

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.

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 ninety (90) 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 performance of any or all agreements with the Customer (including the Agreement) with immediate effect on written notice (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 where K3 incurs third party charges as a result of the reinstatement.

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 (including the applicable Product Terms).

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 applicable Product Terms referenced on the Order Form; 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 to the Customer 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 on the Order Form. Software is supplied as Subscription Software unless expressly stated otherwise on an Order Form.

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 in accordance with K3's expenses policy.

7.3 All prices quoted on an Order Form are for the Products specified on that Order Form, 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) as set out on the Order Form and any changes (including as to quantities) may incur additional Fees.

7.4 For Recurring Fees:

- (a) Fees for Contract Years or Renewal Periods after the first Contract Year (or, if shorter, Initial Term) may vary and will be notified to the Customer in advance of the commencement of the relevant Contract Year or Renewal Period (as applicable); and
- (b) without prejudice to the generality of the foregoing, 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 by notice to increase its Fees 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 date of the Order Form and shall be payable on the date of invoice (no payment terms).
- (b) **Recurring Fees:** shall be invoiced annually (or at such other invoicing intervals stated on the Order Form or Product Terms) and in advance. Payment is required in advance of the relevant Service or subscription period commencing.
- (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 (dependant on license method). 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 (including any usage portal made available to Customer). 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 daily, weekly or fortnightly (as stated on the Order Form or, if not stated, at K3's discretion) in arrears, as consumed.
- (e) **Any Other Products:** shall be invoiced in accordance with the payment and invoicing terms set out on the Order Form or Product Terms or, if not set out on the Order Form or Product Terms, 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). All Fees or prices quoted or stated are exclusive of taxes, and any and all taxes and tariffs (including VAT, sales tax, export/import tariffs, duties and withholding tax) bank charges, commissions or deductions arising in connection with the Agreement shall be paid by the Customer in addition.
- 7.7 If the Customer disputes any invoice issued by K3 the Customer shall notify K3 in writing within 14 days of the invoice date with full details of the amount disputed and the reasons, and if no such notice is provided, the invoice is deemed accepted.
- 7.8 K3 may, without limiting its other rights or remedies, set off any amount owing to it or an Affiliate by the Customer against any amount payable by K3 to the Customer.
- 7.9 If the Customer fails to make any payment when due K3 shall be entitled to charge interest on the overdue amount at the rate of 4% per annum above Barclays Bank plc's base rate from time to time. Interest shall accrue on a daily basis from the due date until actual payment, whether before or after judgment.
- 7.10 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.
- 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 as 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 12 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 7.5 hour day normally between 09:00 and 17:30 (one hour for lunch) 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. 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 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, if the designated resource cannot reasonably be re-deployed to other chargeable work, 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; together with any expenses already incurred or non-refundable. 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.
- 9. INTELLECTUAL PROPERTY RIGHTS**
- 9.1 All IPR in the Products (including the outputs of any Services) belong and shall belong to K3 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 or such third party in and to that IPR.
- 9.2 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 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 17.2(b) shall apply to the licenses granted in this Condition 9.2.
- 9.3 All K3 Materials (and any IPR in them) are the exclusive property of K3 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.
- 9.4 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; or
- (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.
- 9.5 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.
- 9.6 This Condition 9 shall (subject to Condition 17.2(a)(iii)) survive any termination or expiry of the Agreement.
- 10. WARRANTIES**
- 10.1 K3 warrants to the Customer that all Services will be performed:
- (a) by appropriately qualified and experienced personnel;
- (b) using reasonable care and skill;
- (c) materially in accordance with any specification expressly agreed in writing by K3 and set out or referenced in the Agreement; and
- (d) in accordance with any Applicable Law, to the extent applicable to K3's performance (and not output) of the Services.
- 10.2 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.
- 10.3 To the fullest extent permitted by law, the only warranties in relation to any Third-Party Software, third party Software Maintenance and third party Hosting Services are those provided to the Customer in the licence or other terms from the relevant third-party supplier.
- 10.4 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.

11. CONFIDENTIALITY

11.1 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 11 and the receiving party shall be responsible for procuring compliance with the provisions of this Condition 11 by that person); and (iii) in the case of K3, to third party suppliers and/or subcontractors, as is reasonably necessary or desirable in order to perform the Agreement and/or provide the Products.

11.2 The provisions contained in Condition 11.1 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; and/or
- (c) where the information has been developed by the receiving party independently of the disclosure.

11.3 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 14 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.

11.4 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.

11.5 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.

12. CUSTOMER'S OBLIGATIONS

12.1 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 12.1(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 17.16 or Condition 17.17) 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
- (i) where applicable to the Products, install and configure the Products (including updates, service packs and hot fixes) except to the extent an express 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) promptly perform such other obligations or dependencies as are stated to be its responsibility in any SoW materially in accordance with such SoW.

12.2 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 an express obligation of K3 under the Agreement) to keep copies and back-ups of the Customer's data, software, programs, databases and IT records in accordance with generally accepted good practice (and sufficient to enable reinstallation or full recovery (as applicable) of the same); (iii) to ensure that 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) and (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; or (vii) to ensure that the information and data it provides is and remains accurate and complete.
- (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).

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

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

- 13.1 Nothing in the Agreement (and notwithstanding anything in the Agreement to the contrary) shall limit or exclude K3's liability (i) in respect of death or personal injury caused by its negligence, or the negligence of its Representatives; (ii) in respect of fraud or fraudulent misrepresentation; (iii) to the extent not permitted by any Applicable Law.
- 13.2 Subject to Condition 13.1 K3 shall under no circumstances be liable to the Customer 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.
- 13.3 Subject to Condition 13.1, K3's total aggregate liability to the Customer 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.
- 13.4 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;
 - (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 process agreed by the parties (including as set out in any Product Terms) 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 may, on notice and from time to time, discontinue or change the subscription SKUs available, description, features and/or functionality for Subscription Software.
 - (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,

- (h) 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 only in a development or test environment only and not in a production environment. Software Support does not apply to any such Software; and
 - (i) statements regarding K3's liability in respect of individual Products may also be set out in the Product Terms.
- 13.5 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.

14. DATA PROTECTION

- 14.1 The Data Processing Terms form part of the Agreement.

15. PERSONNEL

- 15.1 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.
- 15.2 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.
- 15.3 **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.

16. VERIFICATION AND AUDIT

- 16.1 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.
- 16.2 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 (including Microsoft) performing these validation checks and carrying out other reasonable audit activity.
- 16.3 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.
- 16.4 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.
- 16.5 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 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.
- 17. GENERAL**
- 17.1 **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 11, K3 shall be entitled to disclose Confidential Information to a prospective assignee/transferee on a confidential basis in connection with a proposed Dealing.

17.2 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 17.2 (b) the Customer shall cease use of the Products and any IPR licensed to the Customer under Condition 9.2, 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 9.2 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, 12, 13, 16 and 17) 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.

17.3 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.

17.4 SLA achievement. 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. Whilst K3 shall use reasonable endeavours to meet service level targets expressly set out or referenced in the Agreement, failure to do so shall not, of itself, constitute a breach of the Agreement or a default on the part of K3.

17.5 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).

17.6 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.

17.7 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.

17.8 Third parties. Other than as set out in Condition 17.9, 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.

17.9 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 17.9 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 agreed or notified in writing by K3, the Customer is required to have the same number of licenses for the K3 Software as the Customer has for any Third Party Software (including Microsoft Software) in conjunction with which the K3 Software operates (including where the K3 Software is embedded with the Third Party Software).

17.10 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.

17.11 Variation. Except as set out in the Agreement, no variation of the Agreement, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the parties.

17.12 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.
- (e) K3 shall (ii) if requested by the Customer, no more frequently than annually, confirm in writing its compliance with this Condition 17.12; and (iii) ensure that (in respect of Slavery Law compliance) any sub-contractors and suppliers engaged in connection with performance of the Agreement and (in respect of Bribery Law compliance) any associated person (having the meaning under the UK Bribery Act 2010) performing services in connection with the Agreement shall be subject to terms including terms similar to those applying to K3 under this Condition 17.12 (to the extent applicable).
- 17.13 **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.
- 17.14 **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.
- 17.15 **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.
- 17.16 **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) any breach by an Authorised Affiliate of a provision of the Agreement shall be deemed a breach of that provision by the Customer;
- (c) 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
- (d) an Authorised Affiliate shall not be entitled to enforce or take any action in respect of the Agreement directly.
- 17.17 **Third party access to Products.** If the Customer makes any Product available to a third party service provider to 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) 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.
- 17.18 **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.
- 17.19 **Dutch law Agreements.** The following provisions apply to the extent that the Agreement is governed by and construed in accordance with the law of The Netherlands:
- (a) the Customer may not terminate an Agreement made for an indefinite period of time. An Agreement concluded for an indefinite period of time may be terminated by K3 on not less than ninety (90) days' written notice to the Customer;
- (b) the Agreement may not be rescinded (in Dutch: *ontbinden*) by the Customer;
- (c) reference in the Agreement to the termination of the Agreement (including in Condition 4.2) means *opzeggen* in Dutch, and reference to rescind means *ontbinden*.
- (d) reference in Condition 13.1 to Applicable Law includes the Dutch concept of *opzet en bewuste roekeloosheid*.
- 17.20 **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.
- 17.21 **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 17.2, *intellectual property rights* (Condition 8); *confidentiality* (Condition 11); *liability* (Condition 13) and *Governing law* (Condition 17.23)).
- 17.22 **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.
- 17.23 **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 and identified on the Order Form 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.

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, as identified on the Order Form and as may be further set out in any applicable Product Terms.

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 second signature to the Order Form and the date the parties start performing the Agreement.

Confidential Information: confidential information concerning a party's and/or its Affiliates' business, customers, suppliers, employees, IPR or its products and services, pricing, financial position and/or strategy.

Consultancy Services: the consultancy services (or which may also be described as 'professional services') provided or agreed to be provided by K3 as identified on the Order Form, 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 (dependant on license method) per month or quarter (or other period) as set out on the Order Form, and as updated from time to time in accordance with the Agreement.

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

Control: the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company (whether direct or indirect), and controls, controlled and the expression change of control shall be construed accordingly.

Customer: the person identified as such on the Order 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, including any information derived from such information.

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 http://www.k3btg.com/wp-content/uploads/docs/GDPR_Data_Processing_Terms.pdf or as otherwise referenced on the Order Form or provided to the Customer.

Excluded Cause: has the meaning given in Condition 12.2.

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 as identified on the Order Form and the subject of the Agreement, but for the avoidance of doubt, not Software.

Hardware Support Services: Support Services provided or agreed to be provided in respect of the Hardware identified as having the benefit of Support Services on the Order Form and to be delivered in accordance with the applicable Product Terms.

Hosting Services: the hosting services provided or agreed to be provided by K3 as identified on the Order Form and as may be further set out in any applicable Product Terms.

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

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 and as may be identified as K3 Standard Software on the Order Form, 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 order form between the Customer and K3 for the supply by K3 of the Products set out in that order form.

Perpetual Software: any Software licensed on a perpetual basis (but subject to any termination rights) as identified on the Order Form.

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

Product Terms: any Product-specific terms and conditions appended to the Order Form or referred to in the Order Form or Agreement as 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: all 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) as set out on the Order Form, but not including Software (and Software Maintenance) or Hardware.

Software: any software provided or agreed to be provided by K3 as identified on the Order Form, 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, as identified on the Order Form together with any Customised Software.

Software Helpdesk: the provision of a K3 remote support helpdesk service to enable the Customer to report and K3 to investigate faults or errors with the applicable Supported Software, in accordance with the Agreement and the applicable Product Terms.

Software Maintenance: the update maintenance service provided or agreed to be provided in respect of Supported Software and to be provided in accordance with the Agreement and the applicable Product Terms, and which may also be referred to as "Business Ready Enhancement Plan" or "BREP".

Software Support: one or both of Software Maintenance and/or Software Helpdesk provided or agreed to be provided in respect of the applicable Supported Software and to be delivered in accordance with the applicable Product Terms.

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 as identified on the Order Form and as may be further set out in any applicable Product Terms, and which may include Hardware Support Services and/or Software Support.

Supported Software: the application Software expressly identified on the Order Form as having the benefit of applicable Software 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: 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.

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.