



## Standard Terms and Conditions of Business

THE TERMS AND CONDITIONS SET OUT BELOW CONSTITUTE THE ENTIRE AGREEMENT BETWEEN KHIPU NETWORKS LTD ("KHIPU") AND THE CUSTOMER, UNLESS OTHERWISE AGREED TO IN WRITING BY A DIRECTOR OF KHIPU.

### 1 INTERPRETATION

#### 1.1 Definitions. In these Conditions, the following definitions apply:

<b>Business Day:</b>	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
<b>Charges:</b>	the charges payable by the Customer for the supply of the Goods and/or Services in accordance with clause 12.
<b>Contract:</b>	the contract between KHIPU and the Customer for the supply of Goods and/or Services set out in an Order Acknowledgement and in accordance with these Terms.
<b>Customer:</b>	means the person, firm or company who purchases the Goods and/or Services from KHIPU.
<b>Deliverables:</b>	the deliverables set out in the Order Acknowledgement or otherwise produced by KHIPU for the Customer in the course of any Services.
<b>Force Majeure Event:</b>	has the meaning given to it in clause 19.
<b>Goods:</b>	the goods (or any part of them) to be supplied by KHIPU to the Customer as set out in the Order Acknowledgement.
<b>Intellectual Property Rights:</b>	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
<b>KHIPU:</b>	KHIPU Networks Limited registered in England and Wales with company number 05218573 and whose registered address is at Fleet27, Rye Close, Fleet, Hampshire, GU51 2UH.
<b>KHIPU Materials:</b>	has the meaning given to it in clause 7.1.7.
<b>Managed Services:</b>	means any managed services described in the Order Acknowledgement.
<b>Order Request:</b>	has the meaning set out in clause 2.2.
<b>Services:</b>	the services, including the Deliverables, supplied by KHIPU to the Customer as set out in the Order Acknowledgement.
<b>Terms:</b>	these terms and conditions as amended from time to time in accordance with clause 20.7.



- 1.2 Construction. In these Conditions, the following rules apply:
- 1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
  - 1.2.2 a reference to a party includes its successors or permitted assigns;
  - 1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
  - 1.2.4 any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
  - 1.2.5 a reference to **writing** or **written** includes faxes and e-mails.

## 2 APPLICATION OF TERMS

- 2.1 These Terms shall be deemed to constitute the Contract for the supply by KHIPU of its Goods and/or Services and these Terms shall apply to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, acceptance of quotation, specification or other document).
- 2.2 Submitting a purchase order, accepting a KHIPU proposal or quotation or by signing a Scope of Work constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions ("Order Request"). The Order Request shall only be deemed to be accepted once KHIPU has provided written confirmation of its acceptance or, if earlier, KHIPU commences delivery of the Goods and/or the provision of the Services ("Order Acknowledgement").
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of KHIPU which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by KHIPU and any descriptions of the Goods or illustrations or descriptions of the Services contained in KHIPU's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract 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.
- 2.6 Any quotation given by KHIPU shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.
- 2.7 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.8 No Order Request which has been accepted by KHIPU by way of an Order Acknowledgement may be cancelled by the Customer except with the agreement in writing by a director of KHIPU and on terms that the Customer shall indemnify KHIPU in full against all losses (including loss of profit), costs (including the cost of labour and materials used), damages, charges and expenses incurred by KHIPU as a result of cancellation and/or irrevocably committed to by KHIPU prior to cancellation.



### 3 DELIVERY OF GOODS

- 3.1 KHIPU shall deliver the Goods to the location set out in the Order Acknowledgement or such other location as the parties may agree in writing (**Delivery Location**).
- 3.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location or if KHIPU is providing any staging or pre-configuration services on behalf of the Customer on their arrival to KHIPU's premises for such purpose.
- 3.3 Unless otherwise agreed in writing with KHIPU, the method of carriage will be determined by KHIPU at its sole discretion.
- 3.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence nor shall it be made of the essence by mere notice by the Customer, time shall only be of the essence when specifically agreed in writing by KHIPU. KHIPU shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide KHIPU with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.5 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or KHIPU is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
  - 3.5.1 risk in the Goods shall pass to the Customer (including for loss or damage caused by KHIPU's negligence);
  - 3.5.2 the Goods shall be deemed to have been delivered; and
  - 3.5.3 KHIPU may store the Goods until delivery, upon which the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 3.6 The Customer must inspect the Goods as soon as reasonably practicable following delivery. In any event, the Goods shall be deemed to have been delivered in accordance with KHIPU's records relating to their despatch in a good and undamaged condition and in full working order and in the correct quantity unless KHIPU receives written notice of any visible damage or apparent defect or of any issues regarding the quantity of Goods delivered within 3 Business Days of delivery.
- 3.7 KHIPU shall not be liable for any non-delivery of Goods (even if caused by KHIPU's negligence) unless the Customer gives written notice to KHIPU of the non-delivery within 3 days of the date when the Goods would in the ordinary course of events have been received.
- 3.8 Any liability of KHIPU for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or at KHIPU's sole discretion issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

### 4 GOODS' WARRANTY

- 4.1 Where KHIPU is not the manufacturer of the Goods (for example, in respect of any third-party hardware) provided under these terms ("Third Party Hardware"), subject to the warranties provided by the manufacturer, KHIPU will (where it is able to) use its reasonable endeavours to pass on the benefit to the Customer of warranties provided by the manufacturer of any such Third-Party Hardware. Subject to clause 16.1, this shall be KHIPU's sole liability in respect of the Third-Party Hardware.
- 4.2 KHIPU warrants to the Customer that (subject to the other provisions of these conditions) on delivery the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 4.3 KHIPU shall not be liable for a breach of the warranty in clause 4.2 unless:



4.3.1 the Customer gives written notice of the defect to KHIPU within 3 Business Days of the time when the Customer discovers or ought reasonably to have discovered the defect or breach; and

4.3.2 KHIPU after receiving the notice set out in 4.3.1, is given a reasonable opportunity of examining such Goods and the Customer (if asked to do so by KHIPU) returns (at the Customer's cost) such Goods to KHIPU's place of business for the examination to take place and the Customer gives KHIPU all information and assistance reasonably required in relation to such examination.

4.4 KHIPU shall not be liable for a breach of the warranty in clause 4.2 if:

4.4.1 the Customer or any third party makes any further use of such Goods after such notice being given; or

4.4.2 the defect or breach arises because the Customer or any other third party failed to follow any operating or installation instructions, the guidance or instructions contained within any documentation supplied with the Goods or any other of KHIPU's (or the relevant manufacturer's) instructions (whether oral or in writing) as to the storage, installation, commissioning, use or maintenance of the Goods; or

4.4.3 the defect or breach arises out of any breach by the Customer of the Contract; or

4.4.4 the defect arises as a result of fair wear and tear, or wilful damage, or negligence, or abnormal working conditions;

4.4.5 the Customer or any third party alters or repairs the Goods without the written consent of KHIPU; or

4.4.6 the Goods are used in combination with or otherwise together with any goods or services which are not supplied by KHIPU or which are not otherwise approved in writing by KHIPU as being compatible with the Goods.

4.5 Subject to clause 4.3 and 4.4, if any of the Goods do not conform with the warranty in clause 4.3 KHIPU shall at its sole discretion repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if KHIPU so requests, the Customer shall return the Goods or the part of such Goods which is defective to KHIPU.

4.6 If KHIPU complies with clause 4.5 it shall have no further liability for a breach of the warranty in clause 4.2 in respect of such Goods.

4.7 If any Goods which the Customer claims to be defective are discovered, in the reasonable opinion of KHIPU not to be defective, KHIPU reserves the right to invoice the Customer for all costs and expenses incurred by KHIPU in relation to the collection (and return) of such Goods and the diagnosis of such Goods to determine whether or not they are defective at KHIPU's standard charges in force from time to time.

4.8 KHIPU makes no warranty as to the fitness of the Goods for any particular purpose and it is the sole responsibility of the Customer to determine by reference to information made available by KHIPU in relation to such Goods whether or not the Goods are appropriate for the purpose for which they are required.

4.9 The warranty given in clause 4.2 is given in lieu of all other warranties, conditions, or other terms expressed or implied whether by statute, common law or otherwise which are, to the fullest extent permitted by law excluded from each Contract.

## 5 TITLE AND RISK

5.1 The risk in the Goods shall pass to either the Customer on completion of delivery or in the circumstances set out in Clause 3.5.



- 5.2 Title to the Goods shall not pass to the Customer until KHIPU receives payment in full (in cash or cleared funds) for the Goods and any other goods that KHIPU has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 5.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 5.3.1 hold the Goods on a fiduciary basis as KHIPU's Bailee and hold the Goods in such a way that they remain readily identifiable as KHIPU's property;
  - 5.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 5.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on KHIPU's behalf from the date of delivery;
  - 5.3.4 notify KHIPU immediately if it becomes subject to any of the events listed in clause 18.1.2 to clause 18.1.10; and
  - 5.3.5 give KHIPU such information relating to the Goods as KHIPU may require from time to time.
- 5.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 18.1.2 to clause 18.1.10, then, without limiting any other right or remedy KHIPU may at any time:
- 5.4.1 require the Customer to deliver up all Goods in its possession; and
  - 5.4.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## 6 **SUPPLY OF SERVICES**

- 6.1 KHIPU warrants that the Services shall be performed by qualified individuals in a professional and workmanlike manner conforming to generally accepted industry standards and practices, and in accordance with any applicable laws.
- 6.2 KHIPU shall use all reasonable endeavours to meet any performance dates for the Services agreed in the Order Acknowledgement, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 6.3 KHIPU shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and KHIPU shall notify the Customer in any such event.
- 6.4 KHIPU warrants to the Customer that the Services will be provided using reasonable care and skill.
- 6.5 For the avoidance of doubt, KHIPU shall not be required to provide any training or undertake any installation unless agreed in the Order Acknowledgement.

## 7 **CUSTOMER'S OBLIGATIONS**

- 7.1 The Customer shall:
- 7.1.1 ensure that the terms of the Order Acknowledgement are complete and accurate;
  - 7.1.2 co-operate with KHIPU in all matters relating to the Services;



- 7.1.3 provide KHIPU, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation, IT infrastructure and network and other facilities as reasonably required by KHIPU to provide the Services;
- 7.1.4 provide KHIPU with such information, instructions and materials as KHIPU may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- 7.1.5 prepare the Customer's premises for the supply of the Services including but not limited to building works, electrical power, air conditioning ventilation and internet connections (of appropriate bandwidth);
- 7.1.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 7.1.7 keep and maintain all materials, equipment, documents and other property of KHIPU (KHIPU Materials) at the Customer's premises in safe custody at its own risk, maintain KHIPU Materials in good condition until returned to KHIPU, and not dispose of or use KHIPU Materials other than in accordance with KHIPU's written instructions or authorisation; and
- 7.1.8 the Customer shall advise KHIPU in writing of any reasonable and lawful policies and security rules in force for the conduct of its personnel at the Customer's premises; and
- 7.1.9 be responsible for KHIPU's personnel whilst at the Customer's premises.

7.2 If KHIPU's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):

- 7.2.1 KHIPU shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays KHIPU's performance of any of its obligations;
- 7.2.2 KHIPU shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from KHIPU's failure or delay to perform any of its obligations as set out in the Contract; and
- 7.2.3 the Customer shall reimburse KHIPU on written demand for any costs or losses sustained or incurred by KHIPU arising directly or indirectly from the Customer Default.

## 8 **THIRD PARTY SOFTWARE**

The Customer acknowledges and agrees that any third-party software or firmware supplied by KHIPU with the Goods or otherwise shall be subject to the third party's licence terms and the Customer shall indemnify KHIPU, and hold KHIPU harmless against any losses, expenses, claims and/or damages that KHIPU may suffer or incur howsoever occurring as a result of the Customer's breach of any such licence terms.

## 9 **KHIPU'S KARMA SYSTEM**

If KHIPU provides the Customer with access to its Karma system which is accessible through a secure web browser hosted by KHIPU and which provides status and fault monitoring on various equipment (the "Karma System"), the Customer agrees to comply with KHIPU's end user licence terms in force from time to time. The Customer acknowledges and agrees that the Karma System is provided "as is" and KHIPU does not warrant that the system will be uninterrupted or error free.

## 10 **SUPPORT AND MAINTENANCE**

If KHIPU has agreed in an Order Acknowledgement to provide the Customer with any support and maintenance services in respect of any hardware or software supplied by KHIPU, KHIPU agrees to provide any such support and maintenance services in accordance with KHIPU's Standard Support and Maintenance Terms in force from time to time (which are available on request).

## 11 **MANAGED SERVICES**

- 11.1 To the extent that the Services consist of any Managed Services and the Customer has outsourced specific services requirements to KHIPU (as detailed in the Order Acknowledgement) the additional terms set out in this clause 11, shall apply to the Contract.
- 11.2 The Customer shall permit KHIPU remote access to the Customer's network for the purpose of providing the Managed Services and the Managed Services shall be contingent on the Customer providing continuous internet access of appropriate bandwidth not less than that as specified by KHIPU from time to time to the Customer's systems and the Customer shall use all reasonable endeavors to ensure that such access is uninterrupted and error-free. The Customer acknowledges that KHIPU is not responsible for any failure to provide Managed Services resulting from any interruption to the internet access.
- 11.3 The Customer agrees to be responsible for maintaining a valid accessible backup of any Customer data, and shall make the same available to KHIPU in the event of any data loss.
- 11.4 The Customer shall provide KHIPU and its personnel with such access to the Customer's premises (or other premises, records and materials) sufficient to enable KHIPU to fulfil its obligations under the Contract.
- 11.5 The Customer shall obtain at its own expense all necessary permissions that may be required to allow KHIPU to provide the Managed Services.
- 11.6 The Customer agrees that it shall not unreasonably or without due cause interrupt or interfere with KHIPU's provision of the Managed Services, notwithstanding the Customer's other rights and remedies.
- 11.7 The Customer shall insure all KHIPU owned equipment or hardware made available to the Customer as part of the Managed Services for loss, damage, or misuse of no less than the value of its replacement.
- 11.8 The Customer shall at all times ensure that it has:
- 11.8.1 an appropriate and secure internet connection of suitable bandwidth to enable KHIPU to connect to and remotely access the Customer's network via an agreed and approved VPN connection and/or other secure means of connection; and
  - 11.8.2 an appropriate and functioning power supply to the Customer's network.
- 11.9 The Customer shall not store, distribute or transmit any material through the Managed Services that:
- 11.9.1 is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;
  - 11.9.2 facilitates illegal activity;
  - 11.9.3 depicts sexually explicit images; and/or
  - 11.9.4 promotes unlawful violence, discrimination based on race, gender, age, disability, sexual orientation, religion and belief or any other illegal activities.
- 11.10 The Customer shall not provide and/or make available the Managed Services to third parties.

## **12 CHARGES AND PAYMENT**

- 12.1 The price for Goods shall be the price set out in the Order Acknowledgement or, if no price is quoted, the price set out in KHIPU's published price list as at the date of delivery. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid in addition by the Customer when it pays for the Goods.
- 12.2 The charges for the Services shall be as detailed in the Order Acknowledgement (save in the case of manifest error).
- 12.3 Unless otherwise agreed in the Order Acknowledgment, KHIPU shall invoice the Customer on or at any time after completion of delivery and in respect of Services, KHIPU shall invoice the Customer monthly in arrears.
- 12.4 The Customer shall pay each invoice submitted by KHIPU:
- 12.4.1 within 30 days of the date of the invoice; and
  - 12.4.2 in full and in cleared funds to a bank account nominated in writing by KHIPU, and
- time for payment shall be of the essence of the Contract.
- 12.5 KHIPU reserves the right to:
- 12.5.1 increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to KHIPU that is due to:
    - 12.5.1.1 any factor beyond the control of KHIPU (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
    - 12.5.1.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
    - 12.5.1.3 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give KHIPU adequate or accurate information or instructions in respect of the Goods
- 12.6 If any Charges quoted by KHIPU are based on the Customer trading-in any replaced goods with the relevant manufacturer (Trade-in Allowance) then the Customer shall return any such goods to the relevant manufacturer by the date and in the condition specified in the Order Acknowledgement or, if none is specified, within forty-five (45) days from delivery of the replacement Goods. Otherwise, the Customer shall not be entitled to benefit from the Trade-in Allowance and KHIPU shall be entitled to invoice the Customer for the full price of the Goods (or any amount outstanding).
- 12.7 KHIPU reserves the right to charge the Customer for any reasonable expenses incurred in connection with the Services (including, the cost of hotel, subsistence, travelling and other ancillary expenses) which it will invoice the Customer at cost.
- 12.8 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by KHIPU to the Customer, the Customer shall, on receipt of a valid VAT invoice from KHIPU, pay to KHIPU such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 12.9 If the Customer fails to make any payment due to KHIPU under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis



from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

- 12.10 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. KHIPU may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by KHIPU to the Customer.

### 13 INTELLECTUAL PROPERTY RIGHTS

- 13.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and/or Services shall be owned by KHIPU or its licensors.
- 13.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on KHIPU obtaining an appropriate licence from the relevant licensor on such terms as will entitle KHIPU to license such rights to the Customer.

### 14 CHANGE CONTROL

- 14.1 If either party requests a change to the scope or execution of the Services, KHIPU shall, within a reasonable time, provide a written estimate to the Customer of:
- 14.1.1 the likely time required to implement the change;
  - 14.1.2 any variations to KHIPU's charges arising from the change;
  - 14.1.3 the likely effect of the change on timeframes; and
  - 14.1.4 any other impact of the change on the terms of the Contract.
- 14.2 If KHIPU requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.
- 14.3 If the Customer wishes KHIPU to proceed with the change, KHIPU has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, and any other relevant terms of the Contract to take account of the change.

### 15 CONFIDENTIALITY

- 15.1 A party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract.
- 15.2 The provisions of this clause shall not apply to any confidential information that:
- 15.2.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its representatives in breach of this clause);
  - 15.2.2 the receiving party can demonstrate to the reasonable satisfaction of the disclosing party it was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;



15.2.3 is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

15.3 This clause 13 shall survive termination of the Contract.

## 16 **LIMITATION OF LIABILITY**

16.1 Nothing in these Conditions shall limit or exclude KHIPU's liability for:

16.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

16.1.2 fraud or fraudulent misrepresentation; or

16.1.3 for any other matter which it would be illegal for KHIPU to limit or exclude its liability relation to.

16.2 Subject to clause 16.1:

16.2.1 KHIPU shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of reputation, or any indirect or consequential loss arising under or in connection with the Contract; and

16.2.2 KHIPU's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Charges paid by the Customer to KHIPU under the Contract.

16.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

16.4 This clause 16 shall survive termination of the Contract.

## 17 **RETURN POLICY**

17.1 Where KHIPU is not the manufacturer of the Goods (for example, in respect of any third-party hardware or software) the Customer's right to return any such Goods are subject to the return policies and fees imposed by the applicable manufacturer.

17.2 No credit for items delivered to the Customer will be issued by KHIPU without the prior written approval of KHIPU. Such approval, when provided, must be in the form of a written Return Material Authorization (RMA), which must accompany the returned items. An RMA must be requested by the Customer from KHIPU within twenty (20) days from the original shipping date, unless a shorter period is required by the applicable manufacturer.

17.3 Unless a higher fee is imposed by an applicable manufacture, a minimum 20% restocking fee shall apply for all RMAs.

17.4 The Customer agrees to indemnify and hold harmless KHIPU from any and all losses sustained by KHIPU as a result of the Customer's return of items delivered to the Customer pursuant to these Terms.

17.5 Returned items must be in the original shipping cartons, undamaged, unused and unaltered. Goods received without an RMA and or in a condition other than described entitles KHIPU the right to refuse return of the items or impose additional charges which the Customer agrees to pay.

17.6 Opened and/or installed software is not returnable.

## 18 TERMINATION

- 18.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 18.1.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
  - 18.1.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
  - 18.1.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - 18.1.4 a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
  - 18.1.5 the other party (being an individual) is the subject of a bankruptcy petition or order;
  - 18.1.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - 18.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
  - 18.1.8 the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - 18.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - 18.1.10 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business.
- 18.2 Without limiting its other rights or remedies, KHIPU may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 18.3 Without limiting its other rights or remedies, KHIPU may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and KHIPU if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 18.1.2 to clause 18.1.10, or KHIPU reasonably believes that the Customer is about to become subject to any of them.
- 18.4 On termination of the Contract for any reason:

- 18.4.1 the Customer shall immediately pay to KHIPU all of KHIPU's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, KHIPU shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 18.4.2 the Customer shall return all of KHIPU Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then KHIPU may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- 18.4.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 18.4.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 19 **FORCE MAJEURE**

- 19.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of KHIPU including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of KHIPU or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 19.2 KHIPU shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 19.3 If the Force Majeure Event prevents either KHIPU from providing any of the Services and/or Goods or the Customer from performing any of its obligations under the Contract for more than 14 Business Days, KHIPU shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

## 20 **GENERAL**

### 20.1 **Assignment and other dealings.**

- 20.1.1 KHIPU may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- 20.1.2 The Customer shall not, without the prior written consent of KHIPU, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

### 20.2 **Notices.**

- 20.2.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier.
- 20.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business



Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

- 20.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

20.3 **Severance.**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

- 20.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. 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.

- 20.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

- 20.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

- 20.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by KHIPU.

- 20.8 **Governing law.** 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 law of England and Wales.

- 20.9 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims) and that the parties may enforce the judgment in any jurisdiction as appropriate.