditions and/or Product Terms to be updated from time to time, including as a result of changes to the Products supplied by K3. As such, K3 shall be entitled to amend, vary and/or supplement these Conditions and/or Product Terms from time to time, by making available (which may be by way of updated web-link) to the Customer such amended, varied and/or supplemented Conditions and/or Product Terms. Any such updated Conditions and/or Product Terms shall take effect (as between K3 and the Customer) at the commencement of the Customer's next Contract Year or (if sooner) Renewal Period. Otherwise, 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.

19.12 **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.

19.13 **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 Products.

19.14 **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.

19.15 **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.

19.16 **Authorised Affiliates.** Subject to the licence terms applicable to any Third Party Software and any other applicable third party terms and conditions, the Customer's Authorised Affiliates shall be entitled to receive or use (as applicable) the Products on the terms of the Agreement on the following conditions:

(a) the Customer shall procure that Authorised Affiliates comply with the terms of the Agreement as if named as the Customer in it;

(b) such access shall be taken into account for the purposes of the Unit limits referred to in Condition 6.2;

(c) any breach by an Authorised Affiliate of a provision of the Agreement shall be deemed a breach of that provision by the Customer and the Customer shall be liable for the acts and omissions of any such Authorised Affiliate as if they were the acts or omissions of the Customer;

(d) if there is any change of Control of an Authorised Affiliate, unless K3 agrees otherwise in writing, it shall immediately cease to use or receive (as applicable) the Products; and

(e) an Authorised Affiliate shall not be entitled to enforce or take any action in respect of the Agreement directly.

19.17 **Third party access to Products.** Subject to the licence terms applicable to any Third Party Software and any other applicable third party terms and conditions, if the Customer makes any Product available to a third party service provider of the Customer (which shall require the prior written and explicit consent of K3), then:

(a) the Customer shall ensure that such third party accesses and uses such Product solely for the internal business purposes of the Customer and to the minimum extent required for such purposes;

(b) the Customer shall ensure that such third party shall comply with the obligations of the Agreement relevant to such use as if named as the Customer in it;

(c) such third party access shall be taken into account for the purposes of the Unit limits referred to in Condition 6.2;

(d) any breach by such third party of a provision of the Agreement shall be deemed a breach of that provision by the Customer and the Customer shall be liable for the acts and omissions of any such third party as if they were the acts or omissions of the Customer; and

(e) no such third party shall be entitled to enforce or take any action in respect of the Agreement directly.

19.18 **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.

19.19 **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.

19.20 **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 19.2, *intellectual property rights* (Condition 10); *confidentiality* (Condition 12); *liability* (Condition 14) and *Governing law* (Condition 19.22)).

19.21 **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.

19.22 **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 Form) 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:

Authorised Affiliates: any entity under the direct or indirect Control of the Customer, and any other Affiliate of the Customer expressly agreed in wiring by the parties as an Authorised Affiliate.

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 Form; (ii) these General Terms and Conditions; (iii) the relevant Product 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 or procured or agreed to be supplied or procured by K3 for the Customer, which may be a combination of some or all of K3 Software or Third Party Software.

Commencement Date: shall be either: (i) the date set out as such on the Order Form; or (ii) where no date is set out, the earlier of the date of complete signature of the Order Form and the date K3 starts performing the Agreement; or (iii) if these Conditions are applied at renewal only, the renewal date as may be stated on the applicable renewal invoice or accompanying statement.

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

Consultancy Services: the consultancy services (or which may also be described as 'professional services') provided or agreed to be provided by K3, which may include consultancy, development and training and including any user acceptance testing assistance and/or services.

Consumption Fees: Fees based on how many units the Customer uses/has availability to use (as applicable).

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 Form.

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 Product.

Customised Software: all customised code developed and/or supplied by K3 to the Customer under the Agreement including as part of the Consultancy Services for use by the Customer.

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 otherwise provided or made available to the Customer.

Excluded Cause: has the meaning given in Condition 13.2.

Fees: the fees and charges payable by the Customer to K3 under the Agreement including as shown on the Order Form, the relevant Product Terms 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.

Hardware: the hardware or other goods (or any part of it) provided or agreed to be provided by K3, but for the avoidance of doubt, not Software.

Hardware Support Services: Support Services (including Service Desk) provided or agreed to be provided in respect of the Hardware specifically agreed in writing by K3 as having the benefit of Support Services to enable the Customer to report and K3 to investigate Product Faults with the applicable Hardware.

Hosting Services: the hosting services provided or agreed to be provided by K3.

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

Initial Term: either (i) the initial term as set out on the Order Form; or (ii) (if no such term is stated on an Order Form) one Contract Year.

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 a party:

(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) 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 (vi) above;

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

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

K3 Software: the K3 Standard Software and Customised Software.

K3 Standard Software: the standard Software products provided or agreed to be provided by K3, but not including Third Party Software.

Microsoft: the business known as Microsoft, including any or all of Microsoft Corporation Inc. and Microsoft Ireland Operations Limited, any applicable Affiliate or any successor entity.

Order Form: the K3 order form between the Customer and K3 for the supply by K3 of the Products set out in that order form or, if these Conditions are applied at renewal only, the applicable renewal invoice and/or accompanying statement.

Perpetual Software: any Software licensed on a perpetual basis (but subject to any termination rights).

Products: the Hardware, Software, Software Maintenance and Services (or any one or more of them).

Product Fault: Any material error, bug, or defect with the applicable Product (excluding any error, bug or defect contained within any Customer specific configuration or infrastructure).

Product Terms: any Product-specific terms and conditions forming part of the Agreement.

Recurring Fees: Fees of a recurring nature, including Fees for Subscription Software, Support Services and Hosting Services.

Renewal Period: either (i) the consecutively recurring renewal period set out on the Order Form; or (ii) (if no such period is stated on an Order Form) each consecutively recurring period of one Contract Year following expiry of the Initial Term or prior Renewal Period (as applicable).

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

Services: the services performed or agreed to be performed by K3 (or its subcontractors) under the Agreement (which may include Hosting Services, Consultancy Services and any Support Services), but not including Software (and Software Maintenance) or Hardware.

Service Desk: the provision of a K3 remote support service desk to enable the Customer to report and K3 to investigate Product Faults with the applicable Supported Product.

Software: any software provided or agreed to be provided by K3 which may be K3 Software or Third Party Software, and which may be licensed on a perpetual or subscription basis or provided as Cloud Software/SaaS, together with any Customised Software.

Software Maintenance: the update maintenance service provided or agreed to be provided in respect of Supported Software.

Software Support: one or both of Software Maintenance and/or Service Desk services provided or agreed to be provided in respect of the applicable Supported Software.

SoW or Statement of Work: a document agreed or to be agreed by the parties setting out the detailed scope of a project to implement Products.

Subscription Software: any Software supplied for a specific period of time (and on the basis of recurring charges) and not on a perpetual basis and which may be provided as Cloud Software/SaaS.

Support or Support Services: support services provided or agreed to be provided by K3, and which may include Hardware Support Services and/or Software Support.

Supported Product (or Supported Software/Supported Hardware): the application Software or Hardware (as applicable) expressly agreed in writing by K3 as having the benefit of applicable Support service(s).

Term: the duration of the Agreement, which shall be the Initial Term and any Renewal Period(s) until terminated.

Third Party Software: any Software product which is owned by a third party software vendor and provided or agreed to be provided by K3 as may be identified as Third Party Software on the Order Form.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006.

Unit: has the meaning in Condition 6.2.

User: any individual user of a Product.

Year: consecutive 12-month periods commencing from the (earliest, if more than one) Commencement Date.

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 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.

1. SUPPORT SERVICES PRODUCT TERMS

1.1 If Support Services are agreed to be provided by K3 under the Agreement, these Product Terms form part of the Agreement and set out additional terms on which K3 provides Support Services.

1.2 **Definitions**:

Extended Hours: (if applicable) the hours outside of the Standard Hours during which K3 has agreed to provide Service Desk in respect of Extended Hours Incidents.

Extended Hours Incidents: the type of incidents confirmed by K3 as covered by the Service Desk when occurring during Extended Hours.

Incidents: a type of support ticket logged by the Customer with K3 which is a Product Fault causing an unplanned interruption to the applicable Product or reduction in the quality of the Product.

SLA: any service level agreement and associated guidelines published by K3 from time to time.

Standard Hours: the standard support hours in respect of the Service Desk.

Support Hours: the Standard Hours and/or the Extended Hours as applicable.

2. SUPPORT SERVICES

2.1 If Support Services are agreed in writing to be provided by K3 (including as may be stated on the Order Form) then (subject to payment of the Fees and the other terms of the Agreement) K3 shall provide applicable Support Services during the Term.

2.2 Service Desk (if being provided) shall be provided from the date the Supported Product is used in live commercial production, unless an alternative commencement date is agreed in writing.

3. SERVICE DESK

3.1 The provisions of this paragraph 3 apply where K3 is providing Service Desk.

3.2 The Service Desk shall be delivered via the Customer's internal support services or suitably qualified and experienced super users who in each case must have attended the notified training, administration and application courses prior to the Service Desk starting and who in each case must have a general understanding of the relevant hardware, software, architecture and infrastructure.

3.3 K3 shall provide the Service Desk during the Standard Hours, and if agreed expressly in writing by K3 (which may be included on an Order Form) and subject to payment of additional Fees, the Extended Hours. Service Desk for Extended Hours will only be available for Extended Hours Incidents.

3.4 The Service Desk is not, and is not intended as, a substitute for project management, consultancy or training, which do not form part of Support Services.

3.5 Service Desk will be provided by the remote contact or access method provided by K3 from time to time.

3.6 **Service Desk Request Procedure**.

(a) K3 Service Desk contact details are available on request and may be updated by K3 from time to time. The Customer will provide K3 with all reasonably requested information about the Incident including contact details of the Customer contact and the user experiencing the issue. An Incident (and the SLA) will be paused if K3 cannot contact the person requesting support (or another person with sufficient knowledge of the issue) or if K3 has not been provided with sufficient information relating to the Incident.

(b) Prior to contacting the K3 Service Desk, the Customer is expected to carry out initial fault diagnosis and, where applicable, escalate issues within the Customer or to relevant third parties as applicable. The Customer is expected to be able to resolve a substantial majority of issues logged from Users and only unresolved Incidents can be escalated to the K3 Service Desk.

(c) The Customer will log support requests with the K3 Service Desk (log to include User contact information and all details relevant to the issue (including, where applicable, steps taken to try to resolve the issue, , screen shots and error messages) and the sequence of steps to replicate the error should be collected).

(d) The K3 Service Desk shall assist in attempting to resolve Incidents and will escalate Incidents to applicable K3 product teams as necessary.

(e) Subject to paragraph 5.1 below, issues in Third Party Products (including Third Party Software) (where applicable) may be escalated to the applicable third party, and K3 will liaise with such third party in connection with resolutions.

3.7 **Service Desk SLA**

(a) To the extent that SLAs apply to a Service, details of K3's target SLA for responses and (if recovery and/or resolution SLA's are provided) recoveries/resolutions (which includes workarounds) in respect of the Service Desk shall be available to the Customer upon request. Any SLAs quoted are targets only and do not constitute a guaranteed service level and failure to meet targets shall not, of itself, constitute a breach of the Agreement or a default on the part of K3.

(b) The target SLAs shall only apply after full deployment of the applicable Product and its use by the Customer in a live production environment (and, where applicable, following any agreed period of post go-live hypercare).

(c) Incidents may have a response target and (if recovery and/or resolution SLAs are provided) a recovery/resolution target. Any timeframe specified in an SLA is measured during the Support Hours applicable to that Incident only. For the purpose of calculating response, recovery or resolution times, the clock shall stop for the purpose of SLAs to the extent K3 refers the Incident on to a third party supplier or licensor (rather than K3), until a resolution is received from that third party.

(d) SLAs may require the qualification of support Incidents into different priority categories, dependent upon the seriousness of the issues and/or consequences. Such categorisation shall be the responsibility of K3 and K3 shall take into consideration the facts provided to it by the Customer in respect of the relevant Incident and will act reasonably in assigning a priority to Incidents.

4. SOFTWARE SUPPORT AND SOFTWARE MAINTENANCE

4.1 The provisions of this paragraph 4 apply where K3 is providing Software Support.

4.2 **Suspension**: K3 may suspend Software Support for such time as the Customer does not have a licence to use the Supported Software.

4.3 **Upgrades and Upgrade Fixes:** Where a Product Fault is to be corrected in a forthcoming Software Maintenance/Software release, then for a reasonable period before the release K3 may (in its sole discretion) suspend Service Desk in respect of events caused by that Product Fault.

4.4 Notwithstanding anything to the contrary, Service Desk does not include the modification by K3 of Supported Software, but if modifications are agreed to be made to Supported Software target SLAs shall not apply.

4.5 Software Maintenance (where applicable) consists of the right to receive any updates, service packs and hot fixes to the relevant Software made generally available to its licensees by the relevant software vendor in accordance with its maintenance policy (including K3 in respect of the K3 Standard Software). For the avoidance of doubt, nothing obliges any software vendor to update, upgrade, fix or otherwise modify its Software, and any such updates, upgrades, fixes and modifications are at the discretion (including as to timing) of the relevant software vendor.

4.6 An additional charge may apply if the Customer requires Software Maintenance but has not had continuous Software Maintenance from the date of purchase or has not implemented all updates, service packs and/or hot fixes made available by the relevant software vendor.

4.7 Software Support does not include (i) training, installation or integration services; (ii) any work required to apply or modify any updates, upgrades, service packs and/or hot fixes (including data migration) or to apply or update any existing customisations or bespoke elements of the Customer's system (including Customised Software); or (iii) the automatic right to receive or use any new versions or upgrades, which may be subject to additional fees.

5. THIRD PARTY SOFTWARE VENDOR

Where the Supported Software includes Third Party Software:

5.1 third party support is the level of support (if any) provided by the originating software vendor. In order to benefit from this level of support, the Customer may be required to have a valid Software Maintenance plan for the relevant Software.

5.2 if any Third Party Software vendor: (a) ceases to offer the Software Maintenance for any of the Software (including if the Software reaches "end of life"), or (b) ceases to allow K3 to offer Software Support for any of the Software (in whole or in part), K3 may terminate the Agreement with immediate effect as it relates to the relevant Software Support for that affected Software.

6. HARDWARE SUPPORT SERVICES

6.1 The provisions of this paragraph 6 apply where K3 is providing Hardware Support Services.

6.2 **Corrective Maintenance.** If during the Support Hours the Customer notifies K3 or an Incident with respect to the Supported Hardware (and, in respect of Extended Hours, such Incident constitutes an Extended Hours Incident) K3 shall during the Support Hours use reasonable endeavours to support the Customer to correct the Incident ("**Corrective Maintenance**") by: (i) providing remote Service Desk support; and/or (ii) one or more site visits (if K3 deems it reasonably necessary).

6.3 Corrective Maintenance may include (i) making adjustments to the Supported Hardware, including as to settings, (ii) repairing or replacing parts of the Supported Hardware, (iii) moving the Supported Hardware to fix remotely, and/or (iv) temporary fixes until a longer-term solution can be achieved.

6.4 During the Support Hours K3 may, subject to prior agreement as to the frequency and timings of visits, conduct site visits to test the functions of the Supported Hardware and make such adjustments as K3 shall deem reasonably necessary to keep the Supported Hardware in working order. Such preventative maintenance may be carried out at the same time as Corrective Maintenance.

6.5 **Replacements and Spare Parts.** In performing the Hardware Support Services, K3 shall use reasonable endeavours to source spare parts required to correct Hardware malfunctions and failures. K3 may charge the Customer for spare parts or replacement Hardware not provided free under manufacturer's warranty. Any component of the Supported Hardware may be replaced on a temporary or permanent basis by a component of substantially equivalent functionality. All replacement components provided by K3 on a permanent basis shall become part of the Supported Hardware and the property of the Customer. Provisions in the Agreement relating to the supply of Hardware shall apply to any such components. All components removed from the Supported Hardware shall no longer constitute part of the Supported Hardware and will be the property of K3.

6.6 Where K3 provides the Customer with reserve equipment, the Customer shall store such equipment in the same conditions as Supported Hardware and make this equipment available to K3 for periodic maintenance, as with all other Supported Hardware.

6.7 K3 shall use reasonable endeavours to provide the Hardware Support Services in respect of End of Life Supported Hardware (including parts) but the SLAs shall not apply. **End of Life** for the purpose of this paragraph means hardware which has reached "end of life" in accordance with the manufacturer's end of life policy.

7. EXCLUDED CAUSES

7.1 The Customer acknowledges and agrees that no software or hardware or related infrastructure is perfect or error free, and that despite its commercially reasonable efforts, K3 may be unable to provide answers to or resolve some or all requests for Support, and any answers or resolutions may not be within the above timescales targeted.

7.2 In addition to any Excluded Causes under the General Terms and Conditions, K3 shall not be liable for any delay or failure to perform the Agreement (including the Support Services) to the extent caused or contributed to by, and the Support Service does not include any service or requirement to the extent that such service or requirement is, or arises as a result of:

(a) known issues with the Software or Hardware and accepted by the Customer;

(b) rectification of data mis-postings or analysis of data postings;

(c) the Customer failing to provide K3 with secure remote access or database copies or access (where required);

(d) database services including SQL and/or the operating system;

(e) if K3 cannot replicate the problem as reported using reasonable efforts;

(f) incorrect installation of Products by anyone other than K3 or live use of the Product against the reasonable recommendation of K3;

(g) any version of a Product other than a supported release (and if any support is provided in respect of the same no SLA shall apply);

(h) its Representatives operating or using the Products or requesting Support Services not being sufficiently trained and knowledgeable and/or incorrect use of Product; and

(i) Customised Software (unless the Order Form expressly states that Customised Software is covered by Service Desk and, in which case, unless stated otherwise on the Order Form, K3 shall be entitled to charge an annual Software Support Fee for Service Desk for Customised Software in an amount equal to 20% of the Consultancy Services Fees for the development of the Customised Software (subject to increase in accordance with the General Terms and Conditions)). This 20% charge does not apply where the Service Desk is provided on a time and materials Fee basis. For the avoidance of any doubt, Software Maintenance does not apply to Customised Software; and

(j) in respect of Hardware Support Services only: (i) any issues with Supported Hardware other than fair wear and tear of Supported Hardware; (ii) external surfaces of the Supported Hardware not being kept clean and in good condition; (iii) firmware updates, consumable items, accessories or cables and electrical equipment external to the Supported Hardware; (iv) configuration, networking services, training and consultancy services; (v) defect in design or faulty materials or workmanship in manufacture of Supported Hardware; (vi) any attempt (successful or not) by any person other than K3 to modify, change, move, reposition, adjust, support, repair or maintain any part of the Supported Hardware or merge it (in whole or in part) with any other software/equipment or additions or variations to the software/equipment; (vii) any failure of the Customer to promptly exercise its rights, and/or as requested by K3 assist K3 to exercise or assign to K3 the rights under any third-party warranty concerning a Product;

7.3 If K3 (in its sole discretion) provides Support Services in respect of any of the above issues, it shall be entitled to charge at its standard rates.

7.4 **Excessive Use**: If the Customer's use of the Support Service is, in K3's reasonable opinion, excessive or unreasonable K3 may discuss with the Customer a usage reduction plan and reserves the right to charge the Customer at its standard rates for Support Services provided. In determining whether use is excessive or unreasonable, K3 may have regard to comparative usage by other customers of K3.

7.5 For the avoidance of doubt, K3 does not provide Service Desk or Software Maintenance for any Software or Hardware (as applicable) unless those Products are specifically identified and agreed on the Order Form as a Product to be provided by K3 under the Agreement.

1. **SOFTWARE LICENCE/CLOUD SOFTWARE PRODUCT TERMS**

1.1 These Product Terms form part of the Agreement and set out additional terms on which K3 provides Licensed Software or Cloud Software (as applicable).

1.2 Certain provisions of these Product Terms (where indicated) only apply where the Software supplied by K3 is Cloud Software and certain provisions only apply (where indicated) where the Software is on-premise Licensed Software. The Customer shall ensure that all users of Software comply with the Agreement in relation to their use of Software.

1.3 **Definitions:**

Cloud Software: any Cloud Software provided by K3 to the Customer as a service under the Agreement which is K3 Software.

Licensed Software: K3 Software and Sub-Licensed Software which is on-premise software and licensed by K3 to the Customer under the Agreement.

Sub-Licensed Software: Third Party Software which is not Procured Software and which K3 sub-licenses to the Customer under the Agreement.

Procured Software: Third Party Software (on-premise or cloud) which K3 is to procure a licence or a right to use for the Customer (with the applicable licence or service terms or end user terms applying direct between the Customer and the relevant third party).

1.4 **Licensed Software**

(a) The provisions of this paragraph 1.4 shall apply only to Licensed Software (and not Cloud Software).

(b) 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 to use the Licensed Software at an agreed location for its internal business purposes for the Term. 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. Where Licensed Software is supplied on or for installation on any specific hardware or device, then such Licensed Software may only be used on that hardware/device.

(c) The Customer may make such copies of Licensed Software as are reasonably necessary for internal backup and security only. Such copies and media they are on are the property of K3 (or its licensors). The Customer shall not make more copies of the Licensed Software than specified in the Agreement, except to the extent allowed by Applicable Law.

(d) Where the Licensed Software or any part of it is designed to work with or enhance K3 Standard Software or Third Party Software the Customer is only permitted to use such Licensed Software in connection with its use of the relevant software product to which the Licensed Software relates and for no longer than the period that the Customer is validly licensed to use that underlying software product.

1.5 **Cloud Software**

(a) The provisions of this paragraph 1.5 shall apply only to Cloud Software (and not Licensed Software).

(b) 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.

(c) 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.

(d) 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.

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

(f) The Customer shall not (and shall not permit any other person to) access Cloud Software through any device not approved by K3.

1.6 **Access and use terms (applying to all Software)**

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

(b) Where Software is provided or licensed (as applicable) based on authorised users (named or number of) the Customer shall ensure that: (i) the maximum number of users that it authorises to access and/or use the Software shall not exceed the amount purchased; (ii) where the Software is supplied on a named user basis, each subscription access shall only be used by one individual user unless it has been reassigned in its entirety to another individual user, in which case the prior named user shall no longer have any right to access or use the Software; (iii) each user shall keep its Software access details (including password) confidential and secure, and shall change its password in accordance with any recommendations made by K3 from time to time or as prompted by the Software; (iv) where Software is supplied on a named user basis, it shall maintain a list of current named users and provide such list to K3 within 5 Business Days of K3's written request at any time or times.

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

1.7 **Third party content and IPR**

(a) 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).

1.8 **Restrictions (applying to all Software):** The Customer shall not (and shall not permit any other person to):

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

(b) use any part of the 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 Software any software which forms part of it or attempt to use any such software other than as part of the Software;

(d) use the 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 Software;

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

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

1.9 **Procured Software**: For the avoidance of any doubt, the Agreement does not grant a licence or a right to use Procured Software. Separate licence, use or service terms shall apply between the Customer and the third party licensor/service provider (as provided, notified or made available to the Customer).

1.10 The Customer acknowledges that the Software may contain inactivated product modules or components not licensed for use. The Customer is only licensed to use the modules specified under the Agreement.

1.11 Upon termination of the licence of, or right to access, the Software, or upon termination of or expiry of the Agreement (as applicable), the Customer will no longer have a right to use or access the Software and any such use or access may violate copyright laws and constitute a material breach of the Agreement. If any 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 Software.

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

1.13 **Product/Licence Keys**: The Software may require a key to run or 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 Software may be issued for a limited period. Multiple keys may be required during the Term (including for each Contract Year and/or Renewal Period), and such keys may not be provided if all Fees have not been paid when due. The Customer's right to use the Software may be subject to receipt of the relevant key. The issue by K3 of any temporary licence keys shall not waive or prejudice any of K3's rights under the Agreement.

1.14 **Upgrade and Downgrade:** Where an order is placed for a new version of Software, any existing license of that Software is terminated at go-live of the new version. The Customer has no right to receive, access or use prior versions of the Software.

1.15 **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 K3 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 K3 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 K3 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 1.15 above.

1.16 **Additional Excluded Clauses for Cloud Software:** In addition to the Excluded Clauses under Condition 13.2 of the General Terms and Conditions, K3 shall not be liable for any delay or failure to perform the Agreement (including in relation to 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 **Software Warranty for Licensed Software**:

(a) 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 Licensed Software will be free from material errors when used in accordance with instructions.

(b) If there is a breach of the warranty in paragraph 1.17(a) (which has been notified to K3 by the Customer within the Warranty Period) then K3 shall (as the Customer's sole and exclusive remedy) 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 Licensed 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 (considering the benefit the Customer has already received and up to the amount actually paid by the Customer in respect of the relevant element of the Licensed Software); or (ii) terminate the Agreement in respect of the relevant Licensed Software and refund the Fee paid for the relevant Licensed Software provided the Customer deletes and returns all copies of the relevant Licensed Software. K3 shall have no other liability for any defects or errors in the Licensed Software.

(c) 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 Licensed Software is not the current version of the Licensed Software (iii) the connection, linking or combination of the Licensed Software with any other software or system; (iv) all available updates and/or fixes having not been installed or (v) to the extent that the Licensed 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 Licensed Software delivered/made available at that time and does not extend to cover previously delivered/made available Licensed Software.