

## Terms & Conditions

### 1 DEFINITIONS

1.1 In this Agreement the following expressions have the following meanings:

**"Agreement"** means these Terms & Conditions and the Proposal or Quote.

**"Koris365"** means Koris365 South Ltd, registered in England and Wales (company number 07709017), of 8 Grovelands Business Centre, Boundary Way, Hemel Hempstead, Hertfordshire, HP2 7TE

**"Cloud Services"** means the Software as a Service, Platform as a Service, or Infrastructure as a Service, or any other Cloud service as specified in the Proposal or Quote, and which are provided pursuant to Clause 3.

**"Cloud Services Description"** means the Cloud services description as referenced in the Proposal or Quote.

**"Connectivity Services"** means the connectivity services set out in the Connectivity Services Description, and which are provided pursuant to Clause 7.

**"Connectivity Services Description"** means the Connectivity services description as referenced in the Proposal or Quote.

**"Customer"** means the 'Customer' contracting entity specified in the Proposal or Quote.

**"Documentation"** means the user documentation for Software or Hardware provided by Koris365 to the Customer pursuant to this Agreement.

**"Environment"** means the approved environment, consisting of software and hardware, specified in the Proposal or Quote.

**"Fees"** means the fees and charges specified in the Proposal or Quote.

**"Hardware"** means the hardware products specified in the Proposal or Quote.

**"Managed Services"** means the managed services set out in the Managed Services Description, and which are provided pursuant to Clause 6.

**"Managed Services Description"** means the Managed services description as referenced in the Proposal or Quote.

**"Proposal or Quote"** means the Koris365 Sales Proposal or Quote document.

**"Permitted User"** means any employee or individual contractor of the Customer.

**"Professional Services"** means professional services, such as implementation, development, consultancy, training, that Koris365 may agree to provide to the Customer, as specified in the Proposal or Quote.

**"Old Version"** is a version of Software that is one major release behind the version of the Software that Koris365 is currently shipping.

**"Services"** means, collectively, the Managed Services, Cloud Services, Support Services, Connectivity Services, and Professional Services.

**"Support Services"** means the support and maintenance services set out in the Support Service Description (excluding Third Party Support), and which are provided pursuant to Clause 8.

**"Support Services Description"** means the Support services description as referenced in the Proposal or Quote.

**"Software"** means software owned by third parties that Koris365 supplies to the Customer, as specified in the Proposal or Quote.

**"Third Party Support"** means any support and maintenance services relating to the Software and / or Hardware which are to be provided by a third party, as specified in the Proposal or Quote.

**"Third Party Licence Terms"** means the end user license agreement, if any, that accompanies the third party products or services, which governs the use of or access by the Customer to the applicable third party products or services.

### 2 THIS AGREEMENT

2.1 Koris365 shall:

2.1.1 supply the Cloud Services pursuant to Clause 3;

2.1.2 supply Software pursuant to Clause 4 ;

2.1.3 supply the Hardware pursuant to Clause 5 ;

2.1.4 provide the Managed Services pursuant to Clause 6 ;

2.1.5 provide the Connectivity Services pursuant to Clause 7 ;

2.1.6 provide Support Services pursuant to Clause 8 ; and

2.1.7 perform the Professional Services pursuant to Clause 9 , subject to, and in accordance with, the terms of this Agreement.

2.2 Koris365 warrants that it is authorised to enter into this Agreement (and grant the licences herein).

2.3 In the event of conflict or inconsistency between these Terms and Conditions and the Proposal or Quote, unless otherwise specifically stated in the Proposal or Quote, these Terms and Conditions shall prevail but only to the extent of such conflict or inconsistency.

2.4 The terms of this Agreement apply to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

### 3 CLOUD SERVICES

3.1 Koris365 shall provide the Cloud Services in accordance with this Clause 3.

3.2 Provision of the Cloud Services shall commence on the 'Commencement date' for the Cloud Services (as specified in the Proposal or Quote) and continue for the 'Service period' for the Cloud Services (such period being as specified in the Proposal or Quote) following which the Cloud Services shall continue to be provided unless or until terminated in accordance with this Agreement. The Cloud Services may be terminated by either party on the date of expiry of the 'Service period' for the Cloud Services (such period being as specified in the Proposal or Quote) or any subsequent anniversary of such date of expiry by giving a minimum of three (3) months' prior written notice to the other party.

3.3 Koris365 shall use its reasonable endeavours to provide the Cloud Services. The Customer agrees that Koris365's provision of Cloud Services is dependent on the performance, availability, and functionality of third-party services and networks, and the Internet. The Customer agrees that Koris365 is not responsible for any adverse impact on the Cloud Services arising from the performance, availability, and functionality of third-party services and networks, and / or the Internet.

3.4 The Customer: (a) shall comply with any additional terms of use for the Cloud Services which may be set out in the third-party Cloud Services usage or licensing agreement and (b) must not sub-license the use of, or

permit third parties to use (whether directly, or as part of a managed service), the Cloud Services.

- 3.5 The Customer acknowledges that the Cloud Services are a standardised and commercially available service that has not been developed specifically for the Customer. Therefore, it is the Customer's responsibility to understand and implement any working practice changes required to make use of the Cloud Services.
- 3.6 The Customer shall not use the Cloud Services for any unlawful purpose or to send or receive data which is objectionable, including material, which is pornographic, obscene, defamatory or threatening in any way or which infringes the rights of any third party.
- 3.7 Koris365 shall deliver the Cloud Services by the applicable delivery date specified in the Proposal or Quote. If Koris365 agrees to supply the Cloud Services:
- 3.7.1 using electronic transmission, then delivery of the Cloud Services takes place on the later of the Services or, if applicable, the login details to use the Cloud Services, being made available by Koris365 to the customer
- 3.8 The Customer's right to use the Cloud Services is governed solely by the third-party terms and conditions which accompany and / or are included in such Cloud Services (the "Third Party Licence Terms"). The Customer shall comply with the Third-Party Licence Terms in respect of its use of the Cloud Services.

#### **4 SOFTWARE**

- 4.1 Koris365 shall deliver the Software by the applicable delivery date specified in Proposal or Quote. If Koris365 agrees to supply the Software:
- 4.1.1 using electronic transmission, then delivery of the Software takes place on the later of the Software or, if applicable, the login details to use the Software, being made available by Koris365 to the customer
- 4.1.2 on physical media, then delivery of the Software takes place when the Software is available for collection at Koris365's premises. On such delivery of the Software: (a) the Customer shall be responsible for (i) collecting the Software from Koris365's premises, and (ii) loading the Software on to the Customer's transportation vehicle; and (b) the risk of loss or damage in the Software shall pass to the Customer.
- 4.2 The Customer's right to use the Software is governed solely by the Third Party Licence Terms. The Customer shall comply with the Third-Party Licence Terms in respect of its use of the Software.

#### **5 HARDWARE PRODUCTS**

- 5.1 Koris365 shall deliver the Hardware by the applicable delivery date specified in the Proposal or Quote. Delivery of the Hardware takes place when the Hardware is available for collection at Koris365's premises. On delivery of the Hardware: (a) the Customer shall be responsible for (i) collecting the Hardware from Koris365's premises, and (ii) loading the Hardware on to the Customer's transportation vehicle; and (b) the risk of loss or damage in the Hardware shall pass to the Customer.

- 5.2 Title to the Hardware shall transfer to the Customer on payment of the Fees for that Hardware to Koris365. Until title to the Hardware transfers to the Customer pursuant to this Clause 5.2, the Customer shall from delivery: (a) hold the Hardware on a fiduciary basis as Koris365's bailee; (b) store the Hardware separately from all other goods held by the Customer so that they remain readily identifiable as Koris365's property; (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Hardware; (d) maintain the Hardware in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; (e) notify Koris365 immediately if it becomes subject to any of the events listed in Clause 14.2 (c); and (f) give Koris365 such information relating to the Hardware as Koris365 may require from time to time, but the Customer may resell or use the Hardware in the ordinary course of its business.

- 5.3 If before title to the Hardware passes to the Customer the Customer becomes subject to any of the events listed in Clause 14.2 (c), or Koris365 reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Hardware has not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Koris365 may have, Koris365 may at any time require the Customer to deliver up the Hardware and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Hardware are stored in order to recover them.

- 5.4 The Customer shall bear the risk of loss or damage to the Hardware from delivery to the Customer.

- 5.5 Koris365 will pass through to the Customer the benefit of the manufacturer's standard end user warranty (if any) in respect of the Hardware.

#### **6 MANAGED SERVICES**

- 6.1 Koris365 shall provide the Managed Services in accordance with this Clause 6.
- 6.2 Provision of the Managed Services shall commence on the 'Commencement date' for the Managed Services (as specified in the Proposal or Quote) and continue for the 'Service period' for the Managed Services (such period being as specified in the Proposal or Quote) following which the Managed Services shall continue to be provided unless or until terminated in accordance with this Agreement. The Managed Services may be terminated by either party on the date of expiry of the 'Service period' for the Managed Services (such period being as specified in the Proposal or Quote) or any subsequent anniversary of such date of expiry by giving a minimum of three (3) months' prior written notice to the other party.
- 6.3 Koris365 shall use its reasonable endeavours to meet the service levels for the Managed Services specified in the Managed Services Descriptions.
- 6.4 If Koris365's provision of the Managed Services does not meet the service levels for the Managed Services specified in the Managed Services Description, the Fees for the Managed Services shall be adjusted in accordance with the Managed Services Description.
- 6.5 The Customer can only use the Managed Services in support of the Customer's business operations. The Customer shall comply with any additional terms of

use for the Managed Services which may be set out in the access portal for the Managed Services.

- 6.6 The Customer must not sub-license the use of, or permit third parties to use (whether directly, or as part of a managed service), the Managed Services.
- 6.7 The Customer acknowledges that the Managed Service is:
- 6.7.1 a standardised and commercially available service that has not been developed specifically for the Customer. Therefore, it is the Customer's responsibility to understand and implement any working practice changes required to make use of the Managed Service; and
- 6.7.2 powered by software which by its very nature cannot be free of bugs and errors.
- 6.8 The Customer shall not use the Managed Services for any unlawful purpose or to input data which is objectionable, including material, which is pornographic, obscene, defamatory or threatening in any way or which infringes the rights of any third party.
- 6.9 The Customer shall take all necessary precautions to ensure that the security of the Managed Services is not compromised in any way.

## **7 CONNECTIVITY SERVICES**

- 7.1 Koris365 shall provide the Connectivity Services in accordance with this Clause 7.
- 7.2 Provision of the Connectivity Services shall commence on the 'Commencement date' for the Connectivity Services (as specified in the Proposal or Quote) and continue for the 'Service period' for the Connectivity Services (such period being as specified in the Proposal or Quote) following which the Connectivity Services shall continue to be provided unless or until terminated in accordance with this Agreement. The Connectivity Services may be terminated by either party on the date of expiry of the 'Service period' for the Connectivity Services (such period being as specified in the Proposal or Quote) or any subsequent anniversary of such date of expiry by giving a minimum of three (3) months' prior written notice to the other party.
- 7.3 Koris365 shall use its reasonable endeavours to provide the Connectivity Services. The Customer agrees that Koris365's provision of Connectivity Services is dependent on the performance, availability, and functionality of third-party services and networks, and the Internet. The Customer agrees that Koris365 is not responsible for any adverse impact on the Connectivity Services arising from the performance, availability, and functionality of third-party services and networks, and / or the Internet.
- 7.4 The Customer: (a) shall comply with any additional terms of use for the Connectivity Services which may be set out in the Connectivity Services Description; and (b) must not sub-license the use of, or permit third parties to use (whether directly, or as part of a managed service), the Connectivity Services.
- 7.5 The Customer acknowledges that the Connectivity Service is a standardised and commercially available service that has not been developed specifically for the Customer. Therefore, it is the Customer's responsibility to understand and implement any working practice changes required to make use of the Connectivity Service.
- 7.6 The Customer shall not use the Connectivity Services for any unlawful purpose or to send or receive data which is

objectionable, including material, which is pornographic, obscene, defamatory or threatening in any way or which infringes the rights of any third party.

## **8 SUPPORT SERVICES**

- 8.1 Koris365 shall provide the Support Services in respect of Software, Hardware, Managed Services, Cloud Services and Connectivity Services in accordance with this Clause 8.
- 8.2 Provision of the Support Services shall commence on the 'Commencement date' for Support (as specified in the Proposal or Quote) and continue for the 'Service period' for Support (as specified in the Proposal or Quote) following which the Support Services shall continue to be provided unless or until terminated in accordance with this Agreement. The Support Services may be terminated by either party on the date of expiry of the 'Service period' for the Support Services (such period being as specified in the Proposal or Quote) or any subsequent anniversary of such date of expiry by giving a minimum of three (3) months' prior written notice to the other party.
- 8.3 In respect of the provision of Support the Customer must:
- (a) co-operate with Koris365 in the diagnosis of incidents and / or defects that the Customer encounters, and in particular, provide sufficient information to aid Koris365 in its reproduction and diagnosis of incidents and / or defects;
  - (b) upon Koris365's reasonable request, permit Koris365 to duplicate any incidents and / or defect in the Customer's implemented Environment or reasonable substitute;
  - (c) upon Koris365's correction of any incident and / or defect, provide prompt written confirmation of the resolution of such incidents and / or defect; and
  - (d) comply with the Support process and other obligations set out in the Support Service Description.
- 8.4 Koris365 is not obliged to provide Support for any Old Versions of Software.
- 8.5 Koris365 shall not be obliged to provide Support in respect of any:
- (a) incidents and / or defects that result from the Customer's misuse or improper use of the Software, Hardware, Managed Services, Cloud Services and Connectivity Services;
  - (b) incidents and / or defects that result from the Customer's combination or merger of the Software, Hardware, Managed Services, Cloud Services and Connectivity Services with any hardware, service or software not supplied or supported by Koris365 or not specifically authorised by Koris365 (such authorisation not to be unreasonably withheld or delayed) to be included in the Environment;
  - (c) incidents and / or defects that result from the Customer's failure to implement any maintenance updates, patches, or fixes;
  - (d) element of the Software, Hardware, Managed Services, Cloud Services and Connectivity Services that has been modified by or on behalf of the Customer and any incidents and / or defects caused by such modification (which will extinguish Koris365's support and maintenance obligations immediately but will not entitle the Customer to any refund), except where Koris365 has provided written confirmation to the Customer that it will support such modified elements.

8.6 The Customer shall be responsible for entering, and complying with the terms of, any agreements required for the receipt of Third-Party Support. The Customer shall pay the Charges for the Third-Party Support (as specified in the Proposal or Quote) to Koris365.

#### **9 PROFESSIONAL SERVICES**

9.1 Koris365 shall perform the Professional Services in accordance with the Proposal or Quote.

#### **10 RESPONSIBILITIES**

10.1 Koris365 shall undertake all Services provided pursuant to this Agreement using reasonable care and skill.

10.2 Koris365 shall check all Software that it provides to the Customer under this Agreement with an up-to-date virus checker prior to delivery to the Customer.

10.3 Both parties shall use their reasonable endeavors to meet the timescales specified in the Proposal or Quote. Koris365 shall not be responsible for any failure to achieve deadlines or milestones in the Proposal or Quote to the extent that the failure has been caused by any delay or default on the part of the Customer. Time shall not be of the essence in relation to Koris365's performance.

10.4 The Customer is responsible for procuring, maintaining, and updating the Environment.

10.5 The Customer shall: (a) make reasonable efforts to understand and implement the working practice changes required to make successful use of the Software, Hardware, Managed Services, Cloud Services and Connectivity Services; (b) ensure that the Software, Hardware, Managed Services, Cloud Services and Connectivity Services are used properly by the Customer's competent, trained employees; (c) keep full back-up copies of the Customer's data used in or with the Software, Hardware, Managed Services, Cloud Services and Connectivity Services; (d) permit Koris365's staff to have reasonable access to the Customer's premises and systems to enable Koris365 to perform its duties under this Agreement (including access by remote access); (e) make available to Koris365 all office, information and telecommunications facilities (including a dedicated data line if appropriate) that Koris365 may reasonably require to carry out its duties under this Agreement; and (f) perform its duties as identified in the Proposal or Quote.

#### **11 PROJECT CONTACTS**

11.1 Each party shall appoint their project contact (as specified in the Proposal or Quote) for this Agreement who shall: (a) deal with requests for information; (b) deal with change requests under Clause 26; (c) coordinate the activities of colleagues engaged on the activities relating to this Agreement; and (d) be responsible for agreeing and signing documentation.

11.2 Each party shall ensure that its project contact has the relevant skills and experience to enable them to fulfill their role.

11.3 Each party shall notify the other party of any changes to their appointed project managers.

#### **12 INTELLECTUAL PROPERTY RIGHTS**

12.1 Koris365 and / or its licensors own all copyrights (including copyright in computer software), database rights, rights in inventions, patent applications, patents, trademarks, trade names, know-how, service marks, design rights (whether registered or unregistered), trade secrets, rights in confidential information and

all other industrial or intellectual property rights of whatever nature ("**Intellectual Property Rights**") in the Services or Software.

12.2 Nothing in this Agreement shall have the effect of transferring ownership of any Intellectual Property Rights to the Customer.

12.3 The Customer shall promptly enter into such documentation as is reasonably required by Koris365 to vest ownership of Intellectual Property Rights in accordance with this Clause 12.

#### **13 FEES AND PAYMENT**

13.1 Fees shall be payable by the Customer as set out in this Clause 13. The Fees for Managed Services shall be adjusted in accordance with Clause 6.4 and / or Clause 13.7. The Fees for Professional Services shall be adjusted in accordance with Clause 13.6. The Fees for Support Services and / or Connectivity Services shall be adjusted in accordance with Clause 13.7. The Fees for Cloud Services shall be adjusted in accordance with Clause 13.8.

13.2 All Fees payable by the Customer to Koris365 are payable in Pounds Sterling and are exclusive of any tax, levy or similar governmental charge (including value added, withholding taxes, or sales tax) which shall be paid by the Customer at the rate and in the manner prescribed by law.

13.3 Fees for each of the Software, and Hardware are payable when delivery takes place for such in accordance with Clause 13.3, 4.1, or 5.1 (as applicable). Fees for each of the Managed Services, Cloud Services, Connectivity Services, and Support Services are payable annually in advance.

13.4 If the Fees for Professional Services are payable:

13.4.1 on a "time and materials" basis (as specified in the Proposal or Quote), then the Customer shall also pay any expenses reasonably incurred by Koris365 in performing its duties under the Proposal or Quote, including travel, accommodation, and subsistence expenses. Such Fees and expenses shall become payable monthly in arrears; or

13.4.2 on a "fixed price" basis (as specified in the Proposal or Quote), then such Fees shall become payable as specified in the Proposal or Quote.

13.5 Koris365 shall invoice the Customer for Fees when they become payable. The Customer shall pay each validly issued invoice from Koris365 no later than thirty (30) days after the date of such invoice.

13.6 In respect of Fees for Professional Services which are payable on a "time and materials" basis (as specified in the Proposal or Quote): (a) any daily Fees rates specified in the Proposal or Quote are based on the provision of Professional Services during the hours of 9:30am to 5:30pm on a business day; and (b) the Fees for the provision of Professional Services at any time outside the hours and days specified in paragraph (a) shall be at two hundred (200%) of the daily Fees rates specified in the Proposal or Quote. For the purposes of this Clause 13.6, "**business day**" means a day which is not a Saturday, Sunday, or public holiday in England.

13.7 Koris365 shall be entitled to revise the Fees for the Support Services, Managed Services, Cloud Services and / or Connectivity Services with effect from the date of expiry of the 'Service period' for such services (such period being as specified in the Proposal or Quote) or

any subsequent anniversary of such date of expiry by giving the Customer not less than thirty (30) days' written notice of any change.

- 13.8 Koris365 shall be entitled to revise the Fees for the Cloud Services, subject to thirty (30) days' written notice proportionately with an increase in third party licence or user fees. Additional user or licence Fees are charged at the current Cloud Services licence or user price list.
- 13.9 If any sum payable under this Agreement is not paid by the last day that the Customer is obliged to make payment under this Clause 13, then (without prejudice to Koris365's other rights and remedies): (a) Koris365 shall be entitled to suspend the provision of the Services until the Customer has paid all outstanding invoices; and / or (b) Koris365 reserves the right to charge interest on that sum on a daily compounded basis at the rate of four per cent (4%) per annum above the base rate of HSBC plc from time to time, from the due date until the date of actual payment, whether before or after judgment.
- 13.10 The parties agree that if the Customer fails to pay any sum payable under this Agreement within thirty (30) days after the due date, such default shall constitute a material breach of contract that is incapable of remedy pursuant to Clause 14.2 (b), entitling Koris365 to terminate immediately (and without further notice).

#### 14 TERM AND TERMINATION

- 14.1 This Agreement shall commence on the 'Commencement date' specified in the Proposal or Quote and shall continue unless and until terminated by either party in accordance with this Clause 14.
- 14.2 Either party shall be entitled to terminate this Agreement (a) on written notice if Services are no longer being provided under this Agreement; (b) immediately if that other party commits any material breach of its duties and fails to remedy that breach within thirty (30) days of written notice of that breach (the thirty (30) day period only applies where a breach is capable of remedy - if it is incapable of remedy, this Agreement may be terminated by written notice immediately); (c) immediately if that other party has a winding up petition presented or enters into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of amalgamation or reconstruction without insolvency) or makes an arrangement with its creditors or petitions for an administration order or has a receiver or manager appointed over any of its assets, or a court or arbiter with authority to so determine, determines that the debtor is unable to pay its debts.
- 14.3 On termination of this Agreement, the rights and duties created by Clauses 12, 13, 15, 18, 21, 22, 23, 25, 26 and 27 shall survive; and any rights of either party which arose on or before termination shall be unaffected.

#### 15 CONFIDENTIAL INFORMATION

- 15.1 For the purposes of this Agreement, "**Confidential Information**" shall mean all non-public business and financial information of a party including but not limited to any information relating to the inventions, ideas, designs, works of authorship, know-how, trade secrets and business affairs of either party, whether disclosed before or after the date of this Agreement, but not such information that is or becomes available

to the general public without fault or action of the Receiving Party.

- 15.2 Each party that receives Confidential Information ("**Receiving Party**") from the other ("**Disclosing Party**") shall: (a) keep the Confidential Information confidential; (b) not disclose the Confidential Information to any other person other than with the prior written consent of the Disclosing Party or in accordance with Clauses 15.3 or 15.4; and (c) not use the Confidential Information for any purpose other than the performance of its obligations or its enjoyment of rights under this Agreement ("**Permitted Purpose**").
- 15.3 The Receiving Party may disclose Confidential Information to its own, or any of its group's, officers, directors, employees, staff, and advisers who reasonably need to know for the Permitted Purpose (each a "**Permitted Third Party**"). In the event that the Receiving Party discloses Confidential Information to any Permitted Third Party pursuant to this Clause 15.3, the Receiving Party shall remain liable to the Disclosing Party for the acts, omissions, and compliance with the terms of this Clause 15 of such Permitted Third Party as if such Permitted Third Party was the Receiving Party (and a party to this Agreement). The Receiving Party shall ensure that each Permitted Third Party is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Clause 15. For the purposes of this Clause 15.3, "**group**" means, in respect of a corporate entity, that corporate entity's subsidiaries, its holding companies and every subsidiary of each such holding company from time to time ("**subsidiary**" and "**holding company**" being as defined in section 1159 of the Companies Act 2006).
- 15.4 If required by law, the Receiving Party may disclose Confidential Information to a court or regulatory authority or agency, provided that reasonable advance notice is given to the Disclosing Party and the Receiving Party co-operates with any attempt by the Disclosing Party to obtain confidentiality protection in respect of such information.
- 15.5 The parties agree that any breach of the restrictions contained in this Clause 15 may cause irreparable harm to the innocent party, whereupon the innocent party shall be entitled to injunctive relief without the necessity of proving damages or the inadequacy of money damages, posting any bond or other security in addition to all other legal or equitable remedies.

#### 16 AUDITING

- 16.1 The Customer shall keep and shall make available to Koris365 on request accurate records to enable Koris365 to verify the Customer's compliance with an Third Party Licence provided under this Agreement.
- 16.2 During the term of the licence granted pursuant to Clause 4.8 in respect of the Software, Koris365 shall have the right at any time and from time to time (subject to as provided below), during the Customer's normal business hours (upon prior reasonable written notice), to send a Koris365 employee or an independent accountant to audit the records of the Customer relating to the licensing of the Software and to verify compliance with this Agreement. The Customer shall give such person full access to its premises, computers, employees, system logs, and relevant records for such purpose. Any such audit

shall be conducted in such a manner as to minimise any interference with the Customer's normal business activities and will not include access to the Customer's cost or profit information.

- 16.3 Koris365 agrees not to cause such audits to be carried out more frequently than once a year. Each such audit shall be carried out at Koris365's expense unless it reveals a material breach of the terms of this Agreement, in which event the Customer shall pay the costs thereof.

#### **17 IPR INDEMNITY**

- 17.1 Koris365 shall indemnify the Customer against all actual costs, claims, demands, expenses and liabilities arising out of or in connection with any third party claim that the use or possession of the Software by the Customer infringes any Intellectual Property Rights of any third party ("IP Claim"), provided that: (a) the Customer gives written notice to Koris365 of the IP Claim(s) as soon as practicably possible following receipt; (b) the Customer makes no admission of liability and gives Koris365 sole authority to defend or settle the IP Claim(s) at Koris365's cost and expense; (c) the Customer gives Koris365 all reasonable help in connection with the IP Claim(s) at Koris365's cost and expense; and (d) the IP Claim(s) has not arisen as a result of the Customer using or combining the Software with any equipment, programs or materials not supplied by Koris365. In dealing with any IP Claim, Koris365 may at its own expense and option: (a) pay for the Customer's right to continue using the Software; or (b) make any changes to the Software without materially reducing its functionality or purpose; and / or (c) replace the Software with other functional equivalents (with the same performance capability).

- 17.2 This Clause 17 is the Customer's sole remedy against Koris365 in respect of any IP claim(s).

#### **18 LIABILITY**

- 18.1 Neither party shall exclude or limit its liability for: (a) death or personal injury caused by its negligence; (b) fraud or fraudulent misrepresentation;

- 18.2 Except in respect of liability arising under the indemnity at Clause 17, neither party shall in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for any indirect loss or damage (including, without limitation, loss of profit, loss of revenue, loss of anticipated savings, loss of goodwill, and / or loss of data).

- 18.3 Each party's total Contractual Liability shall not exceed the lesser of: (a) the Fees paid over the preceding twelve (12) month period; and (b) five hundred thousand pounds sterling (£500,000). "Contractual Liability" means liability howsoever arising under or in relation to the subject matter of this Agreement (including, without limitation, liability arising under the indemnity at Clause 17) that is not: (a) unlimited by virtue of Clause 18.1; or (b) excluded pursuant to Clauses 18.2 and 18.3.

- 18.4 To the extent permitted by law, Koris365 hereby excludes any implied condition or warranty concerning the merchantability, quality or fitness for purpose of the Software, Hardware, and the Services, whether such condition or warranty is implied by statute or common law.

#### **19 FORCE MAJEURE**

- 19.1 Neither party shall be liable for any delay or failure in performing its duties under this Agreement caused by any circumstances beyond its reasonable control. Without limitation, the following shall be regarded as causes beyond either party's reasonable control: (a) act of God, explosion, flood, tempest, fire or accident; (b) unusual atmospheric conditions and unusual conditions in outer space which may affect signals to and from and the workings of satellites; (c) failure of a utility service or transport or telecommunication network; (d) war or threat of war, sabotage, insurrection, civil disturbance or requisition; (e) acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental agency or local authority; (f) import or export regulations or embargoes.

#### **20 NON-SOLICITATION**

- 20.1 During the term of this Agreement, neither party shall, without the prior written consent of the other, actively initiate recruitment of any employee of the other who performed material obligations under this Agreement (excluding administrative, secretarial, or other back-office functions). If the restriction set forth in this Clause 20.1 is found by any court of competent jurisdiction to be unenforceable because it extends for too long a period of time or over too great a range of activities or in too broad a geographic area, it shall be interpreted to extend only over the maximum period of time, range of activities or geographic area for which it may be enforceable.

- 20.2 If a party breaches Clause 20.1, it shall pay the other party an amount equal to the last twelve (12) months' salary of the applicable individual in recognition of the value of the individual to the other party and the inconvenience that would be caused. The parties agree that this sum is a genuine pre-estimate of the loss likely to be suffered by the other party in these circumstances and not a penalty. Payment of the above referenced amount shall be a party's only remedy for a breach of Clause 20.1.

#### **21 DATA PROTECTION**

- 21.1 The parties acknowledge that Koris365 is a data processor of any personal data that it processes in providing the Products and / or Services to the Customer, and that the Customer is the data controller of that personal data. Koris365 shall process any personal data on behalf of the Customer in accordance with Koris365's Data Protection Policy, [CP019 – GDPR Data Protection Schedule].

#### **22 DISPUTES**

- 22.1 Any dispute arising under this Agreement should first be escalated to each party's contacts (as appointed pursuant to Clause 11). If the dispute remains unresolved for at least seven (7) days, it shall be referred to the senior executives of the parties who shall attempt resolution through discussions.

- 22.2 If the matter has not been resolved by the senior executives within thirty (30) days of the initiation of discussions, either party shall be entitled to refer the dispute to the exclusive jurisdiction of the courts of England and Wales.

#### **23 LAW AND JURISDICTION**

- 23.1 This 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 English law.

23.2 Subject to Clause 22, the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

#### **24 PUBLICITY**

24.1 Without prejudice to Clause 15 and except as permitted by Clause 24.2, neither party shall publicise the existence of this Agreement or the relationship between the parties without the prior written consent of the other, such consent not to be unreasonably withheld or delayed.

#### **25 ASSIGNMENT AND SUBCONTRACTING**

25.1 The Customer shall not assign or otherwise transfer this Agreement or any of its rights and duties hereunder whether in whole or in part without the prior written consent of Koris365.

25.2 Koris may assign, novate, or sub-contract this Agreement or the performance of any of its duties under this Agreement.

25.3 Subject to the foregoing, the rights and liabilities of the parties hereto are binding on, and shall inure to the benefit of, the parties and their respective successors and permitted assigns.

#### **26 CHANGES**

26.1 No changes to this Agreement shall be valid unless made in writing and signed by the authorised representatives of both parties.

#### **27 GENERAL PROVISIONS**

27.1 **Third Party Rights.** The parties hereby exclude to the fullest extent permitted by law any rights of third parties to enforce or rely upon any of the provisions of this Agreement.

27.2 **Relationship.** Nothing in this Agreement shall render the Customer a partner or an agent of Koris365 and the Customer shall not purport to undertake any obligation on Koris365's behalf nor expose Koris365 to any liability nor pledge or purport to pledge Koris365's credit.

27.3 **Entire Agreement.** This Agreement supersedes any prior contracts, arrangements and undertakings between the parties in relation to its subject matter and constitutes the entire contract between the parties relating to that subject matter. Each party acknowledges that, in entering into this Agreement, it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

27.4 **Severance.** If any part of this Agreement is held unlawful or unenforceable that part shall be struck out and the remainder of this Agreement shall remain in effect.

27.5 **No Waiver.** No delay, neglect or forbearance by either party in enforcing its rights under this Agreement shall be a waiver of or prejudice those rights. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

27.6 **Notices.** All notices under this Agreement shall be in writing and shall be sent to the address of the

recipient set out in this Agreement or to such other address as the recipient may have notified from time to time. Any notice may be delivered personally, by a reputable courier service, by first-class post, by fax, or by email and shall be deemed to have been served if by hand when delivered, if by courier service or first-class post forty-eight (48) hours after delivery to the courier or posting (as the case may be), if by fax when confirmation of transmission is received, or if by email immediately.