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## Scope of Service

### 1. Definitions and Interpretations

1.1 For this Agreement, unless the context requires otherwise:

**“Additional Charge”** means a charge payable by the Client to KVD for the supply of any goods or services other than the Service, made at KVD’s then-current standard prices and rates unless otherwise agreed in writing between the parties.

**“Agreement”** means this document, the relevant contract, and agreed variations of them.

**“Agreement Details”** means the details set out in the section of this Agreement so named.

**“Business Day”** means a day other than a Saturday, Sunday, or a public in which the Service is to be supplied.

**“Business Hours”** means 08:00 to 18:00 GMT on a Business Day.

**“Client”** means the party specified as such in the Agreement Details.

**“Commencement Date”** means the date specified in the contract for the commencement of the Initial Term.

**“Confidential Information”** means any confidential business and financial information of a party including, without limitation, information concerning the business operations and methods of a party or technical information acquired either directly or indirectly by the other party but excludes information which is or becomes publicly known through no wrongful act of the receiving party and for the removal of doubt includes this Scope(s) of Service.

**“Configuration Item”** means any item of hardware or software listed in the Contract unless identified as a Spare.

**“Configuration MACD”** (move, add, change, delete) means a move of, addition to, change of, removal of, or deletion of a Configuration Item or a part thereof performed by KVD upon receipt of a request from the Client.

**“Consultant on Call”** means the consultation service that provides technical support to the Client concerning a Configuration Item as described.

**“Contract”** means the document issued by KVD which sets out details of the Services supplied, monthly cost, and initial contract term.

**“Kiwi Voice and Data” or “KVD”** mean Kiwi Voice and Data Ltd. Registered in England – Registration number 10294174.

**“KVD Management System”** means the system used by KVD in connection with the supply of the Service.

**“End User”** means an employee of the Client.

**“End-of-Life”** means the relevant Configuration Item is no longer manufactured or supported, as determined by KVD, based on any end-of-life or end-of-service announcements made by the manufacturer.

**“Event”** means a condition or situation detected by the KVD Management System which indicates that something has happened concerning a Configuration Item.

**“Good Operating Condition”** means the state in which a Configuration Item functions in accordance with the manufacturer’s specifications and successfully completes all usual diagnostic tests performed by KVD.

**“Governing Law”** means the state or territory specified as such in the Agreement Details.

**“VAT”** means the value-added tax as defined in “Value-Added Tax Act 1994”.

**“Incident”** means the occurrence of an Event in a Configuration Item that prevents it from being in Good Operating Condition.

**“Incident Diagnosis”** means the performance of an investigation (not remediation) by KVD into the possible causes of an Incident.

**“Incident Record”** means a record in KVD’s Management System generated by the Client or KVD that records and tracks a request related to an Incident.

**“Initial Diagnosis”** means the performance of an investigation by the Client into the possible causes of an Incident (including, for example, power failure, reconfiguration, or failure of a connected device or system).

**“Initial Term”** means the period specified as such in the Agreement Details.

**“Management System”** means the system used by KVD to record information relating to the supply of the Service.

**“Minor Feature Release”** means a software release that provides minor additional functionality or refinements to the existing functionality of the relevant software, e.g. moving from version 2.1 to version 2.2.

**“Part”** means a component used to resolve an Incident on a Configuration Item.

**“Patch”** means a maintenance software release issued by the manufacturer to correct an error in its software.

**“Permanent Resolution”** means the action taken to resolve the root cause of an Incident or problem.

**“Reconfigure”** means to apply a backup configuration to a Configuration Item to return it to Good Operating Condition.

**“Remote Alert Notification”** means alerts generated by Configuration Items or monitoring software.

**“Remote Support”** means the use of telephone, email, VPN, or remote support software to facilitate the resolution of an Incident or Request.

**“Request Record”** means a record in KVD 's management system generated by the Client or by KVD that records and tracks a Request.

**“Restore”** means to restore a Configuration Item to Good Operating Condition or to apply a Workaround.

**“Service”** means the service described in this Agreement.

**“Service Administration MACD”** means a request from the client to make changes to the Configuration Item information in the Contract and the KVD Management System.

**“Service Charges”** means the charges for the Service set out in the Agreement Details, an invoice issued by KVD, and/or as detailed in the Contract.

**“Service Desk”** means the KVD technical support group that acts as a single point of contact between KVD and the Client to manage all Incidents, Requests, communications, and escalations with the Client.

**“Service Element”** means an element of the Service as listed in the table contained in clause 2.3.

**“Service Level”** means the combination of service as specified in the Contract.

**“Service Level Agreement”** levels of service offered by KVD in conjunction with the service levels supplied in section 10.

**“Services Portal”** means the internet portal created and configured by KVD for access by the Client’s designated staff.

**“Set-Up Fee”** means the fee (if any) described as such in the original proposal document, payable as invoiced.

**“Ship”** means to send a replacement Part to a Site after initial Remote Support.

**“Site”** means the premises specified in the Contract at which a Configuration Item is located.

**“Software”** means software listed in the Contract or which forms an integral part of a Configuration Item but does not include any software installed on the hardware by the Client unless it is listed in the Contract.

**“Spares”** means components or units owned by the Client which may be used by KVD for the resolution of Incidents.

**“support agent”** software used by kiwi to assist and monitor configuration items

**“Term”** means the Initial Term and any extension of it.

**“Ticket Request”** means a request relating to the supply of the Service or the modification of the Service.

**“Update”** means Patches, Minor Feature Releases, security profile updates, and Upgrades as the context requires.

**“Upgrade”** means software releases that make major changes to the applicable Software e.g. moving from version 2.0 to version 3.0.

**“VPN”** means a virtual private network and provides a secure communications mechanism for data and other information transmitted between two endpoints.

**“Workaround”** means a set of actions that reduce or eliminate the effect of an Incident or Problem for which a Permanent Resolution is not yet available.

## Service Summary

### 2. General Obligations

#### *KVD 's obligations*

- 2.1 KVD must provide the package of Service Elements that are specified in the Contract.
- 2.2 The Service Elements listed in the table in clause 2.3 are described in further detail in clauses 7 to 16 inclusive
- 2.3 Table of Service Elements:

Clause Reference	Service Elements
<b>Maintenance Services</b>	
<b>7</b>	<b>Incident Management</b>
	Service Desk
	Resolution of Incidents
<b>8</b>	<b>Uptime Monitoring - Hardware Failure Monitoring</b>
<b>9</b>	<b>Uptime Monitoring - Remote Alerts</b>
<b>10</b>	<b>Service Level Agreements (SLA's)</b>
<b>11</b>	<b>Subscription Services</b>
<b>12</b>	<b>Services Portal</b>
<b>13</b>	<b>Asset Database</b>
	Asset discovery and inventory
	Asset database reporting
<b>14</b>	<b>License Renewal Reminders</b>
<b>15</b>	<b>Configuration MACDs</b>
<b>16</b>	<b>Service Level Management</b>
	Service Management Reports
	Service Management Reviews

- 2.4 Additional manufacturer-specific clauses may apply. When particular manufacturers are specified in the Contract, the additional terms for each make of Configuration item can be found with the manufacturer.
- 2.5 In the event of a conflict between a manufacturer-specific clause and this document, the manufacturer-specific clause will prevail.

## Client Take-on

### 3. Provision of Information

#### *The Client's obligations*

- 3.1 The Client must:
- a. promptly complete and provide documents reasonably required for the establishment of the Service; and
  - b. provide KVD with documentation that describes the Configuration Item installation and usage in terms of architecture, interfaces, modules, design, build, business function, and call flows.

### 4. Uptime Monitoring - Hardware Failure Monitoring

#### *KVD's obligations*

- 4.1 KVD must configure the KVD Management System to provide the *Hardware Failure Monitoring* Service Element on the Configuration Items.

#### *The Client's obligations*

- 4.2 The Client must allow Events to be sent to the KVD Management System based on instructions provided by KVD.

#### *Exclusion*

- 4.3 KVD is not responsible for any failure of the Configuration Items or the Client's systems to support Hardware Failure Monitoring. If such a failure occurs and KVD does not receive any Events and/or ICMP/SNMP polling, no action will be taken by KVD.

### 5. Asset Database Establishment

#### *KVD's obligations*

- 5.1 KVD may install and configure an asset database collector in the KVD Management System to perform an automated discovery of the Client's devices that are enabled with the correct SNMP community strings.

### 6. Service Commencement

#### *KVD's obligations*

- 6.1 KVD will commence supply of the Service upon:
- a. receipt from the Client of a signed contract which covers the Service Charges for the Initial Term and any Set-up Fees, as set out in the contract.

## Maintenance Services

### 7. Incident Management

#### Service Desk

7.1 The Service Desk provides the Client with a single point of contact at the KVD Service Centre.

#### **The Client's obligations**

7.2 The Client must:

- a. perform any necessary preliminary checks to verify the need for assistance before logging an Incident or Request.
- b. use the Services Portal, email, call the Service Desk to log an Incident or Request and provide as much background information about it as possible.
- c. log Incidents and Requests following the Service Desk procedures notified to the Client.
- d. raise a high priority Incident or Request by telephone only.
- e. advise KVD of any change management procedures that must be followed; and
- f. report any unsatisfactory operation of the Service to KVD in a timely manner.

#### **KVD's obligations**

7.3 KVD must receive reports of Incidents and Requests 24 hours a day, seven days a week.

7.4 Following a Ticket Request, KVD must:

- a. consult with the Client to confirm the impact and urgency of the Incident or Request which will result in the allocation of a default priority to the Incident Record or Request Record.
- b. create Incident Records and Request Records in the KVD Management System and coordinate the response to them in accordance with the relevant Business Continuity Levels.
- c. allocate a unique reference number for tracking and follow-up of the Incident Record or Request Record.
- d. contact the Client to make the necessary arrangements if access to a Site is required to address the Incident Record or Request Record; and
- e. keep the Client updated on the status of the Incident Record or Request Record.

#### Resolution of Incidents

#### **The Client's obligations**

7.5 The Client must:

- a. perform an Initial Diagnosis before reporting an Incident.
- b. after initial diagnostics a ticket should be raised
- c. If requested by KVD, the Client must provide remote electronic access to or any documentation in connection to a Configuration Item for Incident Diagnosis or the implementation of a Workaround or Permanent

## 8. Uptime Monitoring - Hardware Failure Monitoring

8.1 Hardware Failure requires KVD's secure remote monitoring to be installed on each unit.

### Availability Monitoring

#### KVD's obligations

8.2 KVD must:

- a. monitor Configuration Items via a secure remote connection between the support agent and the Configuration Items.
- b. use support agent polling for the availability (up/down) status of the Configuration Items; and
- c. receive notification of Events from Configuration Items for a change of the availability status.

8.3 KVD must:

- a. receive event notifications triggered by hardware component failures defined within the table below;

Hardware Component	Event
Fan	Fan failure
	Fan redundancy lost
CPU	CPU temperature critical
	CPU failure
Memory	Memory usage high
	Memory failure

### Event Correlation

#### KVD's obligations

8.4 KVD must:

- a. using the KVD Management System, group related Events into a single root cause with parent/child relationships.

### Client Notification

#### KVD's obligations

8.5 KVD must where appropriate:

- a. notify up to two nominated Client contacts of Incidents and their status.
- b. send an email to a nominated email address.



### Out of Scope Incidents

#### **The Client's obligations**

- 8.6 The Client must:
- a. resolve Incidents that are outside the scope of the Service, e.g. Configuration Items that have gone down due to a general power failure, air-conditioning problem, or other environmental factor controlled by the Client; and
  - b. notify KVD upon resolution of out-of-scope Incidents.

### Scheduled Outage Notifications

#### **KVD's obligations**

- 8.7 KVD must record Client network outage details in the KVD Management System to ensure that it does not raise Incidents for the outage and that it appropriately schedules changes around the outage windows.

#### **The Client's obligations**

- 8.8 The Client must:
- a. notify KVD of outages scheduled to occur on its network by raising a Ticket Request; and
  - b. if the change window is scheduled for less than four hours in advance, notify KVD by telephone.

### Event Baseline

#### **KVD's obligations**

- 8.9 KVD must perform an Event baseline review after the Service has been active for four weeks to highlight Configuration Items that are experiencing Events consistently in an unusually frequent manner due to previously unresolved problems.

#### **The Client's obligations**

- 8.10 The Client must rectify the problems identified as causing the Events identified. Failure to do so may lead to KVD removing the configuration Item from the *Hardware Failure Monitoring Service* Element. The Client can, if desired, engage KVD to perform the work required to address these deficiencies or problems at an Additional Charge.

## 9. Uptime Monitoring - Remote Alerts

9.1 The *Remote Alerts* option only applies to Configuration Items that can send alerts.

### KVD 's obligations

9.2 KVD must:

- a. perform Incident Diagnosis on the Remote Alert Notifications that have high priority levels.
- b. respond to all Incidents that are within the scope of service supplied.

### The Client's obligation

9.3 The Client is responsible for the resolution of Incidents resulting from Remote Alert Notifications that are outside the scope of the Service.

## 10. Service Level Agreement (SLA's)

### KVD 's obligations

Our SLAs are split into three categories.

#### **No Impact: 2-hour first response, Close the case after 7 days**

General questions and low impact issues e.g. Chrome not launching but other browsers work, Mail in quarantine, investigate suspected spam, request to create a new user.

#### **Minor: 1-hour first response, close the case in 7 days**

The issue affects multiple users but the business remains functional e.g. print queues offline.

Or the issue is stopping one or more users from being able to work in any way e.g. corrupt office install, account locked out

#### **Major: 30-minute first response, close the case in 2 days**

Severe business impact- Server or site down, Account Breach, Crypto attack, disciplinary case of a user's account.

We understand that not every case can be pigeonholed, so if you feel that a description of a case may sound minor, but has a major impact please alert us to this, e.g. the managing director is locked out, or accountant's computer is faulty close to payday and we will assign it a higher priority.

## 11. Subscription Services

### *KVD 's obligations*

- 11.1 KVD must:
- a. procure the right to obtain the relevant Updates from the manufacturer and make the Updates available to the Client upon receipt of a Request; and
  - b. if the manufacturer allows KVD to do so, provide the Client with the manufacturer's Support access information.
- 11.2 If requested by the Client, KVD will install any Updates as a Configuration MACD, as long as sufficient time for testing has been agreed and allocated

### *Subscription Services Options*

#### *Exclusions*

- 11.7 The Service does not include:
- a. setting up Configuration Items to receive alerts and Updates from the manufacturer automatically; and
  - b. notifying the Client of the availability or suitability of Updates.

## 12. Services Portal

### *KVD 's obligations*

- 12.1 KVD must:
- a. provide the Client with access to a *Services Portal*, accessible via the Internet.
  - b. add and delete End User accounts from the *Services Portal* within two Business Days of receipt of a request to do so.

### **The Client's obligations**

- 12.2 If an End User with access to the *Services Portal* leaves his or her employment, the Client must instruct KVD to remove or disable the relevant logins to the *Services Portal* without delay. KVD will remove or disable such logins without unreasonable delay and, provided it does so, shall not be liable for any loss, expense, or damage suffered by the Client in connection with or arising from the failure to act on a request under this clause.

## Support Services

### 13. Asset Database

13.1 Clause 13 applies if the Client has selected the *Kiwicare Workstation & Server* option.

13.2 The *Asset Database* option will discover all network-attached devices.

#### *Asset discovery and inventory*

##### ***KVD 's obligations***

13.3 KVD must:

- a. using an asset database collector in the KVD Management System to access the Client's network to discover devices
- b. compile an inventory of discovered devices.

#### *Client's authorities*

13.4 The Client hereby authorizes KVD to:

- a. run the asset database collector on the Client's network in whole or in part.
- b. collect and collate the data produced by the discovery; and
- c. encrypt and send the data to Kiwi.

13.5 All information collected by KVD will be treated as the Client's Confidential Information.

#### *Asset Database Reporting*

##### ***KVD 's obligations***

13.6 KVD must:

- a. perform a discovery of devices to populate the asset database every six months or at a frequency agreed with the Client.
- b. oversee operation and management of the asset database collector and the generation of reports; and
- c. maintain the configuration of the collector in the KVD Management System

##### ***The Client's obligations***

Notify KVD of updates to required access information including administrator logins and passwords

### 14. License Renewal Reminders

##### ***KVD 's obligations***

14.1 KVD will automatically renew licenses upon expiry.

##### ***The Client's obligations***

14.3 The Client must where a license is not required:

- a. must notify KVD 30 days before the license renewal date

## 15. Configuration MACDs

### *Performance of Configuration MACDs*

15.1 A task will only be a Configuration MACD if the task:

- a. is pre-approved by the Client.
- b. relates directly to a Configuration Item.
- c. is not associated with resolving an Incident.
- d. does not require any scoping or project management.

15.2 All MACD configurations will be carried out during business hours unless agreed otherwise.

15.3 If the performance of any Configuration MACD could lead to instability in the Client's IT infrastructure, KVD can request that the Client perform precautionary or preliminary work before implementation of the relevant Configuration MACD task.

15.4 If requested by the Client, KVD will perform any precautionary or preliminary work on the Client's behalf at an Additional Charge.

### *KVD's obligations*

15.5 KVD must:

- a. perform the Configuration MACD in accordance with this Agreement.

15.6 Where the Client requests that any Configuration MACD be performed out of Business Hours, an additional charge will fall due.

### *The Client's obligations*

15.11 The Client must:

- a. log urgent Configuration MACDs with the Service Desk by telephone only.
- b. advise KVD of the nominated Client contacts with the authority to request Configuration MACDs.
- c. assess and accept all risks associated with a proposed Configuration MACD;
- d. accept that limitations caused by third-party manufacturers may affect any Configuration MACD task commencement and delivery times.

### *Exclusions*

15.12 KVD has no responsibility for any risks associated with the performance of Configuration MACDs.

15.13 The Configuration MACD Service Element cannot be used for the installation of a new product that is of a different type to those already on the Contract.

15.14 Where a requested Configuration MACD will result in a change to the Service Level of a Configuration Item (e.g. a Configuration MACD that requires a Configuration Item be moved to a remote Site where KVD cannot offer the currently Service Level), the task will be performed at an Additional Charge.

## 16. Service Level Management

*Service Management Reports and Service Management Reviews*

### **KVD's obligations**

16.1 KVD must, at the frequency set out in the proposal:

- a. provide *Service Management Reports* to the Client that contain information regarding the supply of the Service that covers such things as:
- b. schedule and attend *Service Management Review* meetings with the Client.

## 17. Service Maintenance

17.1 The Client must promptly notify and provide KVD with all relevant information for any Service Administration MACDs.

17.2 KVD requires that notice is given and agreement reached before any configuration MACD's an additional charge will be rendered where this is not met.

## 18. Client's General Obligations

18.1 The Client must:

- a. keep an up-to-date copy of any 3<sup>rd</sup> Party Software and provide a copy to KVD when requested.
- b. provide KVD with access to the Site and the Configuration Items.

18.2 As part of its Service improvement process, KVD may conduct client satisfaction surveys with Client contacts upon resolution of an Incident or other issue as KVD considers necessary.

18.3 If requested, the Client must provide KVD with reasonable evidence that the Client has adequate, published guidelines and procedures for Occupation Health and Safety purposes in respect of each Site, and that the Client has a satisfactory public liability insurance cover.

## 19. End-of-Life Configuration Items

- 19.1 30 days written notice will be provided where KVD is, in its reasonable opinion, unable to continue to provide effective Service on an End-of-Life Configuration Item. Upon removal, KVD will make a pro-rata adjustment in respect of the Service Charges and the contract will be amended accordingly.
- 19.4 If the Client notifies KVD within the time required by clause 19.1 that it wishes to purchase a new replacement product, KVD will, at a time agreed between the parties, remove the temporary replacement product and replace it permanently with the new replacement product.
- 19.5 The Client's purchase of any new replacement Configuration Item, as required by clause 19.1, must be effected pursuant to a separate order between the parties.
- 19.6 Until the temporary replacement Configuration Item is returned to KVD, the risk of loss, destruction, or damage to it is with the Client.

## 20. Modification of Configuration Items

- 20.1 KVD will make modifications to any Configuration Item as it reasonably determines for the purpose of improving or maintaining its serviceability or reliability.

## 21. Exclusions

- 21.1 KVD is not obliged, without the payment of an Additional Charge, to supply any software, Parts, or services to rectify a problem, fault, or Incident arising from, or repair or replace a Configuration Item which fails or develops an error due to:
- a. external causes including natural disaster, fire, accident, neglect, misuse, vandalism, water, lightning, power failure, power surge, or power spike.
  - b. use of the Configuration Item for other than its intended purpose or contrary to its specifications.
  - c. performance of maintenance or attempted repair of the Configuration Item by persons other than KVD or as authorized by KVD.
  - d. use with or connection of the Configuration Item to items not maintained or approved by KVD.
  - e. relocation of the Configuration Item by the Client.
  - f. insufficient capacity of the Configuration Item caused by the Client's relevant system.

21.2 The Service does not include:

- a. repair or replacement of any Configuration Item that fails due to a design defect, the existence of which was not known to KVD at the date coverage for that Configuration Item commences under this Agreement.
- b. repair or replacement of accessories, attachments, or any other devices (including Configuration Item components) not listed in the Contract.
- c. repairs or replacements necessitated by unauthorized changes, modifications, or alterations of or to any Configuration Item.
- d. provision of optional accessories or consumable supplies.
- e. installation and configuration of Minor Feature Releases, Updates, Patches, or other software releases other than for the implementation of Workaround or Permanent Resolution on a Configuration Item which is covered by the Restore Business Continuity Level.
- f. services to detect or to rectify any fault connected with the inability of any Configuration Item to correctly deal with a date.
- g. preventative maintenance.
- h. support, diagnosis, repair, or replacement of device cables, cable assemblies, or cabling reticulation systems.
- i. freight and/or taxes associated with field notices or product recalls issued by the manufacturer of a Configuration Item.
- j. repair or replacement of Configuration Items while being used for testing of the Configuration Items; or
- k. configuration or reconfiguration of Configuration Item which is in Good Operating condition



## Terms of Service

### 22. Term

- 22.1 The Initial Term of this Agreement commences on the Commencement Date and continues for the Initial Term specified in the contract.
- 22.2 After the Initial Term (or any renewed Term), this Agreement continues for a further term of 12 months, unless either party gives the other party written notice not to renew this Agreement at least 90 days before the end of the Initial Term (or the renewed Term), as the case may be.
- 22.3 The Service Charges payable for a renewed Term will be agreed upon before renewal.

### 23. Services

- 23.1 During the Term KVD must supply the Services to the Client and the Client must pay the Service Charges and any Additional Charges.

### 24. Service Charges and Payment Terms

#### *Invoices*

- 24.1 KVD will issue invoices for the Service Charges as otherwise defined in the contract and must send each invoice to the address there specified or as the Client may otherwise specify in writing. Where applicable the invoice for the Set-Up Fee will be rendered at the commencement of the Term. Where agreed changes are made to the Contract, KVD must invoice the Service Charges for the adjustments pro-rata to the end of the then-current Term. If the Client disputes an invoice in part, it may defer payment of only that disputed part pending resolution of the dispute.
- 24.2 KVD will issue invoices for Additional services when works are complete, goods are supplied or expenses are incurred.

#### *Payment Terms*

- 24.3 The Client must pay the Service Charges, any applicable Set-Up Fees, and any Additional Charges within 14 days after the date on which KVD's invoice is rendered.

#### *Failure to pay*

- 24.6 If the Client fails to pay any amounts payable to KVD by the due date, KVD may, on 7 days' written notice, suspend supply of all or any part of the Service until the Client pays all such overdue amounts.

#### *Special charges*

- 24.7 If access to or replacement of a Configuration Item by KVD requires specialized equipment and/or additional resources to comply with legal or occupational health and safety requirements, the Client will incur an Additional Charge.

### 25. Taxes

- 25.1 VAT will be applied on all invoices issued at the standard rate.

## 26. Warranties

- 26.1 KVD warrants that it will provide the Services properly and professionally and will ensure that the Services are performed by personnel who are suitably qualified to perform the Services.
- 26.2 The Client warrants that it has the appropriate licenses, rights, and/or title to the Configuration Items that are the subject of this Agreement.

## 27. The Client's Obligations

- 27.1 The Client must provide KVD with:
- a. reasonable assistance and information to assist it to provide the Services.
  - b. all communications interfaces KVD requires to enable the provision of the Services, except those that KVD keeps on its premises or installs at a Site for use in providing the Services.
  - c. access to a Site when required for providing the Services.
  - d. if requested, provide secure facilities at a Site for KVD to store tools, parts, and other items necessary for it to perform its obligations under this Agreement.
  - e. keep such records relating to use and performance of the Configuration Items which are the subject of the Services as KVD may reasonably request and ensure that KVD 's personnel have access to such records at all reasonable times;
  - f. comply with the Client's obligations set out in this Agreement; and
- 27.2 If the Client fails to promptly comply with any of the Client's obligations set out in this Agreement, KVD may, in its absolute discretion, suspend performance of any or all of the Services affected as a result of the Client's failure or refusal until the Client has complied with its obligations.

## 28. SubContractors

- 28.1 KVD may subcontract parts of the Services to such persons as it, in its discretion, considers necessary to enable it to fulfill its obligations under this Agreement.

## 29. Confidentiality

- 29.1 Neither party is permitted, without the prior written consent of the supplying party, to disclose or communicate to any third party or their employees, agents, Contractors or consultants any Confidential Information or use any Confidential Information for any purpose except for the purpose for which such Confidential Information was supplied or for the proper performance of this Agreement.
- 29.2 Each party agrees that the documents attached to or incorporated in this Agreement by reference are confidential and must not be disclosed to any person (other than a party's legal or financial advisors or as required by law) without the prior written consent of the other party.

## 30. Limitations on liability

- 30.1 Other than in respect of its liability for death, personal injury, damage to tangible property, claims for breach of third party intellectual rights or breach of privacy laws, KVD 's aggregate liability, whether arising from breach of contract, negligence, or any other tort, breach of warranty under and indemnity or statute, in equity or otherwise is limited to an amount equal to the annual Service Charges paid by the Client at the date such liability is proven to have arisen.

- 30.2 If KVD admits liability to the Client for a claim for a breach of this Agreement and the Client has elected not to, (or has no right to) terminate this Agreement on the grounds of the breach, KVD may, at its option, elect to apply the whole or part of any amount agreed to be paid to the Client as the result of such breach as a credit to future Service Charges payable by the Client.
- 30.3 KVD has no liability to the Client for any incidental, indirect, special or consequential loss or damage, or for loss of or corruption of data, loss of use, revenues, profits, goodwill, bargain, opportunities, or anticipated savings, whether arising from breach of contract, negligence or any other tort, in equity or under an indemnity, warranty or otherwise, whether or not KVD was aware of the possibility of such loss or damage.
- 30.4 To the fullest extent permitted by law, the parties agree to exclude all express or implied warranties, representations, statements, terms, and conditions relating to KVD or the provision of the Services under these terms, not expressly set out in these terms, are excluded from the agreement between the parties.
- 30.6 KVD will not be liable for any failure or delay in providing the Services where such failure or delay is the direct or indirect result of any action by or the failure of the Client to comply with this Agreement.

## 31. Termination

- 31.1 If a party breaches any provision of this Agreement, the other party may:
- suspend the provision of the Services or payment of any amounts otherwise due (as the case may be) until the breach is remedied by the party in breach; and
  - terminate this Agreement, if the party in breach remains in breach of any such provision after receiving at least 30 days' notice in writing from the other party identifying the breach and requesting its remedy.
- 31.2 Either party may terminate this Agreement immediately if the other party:
- enters into any arrangement between itself and its (or any class of its) creditors.
  - ceases to be able to pay its debts as they become due.
  - ceases to carry on business.
  - enters into liquidation or any form of insolvency administration; or
  - has a receiver, a receiver, and manager, a trustee in bankruptcy, an administrator, a liquidator, a provisional liquidator, or other like person appointed to the whole or any part of its assets or business.
- 31.3 If KVD terminates this Agreement, the Client must immediately pay to KVD the total of all amounts then due to KVD according to this Agreement.
- 31.4 Termination of this Agreement (for whatever cause) does not affect any right or cause of action which has accrued to the party which terminates this Agreement at or before the date of termination.

### 32. Soliciting Employees or Contractors

- 32.1 During the term of this Agreement and for 12 months after termination by either party of this Agreement, a party must not solicit to employ any person who is an employee of or Contractor to the other party who was involved during the most recent 12-month period of this Agreement in the matters covered by this Agreement.
- 32.2 This clause does not apply where:
- a. the employment is agreed to by the parties.

### 33. General Conditions

#### *Prior agreements*

- 33.4 This Agreement supersedes all prior agreements, arrangements, and undertakings between the parties and constitutes the entire agreement between the parties relating to its subject matter.

#### *Variations*

- 33.5 No variation of this Agreement is binding upon the parties unless made in writing signed by an authorized representative of each of the parties unless provided otherwise in this Agreement. KVD's written acceptance of a written request (including a request made by e-mail) by the Client for a variation to the Contract is binding on both parties. Following an agreed variation, KVD must issue a revised Contract.

#### *Notices*

- 33.6 Notices to or by a party delivered in person are deemed to be given by the sender and received by the addressee when delivered to the addressee: if by post, 3 Business Days from and including the date of postage; or if by facsimile, when successfully transmitted to the addressee provided that if the transmission is on a day which is not a Business Day or is after 5.00 PM (addressee's time), on the next Business Day.

#### *Illegality*

- 33.7 Any provision or the application of any provision of this Agreement that is void, illegal, or unenforceable in any jurisdiction does not affect the validity, legality, or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

#### *Waiver*

- 33.8 A waiver of a breach of this Agreement or any right, power, authority, discretion, or remedy arising upon a breach of or default under this Agreement must be in writing and signed by the party granting the waiver.

### *KVD Management System*

- 33.10 Due to changes in technology and KVD 's desire to maintain the highest possible quality of the Services, it may be necessary to make adjustments or add enhancements to the KVD Management System during the Term. KVD will provide advance notice of any such changes, if possible. If the standard scope of the Services is necessarily improved or extended as a result of the enhancements, they will be offered to the Client for the remainder of the then-current Term at no additional cost, provided that KVD will expect that no claim is made for a reduction in the Service Charges for minor reductions in scope as a result of the enhancements.

### *Force majeure*

- 33.11 Neither party is liable to the other for the consequences of any delays or failures of its performance which are caused by any event beyond its reasonable control, including without limitation acts of God, fire, flood, accident, terrorism, strike, labour problems, and riots.