

Terms and Conditions



MXC | CAPITAL
LONDON'S TECHNOLOGY
MERCHANT BANK



LIBERTY GLOBAL

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1 Basis of Agreement

- 1.1 These terms and conditions apply to the Agreement to the exclusion of any other terms and conditions that the Customer seeks to impose or incorporate or which are implied by trade, custom or course of dealing.

2 Term

- 2.1 This Agreement shall come into force on the Effective Date. Subject to the provisions for early termination in clause 23 this Agreement shall continue for the Initial Term and thereafter until terminated by either Party giving not less than 90 days' notice in writing to the other (any such notice to expire on or after the end of the Initial Term).

3 Service

- 3.1 In consideration of the payment of the Charges, the Company shall supply the Service to the Customer in accordance with and subject to the terms of the Agreement.
- 3.2 If the Company's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors or employees, the Company shall not be deemed to be in breach of the Agreement and will not be liable to the Customer as a result of such prevention or delay.

4 Licence

- 4.1 The Company hereby grants to the Customer a non-exclusive, non-transferable right to access and use the Service during the term of the Agreement in each case in accordance with and subject to the Agreement.
- 4.2 In relation to the scope of use:
- 4.2.1 for the purposes of clause 4.1, use of the Service shall be restricted to the Customer's own internal business operations; and
- 4.2.2 the Customer may not use the Service other than as specified in clause 4.2.1 (including for the operation of any service bureau or outsourced service) without the prior written consent of the Company, and the Customer acknowledges that additional fees may be payable on any change of use approved by the Company.
- 4.3 The Customer shall:

- 4.3.1 keep confidential at all times any user names, access codes or other authorisations which may be provided or allocated to it by the Company and/or via the Service from time to time together with any associated passwords;
- 4.3.2 where the Customer is responsible for setting its own password, ensure that it and each authorised user shall keep a secure password for his use of the Service, in particular ensuring that such password shall be changed no less frequently than monthly and that each authorised user shall keep his password confidential.
- 4.4 The Customer shall immediately inform the Company of any actual or suspected loss, theft, publication or disclosure of any of its user names, access codes, other authorisations or passwords for the Service and/or of any actual or suspected unauthorised access to or use of the Service using the same of which the Customer becomes aware.
- 4.5 The Customer shall not, and shall procure that each user shall not:
 - 4.5.1 use or attempt to use the Service for any illegal or unlawful purpose and/or for the purposes of publishing or otherwise distributing materials which are offensive, defamatory or in breach any rights belonging to any third party;
 - 4.5.2 use or attempt to use the Service in any way which disrupts, restricts or interferes with the provision of the Service by the Company and/or the availability of the Service to and use by other users authorised by the Company;
 - 4.5.3 access or attempt to access any part of the Service which the Customer is not authorised to access and/or to access any data which is held on or accessible via the Service other than the Customer Data and any data which is made publicly available by the Company to all users on or via the Service; and/or
 - 4.5.4 reverse engineer, decompile, copy, distribute, disseminate, sub-licence, modify, translate, scan and/or adapt any software or other code or script which forms part of or is accessible via the Service (save only to the extent that the Customer is permitted to do so by law).
- 4.6 The Customer shall:
 - 4.6.1 ensure that its own computer systems and associated environment are protected against the introduction of any viruses;
 - 4.6.2 use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software; and
 - 4.6.3 in the event of any such virus being introduced or unauthorised access or use, promptly notify the Company.

4.7 The Company shall configure the Service as necessary to allow remote support. where Hardware and/or Software is required, this will be provided by the Company but, notwithstanding clause 11, title and ownership shall remain with the Company. Where any such Hardware is located at any premises of the Customer, the Customer shall not do anything which is inconsistent or contradictory with the Company's ownership of that Hardware nor shall the Customer remove any notices on such Hardware which identify it as the property of the Company nor seek to exercise any lien over such Hardware or allow it to become subject to any charge or mortgage. The Customer shall allow the Company access to its premises on demand for the purposes of inspecting and/or removing any such Hardware and shall not move such Hardware from the premises where it was installed by the Company without the Company's prior written consent. Whilst any such Hardware is located at the any premises of the Customer it shall be held at the risk of the Customer and the Customer shall insure such Hardware for its full replacement value. If there is any loss or damage to such Hardware whilst held at the Customer's risk the Customer shall reimburse the Company on demand for the cost of repairing or replacing the same.

5 General Terms Applicable to the Supply of Goods

- 5.1 If the Service includes the supply of Goods to the Customer, the Customer acknowledges and agrees that clauses 5 to 12 shall apply.
- 5.2 Goods supplied by the Company shall be warranted by the manufacturer's warranty from the date of installation or supply. The Company will take all reasonably practicable steps to ensure that the Goods supplied shall be fit for purpose when such purpose was made known to the Customer prior to supply based upon information supplied by the Customer.

6 Defective Goods

- 6.1 The Company undertakes that if a serious defect in materials or workmanship appears in Goods supplied by the Company within the period of 30 days from the date of delivery of such Goods, the Company shall, at its option, repair or replace the defective Goods in accordance with the manufacturer warranty, or refund the price paid for the defective Goods in full, provided that in any case, the Goods have been accepted and paid for (if normally due).
- 6.2 The Company's obligations contained in this clause are subject to:
- 6.2.1 the Goods having been used in an appropriate manner and/or as prescribed in the operating instructions (if any);
 - 6.2.2 the Goods being made available for collection by the Company upon its reasonable request;
 - 6.2.3 the Goods not having been modified or repaired (other than by the Company) or otherwise interfered with over and above any use in the normal course of business; and
 - 6.2.4 if practicable, the Customer making no further use of the Goods which are alleged to be defective after the time the Customer discovers that they are defective.
- 6.3 Where the Company's liability under this clause 6 can be fulfilled by the supply of a replacement part, the Company will arrange for delivery and undertake liability for loss or damage in transit or otherwise to the same extent as for the Customer's original order.

- 6.4 Nothing herein shall impose any liability upon the Company in respect of any defect in the Goods arising out of the acts, omissions, negligence or default of the Customer, its employees or agents including, in particular but without prejudice to the generality of the foregoing, any failure by the Customer to comply with any recommendations of the Company as to storage and handling of the Goods.
- 6.5 Where the Goods are for delivery by instalments, any defect in any instalment shall not be a ground for cancellation of the remainder of the instalments and the Customer shall be bound to accept delivery thereof.
- 6.6 Nothing herein shall have the effect of excluding or restricting the liability of the Company for death or personal injury resulting from its negligence in so far as the same is prohibited by law.
- 6.7 The Customer acknowledges that the Company does not manufacture the Goods. Consequently, the Customer shall only be entitled to the benefit of any warranty or guarantee in relation to the Goods as is given to the Company by the manufacturer of the Goods.

7 Return of Goods

- 7.1 Unless otherwise stated in this Agreement, any Goods supplied cannot be returned without the Company's prior written authorisation. Duly authorised returns shall be sent to the Company's Premises at the Customer's expense.
- 7.2 Goods authorised for return must be returned complete in original packaging.

8 Transport and Storage

- 8.1 The means of delivery of Goods shall be at the discretion of the Company except where specifically requested by the Customer and agreed by the Company in writing.
- 8.2 In cases where the Company is unable to despatch the Goods due to a request or default by the Customer, the Company shall be entitled, at the expiration of 7 days from the date of notification to the Customer that the Goods are ready for despatch or collection, to store the Goods either at the Company's Premises or elsewhere. The Company reserves the right to charge a sum equal to the costs incurred for storage and insurance of the Goods. This provision shall be in addition to and not in substitution for any other payment of damage for which the Customer may become liable in respect of any failure by the Customer to take delivery at the appropriate time.
- 8.3 The Company accepts no responsibility for non-delivery of Goods in transit if it is not notified of such non-delivery within 3 days of the date of invoice.
- 8.4 The Customer shall advise the Company within 2 working days of delivery as to any Goods damaged in transit or any short delivery.
- 8.5 The Company will not be liable for any Goods returned without the Company's written consent.
- 8.6 The Customer must provide the Company with appropriate access for delivery of Goods and facilities suitable for delivery in accordance with health & safety guidelines and policies.

9 Packaging

The Customer shall pay the cost of any special packaging specifically requested by the Customer or any packaging rendered necessary by delivery by any means other than the Company's normal means of delivery.

10 Design Variation

Whilst the Company makes every effort to ensure the Goods supplied correspond in every respect with any sample specification or description provided as the case may be, the Company is not responsible for minor variations in specification, in colour or other design features, and no such minor variations shall entitle the Customer to rescind the supply of such Goods and/or the Service, or shall be the subject of any claim against the Company by the Customer. Any Goods which are subject to minor variations shall be to an equivalent standard.

11 Title and Risk

- 11.1 From the time of delivery the Goods shall be at the risk of the Customer who shall be solely responsible for their custody and maintenance but, unless otherwise expressly agreed in writing, the Goods shall remain the property of the Company until all payments have been made in full and unconditionally, or in the event that payment is to be made via a third party leasing company the Customer has authorised payments to be released from the leasing company to the Company.
- 11.2 Until title of the Goods has passed under clause 11.1 above the following shall apply:
- 11.2.1 The Customer shall keep the Goods separate and identifiable from all other Goods in its possession as bailee for the Company.
- 11.2.3 In the event of any resale by the Customer of the Goods, the Company shall (without prejudice to the rules of equity relating to tracing) be beneficially entitled to the proceeds of sale or other disposition thereof so that such proceeds shall be held on trust in a separate identifiable account for the Company by the Customer who will stand in a strictly fiduciary capacity in respect thereof. In any case the Customer is obliged to remit to the Company the full invoice value of the Goods.
- 11.2.4 The Company shall have the power to resell the Goods, such power being additional to (and not in substitution for) any other power of sale arising by operation of law or implication or otherwise and for such purpose the Company and its employees and agents may forthwith enter upon any land, buildings or vehicles where the Goods or part of them are situated or are reasonably thought to be situated in order to recover them. The Customer shall for such purposes notify the Company of the whereabouts of the Goods.
- 11.2.5 The Customer shall at all times keep the Goods comprehensively insured against all risks for their full price. The policy shall bear an endorsement recording the Company's interest.

12 Delivery Date

- 12.1.1 The Company will use its best endeavours to deliver the Goods and Service within the agreed timescales but the Company does not accept liability for any delay in delivery of Goods or completion of the Service which is outside of its control.
- 12.1.2 Delivery shall be taken by the Customer within the time as mutually agreed in writing in advance.
- 12.1.3 Should default be made by the Customer in paying any sum due, the Company shall have the right to either suspend all further deliveries until the default is made good or to cancel the order so far as Goods and/or Service remain to be delivered thereunder.

13 Customer Obligations

- 13.1 The Customer will:
 - 13.1.1 ensure that environmental and supply conditions suitable for the Hardware on the Customer's site are maintained in accordance with the recommendations set out in the Hardware manufacturer's instructions and any reasonable instructions and directions provided by the Company and will keep the Hardware clean and in good condition;
 - 13.1.2 allow the Company reasonable access to Hardware on the Customer's site;
 - 13.1.3 provide adequate working space and facilities for the Company's employees or agents to perform the Service;
 - 13.1.4 co-operate with the diagnosis of Service or Hardware malfunctions or maintenance;
 - 13.1.5 ensure that communication equipment is powered and connected at all times and any specific configurations or settings are unchanged. If the Company is unable to establish connectivity to the Customer's site due to the removal or disconnection of communication equipment or settings, any subsequent site visit will be paid for by the Customer in addition to the other charges due;
 - 13.1.6 provide designated contacts for the reporting of Incidents (as defined in the applicable Koris365 Service Level Agreement and ensure competent and experienced staff are available to assist with remote support;
 - 13.1.7 comply with all Applicable Laws with which it is bound to comply in its use of the Service;
 - 13.1.8 where applicable to the Service, comply with the Koris365 Acceptable Use Policy;
 - 13.1.9 obtain and shall maintain all necessary licences, consents, and permissions necessary for the Company, its contractors and agents to perform their obligations under this Agreement
 - 13.1.10 adequately train and keep trained its staff on the use of the Service, the Hardware, the Software and the system as a whole;
 - 13.1.11 maintain and operate the Hardware, Software and Service in a proper and prudent manner and ensure that only competent and experienced staff operate it;

- 13.1.12 not modify or move make any addition or adjustment to Hardware or communications equipment connected with the Service without the prior consent of the Company;
- 13.1.13 notify the Company in writing of any problem or complaint regarding performance of the Service as soon as reasonably possible but in any event within 2 (two) Working Days of becoming aware of the problem or complaint;
- 13.1.14 notify and obtain written consent from the Company before changing, removing or deploying any technology solutions that may affect the Service;
- 13.1.15 provide wide-area-network provision together with suitable connectivity with appropriate resilience and associated service level to support the Service if not provided as part of the Service;
- 13.1.16 be solely responsible for storing their encryption keys in a secure location, unless mutually agreed that the Company is permitted to hold these. The Customer acknowledges that loss of the encryption keys by the Customer will prevent recovery of Customer Data from the Service; and
- 13.1.17 be responsible for the availability of its network and those systems to be backed up by the Company backup and/or disaster recover service together with defining appropriate backup sets and schedules for those systems to be backed up.

14 Company Obligations

14.1 The Company shall:

- 14.1.1 perform its obligations under this Agreement using all reasonable skill, care and diligence and in accordance with Applicable Laws with which it is bound to comply;
- 14.1.2 ensure that employees of the Company engaged in providing the Service will be suitably skilled and experienced to undertake the roles to which they have been appointed;
- 14.1.3 obtain all necessary licences and consents necessary for it to perform its obligations under the Agreement; and
- 14.1.4 take all reasonably practicable steps to perform the Service in such a way as not to cause any fault or malfunction in the Customer's information technology systems, software and infrastructure and to ensure that the Goods and Service will perform in a way so as not to cause any interruption to the business process of the Customer or the Customer's affiliated companies.

14.2 The Company:

- 14.2.1 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Service may be subject to limitations, delays and other problems inherent in the use of such communications facilities;

- 14.2.2 is not responsible for any failure to restore Customer Data due to the inability by the Customer for whatever reason to provide to the Company relevant information held by the Customer required for the restoration of Customer Data. This includes but is not limited to encryption keys, user names and passwords; and
- 14.2.3 shall use reasonable endeavours to provide the Service to the Customer on the date(s) mutually agreed.
- 14.3 Where the Company identifies any configuration or specification errors within the Customer's infrastructure or information technology systems, the Company shall notify the Customer and get the Customer's prior authorisation in writing (which may include by way of email) before implanting any fix, improvement, modification, variation or other change to the Customer's infrastructure or information technology systems.
- 14.4 The Company undertakes that it and its employees, agents and subcontractors will:
 - 14.4.1 when on any premises of the Customer, display any form of identification provided by the Customer at all times; and
 - 14.4.2 co-operate with other suppliers engaged by the Customer as reasonably necessary in performing the Service.

15 Third Party Providers

- 15.1 Where the Service is supplied with goods or services from third parties the Customer shall comply with (and ensure that its authorised users comply with) all terms and conditions relating to such third party goods and services.
- 15.2 The Customer acknowledges that the Company is not the main supplier of such third party goods and services and that the Customer shall only be entitled to the benefit of any warranty or guarantee in relation to such third party goods and service as is given to the Company by the relevant third party supplier.
- 15.3 The Customer shall indemnify and hold the Company harmless against any loss or damage which it may suffer or incur as a result of the Customer's breach any terms and conditions relating to third party goods and services that are supplied with the Service.
- 15.4 The Company agrees to notify the Customer immediately should the Company receive notice from a third party supplier of cancellation of a third party supplier service and to refund any monies owed to the Customer upon receipt of any outstanding monies from such third party supplier.

16 Charges

- 16.1 The Customer shall pay the Charges as follows:
 - 16.1.1 the Commencement Charge on the Commencement Date;
 - 16.1.2 any Interim Charges within 30 days of the date of invoice of any Interim Charges; and

- 16.1.3 the Monthly Charge in advance commencing on the Service Commencement Date and thereafter on each monthly anniversary of the Commencement Date for the remainder of the term of this Agreement.
- 16.2 Without prejudice to clause 16.1, all invoices are due for payment 30 days from the invoice date unless otherwise agreed in writing. Payment is to be made in sterling unless otherwise agreed in writing by a director of the Company.
- 16.3 The Customer must contact the Company within 3 days of receiving an invoice to raise any queries or dispute it has in relation to an invoice. The parties shall use reasonable endeavours to resolve any invoicing queries.
- 16.4 In the event that the Company takes legal action for recovery of any overdue amount, the Customer shall become liable to pay the Company a sum equal to the legal fees and expenses incurred. This clause shall not apply where the parties are complying with their obligations under clause 16.3 above.
- 16.5 In the event that payment is to be made via a third-party leasing company, the Customer shall not unreasonably withhold authorisation for payment to be released to the Company for the Service and Goods supplied. If the Customer shall fail to release payment authority without reasonable cause, the Company reserves the right to issue invoices directly to the Customer for payment subject to this clause 16
- 16.6 The Customer acknowledges and agrees that:
- 16.6.1 The Company determines the Charges for each invoice by considering the Customer's calculated usage for the invoice period. Consequently, if the customer's actual usage increases, the Company may adjust the Charges accordingly to reflect the higher usage. For the avoidance of doubt, Charges will not be reduced below the Charges set out in the Koris365 Service Contract, unless there is a separate agreement stating otherwise.
- 16.6.2 any other charges or other amounts which are not set out in the Koris365 Service Contract which may fall due to be paid by the Customer to the Company under the Agreement shall be paid by the Customer to the Company monthly in arrears.
- 16.7 All Charges shall be paid by direct debit to such bank account as the Company notifies in writing to the Customer from time to time.
- 16.8 Without prejudice to any other right or remedy that the Company may have, if the Customer fails to pay the Company on the due date the Company may suspend the Service, including disabling the Customer's password, account or access to the Service, without any liability to the Customer until such time as any overdue amount has been paid.
- 16.9 The Charges are exclusive of VAT which shall be payable by the Customer to the Company at the rate prescribed by law.
- 16.10 Unless specified in the Koris365 Service Contract, the Charges do not include travel, accommodation and subsistence expenses incurred by the Company in the provision of the Service. The Customer shall reimburse the Company for any such expenses incurred on receipt of a valid invoice.
- 16.11 The Company may increase the Charges at any-time on notice:

- 16.11.1 if the Charges have increased in accordance with market conditions at the date of actual supply due to circumstances outside the Company's control;
 - 16.11.2 to reflect any change to any aspect of the Service which is subject to recurring Charges;
 - 16.11.3 to the extent necessary to reflect any additional or increased costs or expenses incurred by the Customer in providing the Service which may include increases in the charges of third parties to the Company for licences, data storage, telecommunications and/or utilities and/or the imposition of new or increased taxes or levies; and/or
 - 16.11.4 once per annum, by a percentage amount not to exceed the increase in the Retail Prices Index since the date that the Company last increased the Charges.
- 16.12 The Charges and any other amounts which may become payable from time to time by one Party to the other under this Agreement shall be paid by the applicable Party in full in accordance with the terms of this Agreement without set off, deduction or withholding on any account.

17 Warranty

- 17.1 Each Party warrants to the other that it has full power and authority to enter into and perform this Agreement.
- 17.2 The Company does not warrant that the Customer's use of the Service will be uninterrupted or error-free; or that the Service will meet the Customer's requirements.
- 17.3 Other than those conditions and warranties provided for in this Agreement, each Party agrees that all conditions, representations and warranties whether express or implied by statute or otherwise relating to the Service and the performance of the Company of its obligations under this Agreement are to fullest extent permitted by law excluded from this Agreement.

18 Limitation of Liability

- 18.1 Neither Party seeks to limit or exclude in any way its liability for: death or personal injury caused by negligence; for fraud or fraudulent misrepresentation; in respect of any breach of any condition implied under section 12 of the Sale of Goods Act 1979; and/or for any other matter or liability which cannot be lawfully limited or excluded.
- 18.2 Subject to clause 18.1, the Company's total aggregate liability, whether or not arising pursuant to an indemnity, in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising under or in connection with the performance or contemplated performance of this Agreement shall in all circumstances be limited in aggregate to the total Charges paid in the period from the Effective Date to the the date on which the claim arose, but no greater than the total Charges paid within 12 months prior to the date on which the claim arose.

- 18.3 Subject to clauses 18.1 and 18.2, the Company shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for: loss of business; loss of use; loss of profit; loss of anticipated profit; loss of contracts; loss of revenues; loss or damage to goodwill or brand; loss of anticipated savings; loss of data or use of data; product recall costs; damage to reputation; fines imposed by regulators; and/or any consequential, special or indirect loss or damage in any case, regardless of whether or not the Company was aware or had been made aware (or ought reasonably to have been aware) at the time of entering into this Agreement of the risk that such loss or damage might occur.
- 18.4 The Company shall not be liable for:
- 18.4.1 any failure or delay in complying with any of its obligations under this Agreement where such delay or failure is attributable to an act or omission of the Customer or an event of Force Majeure; or
- 18.4.2 any defects in hardware or manufacturer faults (unless the defect or fault results from the Company's negligence).
- 18.5 The Customer agrees to take all steps necessary to mitigate any losses, costs, expenses, claims and demands that it may seek to claim from the Company under or in connection with this Agreement including pursuant to any indemnity.

19 Data Protection

- 19.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 19.2 Each Party shall comply with applicable requirements of the Data Protection Legislation. This clause 19 is in addition to and does not replace a Party's obligations under the Data Protection Legislation. The terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing" have the meanings prescribed in the Data Protection Legislation.
- 19.3 For the purposes of the Data Protection Legislation, the Customer is the Data Controller and the Company is the Data Processor. The Koris365 Service Contract sets out the subject matter, nature and purpose of processing by the Company, the duration of the processing, the types of Personal Data, categories of Data Subject and the obligations and rights of the Customer as Data Controller.
- 19.4 The Company shall:
- 19.4.1 process Personal Data only on written instructions of the Customer. If the Company is required by any applicable laws to process Personal Data it shall, to the extent legally permitted, notify the Customer before doing so;
- 19.4.2 have in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of, accidental loss or destruction of or damage to Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected;

- 19.4.3 not engage another processor without prior general written authorisation from the Customer and without ensuring that the same data protection obligations as set out in the Agreement are imposed on that other processor and the Company shall remain fully liable to the Customer for performance of the other processor's obligations to the extent the other processor fails to fulfil their data protection obligations;
- 19.4.4 ensure that persons who have access to or process Personal Data keep the Personal Data confidential (either under contractual or statutory obligations);
- 19.4.5 ensure that any transfer of Personal Data outside of the European Economic Area takes place only on documented instructions of the Customer and that the organisations to which the Personal Data is transferred ensure an adequate level of protection;
- 19.4.6 assist the Customer to respond to any request from a Data Subject;
- 19.4.7 notify the Customer without undue delay of a Personal Data breach (which has the meaning given to it in the Data Protection Legislation) and provide reasonable assistance to the Customer complying with its obligations pursuant to Articles 32 to 36 of GDPR;
- 19.4.8 at the written direction of the Customer, delete or return Personal Data to the Customer on termination of this Agreement unless the Company is required by law to store the Personal Data; and
- 19.4.9 maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the Customer or the Customer's designated auditor, provided that the Customer shall provide reasonable notice of any audit it wishes to carry out and there shall be no more than one audit in any rolling 12 (twelve) month period.
- 19.5 The Company shall immediately inform the Customer if, in its opinion, an instruction from the Customer infringes the Data Protection Legislation.
- 19.6 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 19.7 The Company shall follow its archiving and back-up procedures for Customer Data as set out in the Koris365 Service Description. In the event of any loss or damage to Customer Data (howsoever caused), the Customer's sole and exclusive remedy shall be for the Company to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Company in accordance with the archiving and back-up procedure described in the Koris365 Service Description. The Company shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.

20 Confidentiality

- 20.1 Each Party shall protect the Confidential Information of the other Party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.
- 20.2 Confidential Information may be disclosed by the receiving party to its employees, Affiliates and professional advisors, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.

- 20.3 The obligations set out in this clause shall not apply to Confidential Information that the receiving party can demonstrate:
- 20.3.1 is or has become publicly known other than through breach of this clause; or
 - 20.3.2 was in the possession of the receiving party prior to disclosure by the other party; or
 - 20.3.3 was received by the receiving party from an independent third party who has full right of disclosure; or
 - 20.3.4 was independently developed by the receiving party; or
 - 20.3.5 was required to be disclosed by a governmental authority, provided that the party subject to such requirement to disclose gives the other prompt written notice of the requirement.
- 20.4 The obligations of confidentiality in this clause shall not be affected by the expiry or termination of this Agreement.

21 Proprietary Rights

- 21.1 All Intellectual Property Rights belonging to a Party prior to the signing of this Agreement will remain vested in that Party.
- 21.2 The Customer acknowledges and agrees that the Company and/or its licensors own all Intellectual Property Rights in the Service.
- 21.3 The Company grants a royalty-free, non-transferable, non-exclusive licence to the Customer of any and all of the Company's Intellectual Property Rights for the duration of the Term and to the extent required for the sole purpose of receiving the Service and performing its obligations and exercising its rights under this Agreement.
- 21.4 The ownership of intellectual property rights in any documentation (including but not limited to the records, designs, reports and specifications) and other materials (including but not limited to databases and software) that are created exclusively for the Customer and delivered by the Company shall vest absolutely in the Customer.
- 21.5 Subject to clause 21.7, in the event of any claim or allegation that the Company's provision of the Service infringes the Intellectual Property Rights of any third party then provided that:
- 21.5.1 the Customer gives the Company prompt notice of any such claim or allegation of which it becomes aware;
 - 21.5.2 allows the Company sole authority to defend or settle such claim; the Customer makes no admission as to, or settlement or compromise of any claim or action without the Company's prior written consent;
 - 21.5.3 and provides the Company with such support and assistance as it may reasonably request then,
- the Company shall:

- 21.5.4 defend the Customer against such claim and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claim; and
- 21.5.5 procure the right for the Customer to continue using the Service so as to avoid the infringement claimed; or
- 21.5.6 replace or modify the Service so that it continues to fulfil substantially the same purposes as described in the documents which compromise this Agreement but avoiding the infringement claimed.
- 21.6 If the Company is unable to fulfil its obligations under clauses 21.5.4 and 21.5.6 then the Company shall be entitled to terminate this Agreement immediately on notice to the Customer.
- 21.7 Notwithstanding the terms of clause 21.5, the Company shall have no liability in respect of any claim that the Company's provision of the Service infringes the Intellectual Property Rights of any third party where the infringement claimed of is attributable to:
 - 21.7.1 any modification made to the Service by the Customer; or
 - 21.7.2 any third party acting without the authority of the Company; and/or
 - 21.7.3 any failure by the Customer to use and access the Service in accordance with this Agreement.
- 21.8 Notwithstanding any other term of this Agreement, the provisions of this clause 21 state the Customer's sole and exclusive rights and remedies in respect of any claim or allegation that the provision of the Service by the Company infringes the Intellectual Property Rights of any third party.

22 Cancellation

- 22.1 No contract or order for the Service and/or the Goods may be cancelled by the Customer without the Company's written consent, which will not be unreasonably withheld. If cancellation is accepted by the Company, the Company will invoice, and the Customer will pay, for all Goods supplied and Service completed and expenses properly incurred up to the date of cancellation including purchase of any Goods ordered in advance of supply.

23 Default and Early Termination

- 23.1 This Agreement may be terminated immediately upon giving notice to the other if the other Party:
 - 23.1.1 is in material breach of any of its obligations under this Agreement and, in the case of any material breach which is capable of remedy, does not remedy such breach within the 30 days after receiving written notice from the other Party requiring it to do so; or
 - 23.1.2 suffers an Insolvency Event or is unable to pay its debts or ceases to trade.
- 23.2 The Company may terminate this Agreement immediately upon giving notice to the Customer if the Customer fails to make any payment due to the Company under this Agreement on or before the due date for payment. The Company may suspend all Service until payment has been made in full.

- 23.3 If the Customers suffer any of the events as detailed in clause 23.1.2 the Company may withhold or suspend access to the Service without notice or liability until payment in full of all overdue amounts is made by the Customer.
- 23.4 If the Company terminates this Agreement pursuant to 23.1 then in addition to any other sums due under this Agreement the Customer shall pay an early termination fee of a sum equal to the total Monthly Charges which would have been payable by it under this Agreement for the unexpired period of the Term within 30 days of the date of such termination.
- 23.5 The Parties acknowledge and agree that any early termination fee which may become payable by the Customer pursuant to clause 23.4 represents a genuine and commercially reasonable pre-estimate by the parties of the loss and damage which the Company would suffer in the event of such early termination. Payment of any such early termination fee by the Customer shall be a non-exclusive remedy for the Company.
- 23.6 Upon termination or expiry of this Agreement for whatever reason:
- 23.7 all outstanding amounts accrued to be paid by the Customer under this Agreement prior to the date of termination or expiry shall immediately become due for payment and, in respect of Service supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt; and
- 23.8 all licences granted to the Customer under this Agreement shall immediately terminate;
- 23.9 any provision which expressly or by implication is intended to come into or remain in force on or after termination shall continue in full force and effect;
- 23.10 each of the parties shall immediately return to the other Party (or, if the other Party so requests by notice in writing, destroy) all of the other Party's property in its possession at the date of termination, including all of its Confidential Information, together with all copies of such Confidential Information, and shall make no further use of such Confidential Information; and
- 23.11 the Company may destroy or otherwise dispose of any of the Customer Data in its possession or under its control unless the Company receives, no later than ten days after the effective date of the termination or expiry, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Company shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of receipt of such a written request, provided that the Customer has a paid all sums due to the Company. The Customer shall pay all reasonable expenses incurred by the Company in returning or disposing of Customer Data.
- 23.12 The termination of this Agreement shall be without prejudice to the rights and remedies of either Party which may have accrued up to the date of termination.

24 Personnel

- 24.1 Each Party will be responsible for the supervision, direction and control of its own staff.

24.2 Neither Party shall during the Term or during the 12 month period thereafter, solicit, entice, procure, or seek to procure the services or employment of a member of staff employed by the other Party in any case whether directly themselves or through a third party without the prior written consent of the other Party, provided that the restriction in this clause 24.2 shall not apply to any person who responds to a general advertisement for employment placed by either Party in good faith.

25 Notice

25.1 Any notice given hereunder must be sent by registered post addressed to the Party to be served at its Registered Office and any notice so sent shall be deemed to have been received by the Party to which it is addressed at the time at which it would have been delivered in the ordinary course of post unless that would result in the notice in question being deemed to have been received on any day which is not a Working Day in which case, the notice in question shall instead be deemed to have been received by the Party to be served on the next following Working Day.

26 General

- 26.1 **Assignment.** The Company (but not the Customer) may subcontract, assign, delegate, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under this Agreement without the prior written consent of the Customer.
- 26.2 **Relationship of the parties.** This Agreement does not create any partnership or joint venture between the parties.
- 26.3 **Anti-Bribery and Modern Slavery.** Each Party shall comply with the Bribery Act 2010 and the Modern Slavery Act 2015 and not do, or omit to do, any act that will cause the other to be in breach of the Bribery Act 2010 or the Modern Slavery Act 2015.
- 26.4 **Further Assurance.** At any time, each Party shall sign all documents and do or cause to be done all further acts and things as that Party so requiring may reasonably require to give full effect to the terms of this Agreement.
- 26.5 **Entire Agreement.** This Agreement contains all the terms which the parties have agreed with respect to its subject matter and supersedes all previous agreements and understandings between the parties (whether oral or in writing) relating to such subject matter. Each Party acknowledges and agrees that it has not been induced to enter into this Agreement by a statement or promise which it does not contain. All warranties, conditions and other terms (whether express or implied) which are not set out in this Agreement are (to the fullest extent permitted by law) excluded from this Agreement.
- 26.6 **Third Party Rights.** For the purposes of the Contracts (Rights of Third Parties) Act 1999 no person who is not a Party to this Agreement shall have any right to enjoy the benefit or enforce any of the terms of this Agreement other than Affiliates of the Company.
- 26.7 **Variation.** No variation of this Agreement shall be effective unless it is in writing and signed by each of the parties (or their authorised representatives).
- 26.8 **Waiver.** Failure to exercise (or to fully exercise), or any delay in exercising, any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy under this Agreement or by law.

- 26.9 Severability. If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, illegal or unenforceable in any jurisdiction then it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible that provision shall be deemed to be omitted from this Agreement in so far as this Agreement relates to that jurisdiction and the validity and enforceability of that provision in other jurisdictions and the other provisions of this Agreement shall not be affected or impaired.
- 26.10 Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which is an original and which, together, have the same effect as if each Party had signed the same document.
- 26.11 Governing Law and Jurisdiction. This Agreement shall be governed by English Law. The parties agree to submit to the exclusive jurisdiction of the English Courts.

27 Definitions

In this Agreement the following words have the following meanings:

“Affiliate”	in respect of either Party, a company which is a Subsidiary of that Party or which is a Holding Company of that Party, or a Subsidiary of such Holding Company. The terms “Subsidiary” and “Holding Company” shall have the same meaning as set out in section 1159 Companies Act 2006;
“Agreement”	means the agreement between the Parties comprising these terms and conditions and the documents set out in the Koris365 Service Contract;
“Applicable Laws”	all applicable laws, statutes, regulations and codes from time to time in force;
“Charges”	the charges for the Service set out in the Koris365 Service Contract and payable in accordance with clause 14;
“Commencement Charge”	the initial charge payable by the Customer to the Company to commence planning and deployment to establish the Service as set out in the Koris365 Service Contract;
“Commencement Date”	the date the Service, as defined in the Koris365 Service Contract is made available to the Customer or as agreed with the Customer in writing, whichever is the sooner;
“Company”	Koris365 North Limited, as further described in the Koris365 Service Contract;

“Company’s Premises”	the premises notified to the Customer by the Company from time to time or if not so mentioned, Unit 15, Pavilion Business Park, Leeds, LS12 6AJ;
“Confidential Information”	information or data of whatever nature relating to either Party’s business, customers, prices, plans, strategies, including prospective business and prospective customers which is obtained, whether (without limitation) in writing, pictorially, in machine readable form or orally, by the other Party together with any information which would be regarded as confidential by a reasonable business person;
“Customer”	the entity contracting for the Service from the Company as defined in the Koris365 Service Contract;
“Customer Data”	any data inputted by the Customer, its employees or by any third parties acting on the behalf of the Customer for the purposes of using the Service or facilitating the Customer’s use of the Service;
Data Protection Legislation	(i) the General Data Protection Regulation ((EU) 2016/679) (“GDPR”) unless and until the GDPR is no longer directly applicable in the UK, together with any national implementing laws, regulations and secondary legislation as amended or updated from time to time in the UK, including the Data Protection Act 2018 (“DPA”); (ii) any successor legislation to the GDPR and the DPA; and (iii) any other directly applicable EU regulation relating to data protection and privacy;
“Effective Date”	the date set out in the Koris365 Service Contract;
“Fixes”	security and bug-fix updates provided by Software and/or Hardware manufacturer(s);
“Force Majeure”	any event beyond the reasonable control of the Company including any act of God, war, riot, terrorism, explosion, abnormal, extreme or unusual weather conditions, loss of utilities, fire, flood, strike, lock out or industrial dispute and/or governmental or regulatory authority action;
“Goods”	the equipment, Hardware, peripherals, accessories, or other items described in the Koris365 Service Contract;

“Hardware”	network, server, storage or other technology infrastructure appliances deployed by the Company and/or the Customer to deliver the Service;
“Initial Term”	the duration of the Service as set out in in the Koris365 Service Contract;
“Intellectual Property Rights”	any current and future intellectual property rights and interests including patents, utility models, designs, design rights, copyright (including rights in software), decryption rights, database rights, trade marks, rights pursuant to passing off, service marks, business and trade names, domain names, know-how, topography rights, inventions, rights in confidential information (including technical and commercial trade secrets) and image rights, and rights of a similar or corresponding character in any part of the world, in each case whether registered or not and including any application for registration and renewals or extensions of such rights in any country in the world;
“Interim Charges”	any charges due for interim elements of the Service made available to the Customer between the Effective Date and the Commencement Date as set out in the Koris365 Service Contract;
Insolvency Event	means a Party: <ul style="list-style-type: none">(a) enters liquidation;(b) has a receiver, liquidator, administrator, trustee or an individual with a similar role appointed over any of its assets; or(c) proposes to make any arrangement with its creditors or goes into liquidation; or(d) suffers an event which, under the law of any jurisdiction, is equivalent to any of the acts or events specified above.
“Monthly Charge”	the recurring monthly charges payable by the Customer to the Company for the Service as set out in the Koris365 Service Contract;
“Party”	the Customer and the Company, together the “Parties”;

“Scheduled Maintenance”	the process whereby the Company carries out Customer requested updates, upgrades or other modifications to the Hardware or Software involved in the Service as described in the applicable Koris365 Service Level Agreement;
“Service”	the service to be provided by the Company to the Customer in accordance with and subject to this Agreement, such service being as detailed in the Koris365 Service Contract;
“Koris365 Service Contract”	the document which sets out in detail the Service to be provided by the Company to the Customer;
“Koris365 Service Description”	the document setting out the description of the Service, as attached to the Koris365 Service Contract;
“Koris365 Service Level Agreement”	the service level agreement relevant to the Service, as attached to the Koris365 Service Contract;
“Koris365 Acceptable Use Policy”	the policy shown on the Company’s website from time to time;
“Software”	network, server, storage or other technology infrastructure software, code or scripts deployed by the Company and/or supplied by the Customer to deliver the Service;
“Usage”	the calculation of requirements specified with the Koris365 Service Contract at the Commencement Date;
“Working Day”	a day other than a Saturday, Sunday or public holiday in England when the banks in London are open for business;

27.1 In this Agreement: Clause headings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement; references to clauses and Schedules are to the clauses and schedules of this Agreement; words denoting the singular shall include the plural and vice versa; words denoting any gender shall include all genders; any reference to any law, statute, statutory provision, statutory instrument, directive, subordinate legislation, code of practice or guideline shall be construed as a reference to the same as may be amended, consolidated, modified, extended, re-enacted or replaced from time to time; reference to any of the documents which comprise this Agreement includes a reference to those documents as the same may be amended or varied from time to time in accordance with their provisions; and use of words such as “include”, “including” and “in particular” shall not limit the generality of any preceding or following words which are not intended to be exhaustive.