

MODULE TC  
TERMS & CONDITIONS

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 The definitions and rules of interpretation set out in Clause 24 of this Module TC apply to this Agreement, unless otherwise defined in this Agreement.

**2. COMMENCEMENT AND DURATION**

The term of this Agreement shall commence on the Effective Date and unless terminated earlier in accordance with its terms, shall continue for the Agreement Term.

**3. APPLICABLE TERMS**

- 3.1 The terms of this Module TC shall be of general application to all Services provided by KINTO under this Agreement unless otherwise specified. In addition, the terms of certain other Modules specified in Module CMOF and and/or the SOW shall apply to services of a particular type as further specified.

**4. KINTO SERVICES: PLATFORM SERVICES AND PROFESSIONAL SERVICES**

- 4.1 KINTO is committed to the development and continuous improvement of KINTO Technology and makes available one or more Platforms on a commercial basis to support customers with their mobility technology and related requirements. In addition to any Platform Support bundled as part of Platform Services KINTO may agree to provide Professional Services at an additional cost to meet additional, bespoke requirements of the Customer as set out in one or more SOW and subject to the terms of this Agreement.

**5. SERVICE PROVISIONING: PLATFORM, PLATFORM SERVICES**

- 5.1 Where agreed in one or more SOW KINTO will provide the Platform Services in exchange for which Customer shall pay the Platform Subscription Fees.
- 5.2 In consideration of the Platform Subscription Fees by the Customer, and subject to and conditioned upon compliance with this Agreement (including payment of the Subscription Fees by the Customer), KINTO grants to the Customer, during the Term, a limited, non-exclusive, non-transferable, non-sublicensable, revocable licence, to permit the Authorised End Users to access and use the Platform Services (and the Platform(s) and the Documents in connection with the Platform Services) limited to the Territory solely for the Customer's internal business operations.
- 5.3 KINTO shall use reasonable endeavours to provide the Platform Services in accordance with any applicable Service Level Agreement.
- 5.4 KINTO warrants that during the Term the Platform will operate in all material respects in accordance with the relevant Service Specification.
- 5.5 If KINTO fails to comply with the warranty at Clause 5.4, it shall use its reasonable endeavours to rectify, repair or correct such failure within a reasonable time which shall be the Customer's sole and exclusive remedy in respect of a breach of the warranty at Clause 5.4.
- 5.6 The warranty at Clause 5.4 shall not apply to the extent of any non-conformance, including unavailability, which is caused by:
- (a) the Customer's breach of this Agreement;
  - (b) use of the relevant Platform contrary to KINTO's instructions; or
  - (c) modification or alteration of the Platform by any party other than KINTO or personnel authorised by KINTO.
- 5.7 The Customer acknowledges that KINTO may from time to time carry out routine and emergency maintenance of the Platform(s). The Customer (and its Authorised End Users) may be unable to access the Platform(s) during any period in which routine or emergency maintenance is being carried out, though KINTO will use reasonable endeavours to keep disruption to and unavailability of the Platform(s) to a minimum.
- 5.8 Except as expressly provided in this Agreement, the Platform(s) are provided "as is" and to the extent permitted by law, KINTO disclaims all other conditions, warranties, representations, undertakings or other terms which might have effect with respect to any Platform(s), or be implied or incorporated into this Agreement, whether by statute, common law, custom or otherwise, including any implied conditions, warranties, undertakings or other terms relating to satisfactory quality, reasonable skill and care, fitness for any particular purpose, ability to achieve a particular result or arising from course of dealing or usage of trade. KINTO does not warrant anything in relation to systems that do not make up the Platform(s) or the connection to those systems.

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- 5.9 Without limitation to Clause 21.1 (Force Majeure), the Customer acknowledges that KINTO has no control over the availability of bandwidth over the entirety of the internet and that, while KINTO will use such endeavours as KINTO deems appropriate to facilitate the Platform(s), KINTO shall not be responsible for any issues or delays caused by such unavailability.
- 5.10 KINTO does not warrant, represent, undertake or agree that:
- (a) the use of the Platform Services by the Customer or its Authorised End Users will meet the Customer's requirements nor that any recommendations derived from use of the Platform Services will deliver any particular benefits if implemented;
  - (b) defects in the Platform Services will be corrected;
  - (c) the operation or availability of the Platform Services will be uninterrupted or error-free; or
  - (d) the functions of the Platform Services will operate in the combinations which the Customer selects for use.
- 5.11 The Customer acknowledges and agrees that any rights to, or in, any Intellectual Property Rights in respect of the Platform(s), the Platform Services and Documents are licensed (not sold) to the Customer and Customer shall have no rights in, or to, the Platform(s), the Platform Services or the Documents other than as expressly stated in this Agreement.
- 5.12 KINTO and its licensors shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Platform(s) any enhancement requests or feedback provided by the Customer, its Admins and any Authorised End Users, so long as the Customer is not identified in any way as the source of such feedback. For the avoidance of doubt, KINTO shall not be obliged to implement any such enhancement requires or feedback.
- 5.13 KINTO may amend the Platform(s) and the Documents from time-to-time provided such amendments apply to the majority of customers for the relevant Platform and KINTO uses its reasonable endeavours to ensure that such amendments do not materially and negatively impact the functionality, performance or security of the relevant Platform.

**6. PLATFORM: CUSTOMER ACCOUNT**

- 6.1 The Platform(s) and/or Platform Services may not be available to Customer unless Customer is subscribed to the relevant Platform(s) and Platform Services and/or have purchased additional Services as set out in Modules CMOF and CMON. As part of the Platform(s) subscription process, KINTO may ask Customer to provide certain information, such as details of the Customer's Authorised End Users, including their names and email address and company information.
- 6.2 Upon subscription to the Platform(s), the Customer will be entitled to designate an Admin for Customer's account ("**Account**") on the relevant Platform. The Customer is responsible for keeping its Account details true, accurate, current, complete, private and confidential. KINTO accepts no liability to the Customer or any third party for any loss or damage arising from a failure by the Customer to keep its Account details in compliance with this Clause 6.2.
- 6.3 The Customer is forbidden from sharing its Account details with third parties. If Customer's Account has been compromised, the Customer must notify KINTO immediately. If KINTO has reason to believe that that the Customer is sharing its Account details with third parties, KINTO reserves the right, in its sole discretion, to:
- (a) disable the relevant Account until further notice;
  - (b) retroactively assess and issue additional fees payable by the Customer in connection with the Services offered/accessed by the Customer outside the scope of the agreed terms in the SOW, in each instance, on KINTO's then current per-user pricing; and
  - (c) exercise any other rights or remedies KINTO may have under this Agreement, including KINTO's termination and suspension rights set out in Clause 16.

**7. PLATFORM: ADMINISTRATORS AND AUTHORISED END USERS**

- 7.1 The Customer, acting through its designated Admin, shall be solely responsible for inviting any of Customer's intended users to become Authorised End Users of the Platform.
- 7.2 The Customer undertakes that:

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- (a) Customer will (and procures that the Authorised End Users will) comply with the terms of this Agreement and the relevant Platform Terms of Use, and Customer is responsible for any acts and omissions of the Admins and Authorised End Users as if committed by the Customer itself;
- (b) Customer will maintain a written, up to date list of current Admins and Authorised End Users and provide such list to KINTO within 5 Business Days of a written request to do so;
- (c) the maximum number of Admins and/or Authorised End Users that the Customer authorises to access and use the Services, Platform(s) and the Documents shall not exceed the number permissible as set out in the SOW;
- (d) Customer will ensure each Admin and Authorised End User account is assigned to one individual Admin and/or Authorised End User and may not be shared between multiple individuals unless such account has been reassigned in its entirety to another individual Admin or Authorised End User, in which case the prior Admin or Authorised End User, shall no longer have any right to access or use the Services, Platform(s) and/or Documents through that account;
- (e) Customer shall ensure that each Admin and Authorised End User keeps their password(s) for their use of the Platform(s) secure and confidential and does not share their password(s) to allow any other employee, contractor, representative or agent of the Customer or any other individual or third party to access the Platform(s);
- (f) if an Admin or Authorised End User leaves the employment or engagement of the Customer or where the employment or engagement of an Admin or Authorised End User is transferred such that the Customer does not intend for them to have access to the Platform(s), the Customer shall promptly inform KINTO so that KINTO may disable such individual's password(s) (which KINTO shall do within a reasonable period of time);
- (g) Customer shall, no more frequently than once per year in the case of physical audits, permit KINTO or KINTO's designated auditor to audit the Services to verify that Customer's use of the Services, Platform(s) and Documents does not exceed the total number allowed under this Agreement. This audit may take place physically on the Customer's premises, or remotely, at KINTO's option, and KINTO may deploy reasonable online audit tools via the Services for these purposes; and
- (h) Customer shall supervise and control use of the Services, Platform(s) and Documents and ensure they are used by Authorised End Users only in accordance with the terms of this Agreement.

**8. SERVICE PROVISIONING: PROFESSIONAL SERVICES**

- 8.1 Where agreed in one or more SOW KINTO shall provide the Professional Services and Deliverables in exchange for which Customer shall pay the Professional Service Fees.
- 8.2 In supplying the Professional Services, KINTO shall:
  - (a) perform the Professional Services with reasonable care and skill in accordance with the generally recognised standards and practices in its industry;
  - (b) to the extent that KINTO personnel accesses any Customer premises, use reasonable endeavours to ensure that such personnel comply with reasonable health and safety and security requirements applicable to such premises provided that KINTO has been notified of such requirements in advance in writing. KINTO shall not be liable under this Agreement if, as a result of observing these requirements, it is in breach of any of its other obligations under the Agreement.
- 8.3 If KINTO fails to comply with Clause 8.2(a), it shall use its reasonable endeavours to remedy such failure as soon as reasonably practicable which shall be the Customer's sole and exclusive remedy in respect of a breach of Clause 8.2(a).

**9. INTELLECTUAL PROPERTY RIGHTS**

- 9.1 As between the parties, Customer and/or its third party licensors retains ownership of any Intellectual Property Rights in:
  - (a) any software, documentation or other materials created by it and/or its third party licensors prior to or outside the scope of this Agreement;
  - (b) the Customer Data; and

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(c) the Customer Materials,  
(collectively, “**Customer IPR**”).

9.2 As between the parties, KINTO and/or its third party licensors retains ownership of any Intellectual Property Rights in:

- (a) any software, documentation or other materials created by it and/or its third party licensors prior to or outside the scope of this Agreement;
  - (b) the Platform(s); and
  - (c) the Documents,
- (collectively, “**KINTO IPR**”).

9.3 The Customer acknowledges and agrees that Customer has no right to access any part of the Platform(s) in source code form.

9.4 The parties acknowledge and agree that the terms relating to ownership of the Deliverables is set out in Module KPSTE and Module KPSTT respectively.

**10. PAYMENT TERMS**

10.1 The Customer shall pay all Platform Subscription Fees to KINTO annually in advance.

10.2 KINTO shall invoice the Customer for the Platform Subscription Fees in annual instalments on or after the Subscription Start Date and on or after each anniversary of the Subscription Start Date throughout the Platform Subscription Term.

10.3 Platform Subscription Fees are payable for the full period of the Platform Subscription Term and the Platform Subscription Term shall not be reduced or terminated on request or notice on a pro-rated basis or otherwise earlier than stated in the relevant SOW. Upon receipt of such request KINTO may invoice Platform Subscription Fees in respect of the full Platform Subscription Term.

10.4 The Customer shall pay all Professional Services Fees as described in a SOW.

10.5 Professional Services are performed and shall be invoiced and paid according with details specified in the applicable SOW either on a rate card, milestones, deliverables or blended basis.

10.6 KINTO performs Professional Services on a retained basis where possible which is likely to involve payment in whole or in part in advance of service commencement. Specific details are defined per project or assignment in the relevant SOW.

10.7 Unless otherwise specified in the SOW, KINTO shall invoice the Customer for any Professional Services on the Professional Services Start Date.

10.8 Professional Services Fees are payable for the full scope of Professional Services ordered pursuant to a SOW. Upon receipt of a request to reduce or vary the scope of Professional Services or Professional Services Fees KINTO may invoice Professional Services Fees in respect of the full scope of professional services ordered under the relevant SOW.

10.9 While KINTO is under no obligation to agree to consider any request to reduce the scope of Professional Services or terminate orders for Professional Services early or prior to completion of such services and Deliverables in the event KINTO agrees on exceptional basis and upon its sole discretion to enter into discussion about possible scope change or variation of Professional Services under no circumstances will any Professional Services Fees in relation to Professional Services which have been substantially or fully delivered or completed or in respect of which costs have been sunk and/or future resources allocated or commitments made at the time of such request be waived or varied as a result of any such discussion or engagement.

10.10 In addition to paying the Professional Services Fees, the Customer shall reimburse KINTO for the following expenses and costs in relation to the Professional Services:

- (a) the cost of reasonable, pre-approved travel and lodging expenses incurred in relation to the performance of the Professional Services; and
- (b) the cost to KINTO of any materials or services procured by KINTO from third parties for the provision of the Professional Services, provided that KINTO obtains the Customer's prior written approval before incurring any such costs.

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- 10.11 KINTO shall be under no obligation to provide Services without a fully executed SOW.
- 10.12 The Customer shall pay all sums due to KINTO in cleared funds in the currency specified in the invoice (or, if not specified, pounds sterling (GBP)).
- 10.13 The Customer shall pay each invoice within thirty (30) days of the date of any such invoice.
- 10.14 Without limiting KINTO's other rights and remedies, if KINTO has not received payment by the invoice due date in accordance with Clause 10.13, KINTO may:
- (a) on no less than fourteen (14) days' notice to the Customer and without liability to the Customer, disable the Customer's password(s), Account(s) and suspend the Customer's access to all or part of the Services and KINTO shall be under no obligation to provide Services while any amounts due remain unpaid; and
  - (b) charge interest on the overdue amount on a daily basis at an annual rate equal to 2% over the then current base lending rate of Bank of England base rate from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 10.15 All payments are non-cancellable and non-refundable in any circumstances including upon early termination of this Agreement. All sums shall be paid in full without set off or deduction.
- 10.16 All sums are exclusive of Sales Tax which, if applicable, which shall be added to KINTO's invoice(s) in accordance with the relevant regulations in force at the time of making the relevant taxable supply.
- 10.17 If the Customer is or may be required under any law or regulation of any governmental entity or authority, domestic or foreign, to withhold or deduct any portion of any payment due to KINTO pursuant to this Agreement and KINTO is unable to reclaim or recover that deduction through the exercise of reasonable efforts, then the sum payable to KINTO will be increased by the amount necessary to yield to KINTO an amount equal to the sum it would have received had no withholdings or deductions been made.
- 10.18 The Customer shall provide accurate, current and complete information on the Customer's billing address and billing contacts, including email address and phone number, and will promptly notify KINTO if this information changes.

**11. KINTO OBLIGATIONS**

- 11.1 KINTO will perform its obligations under this Agreement in compliance with all applicable laws.
- 11.2 KINTO shall use reasonable endeavours to meet any performance dates set out in the SOW or agreed between the parties, but any such dates shall be estimates only and time shall not be of the essence in this Agreement.
- 11.3 This Agreement shall not prevent KINTO from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services which are similar to those provided under this Agreement.
- 11.4 The Customer acknowledges that KINTO may sub-contract any of its obligations under this Agreement to a third party (including any Affiliate of KINTO) and KINTO accepts liability for the acts and omissions of any sub-contractors as if they were acts or omissions of KINTO itself.

**12. CUSTOMER OBLIGATIONS**

- 12.1 The Customer shall:
- (a) provide KINTO with:
    - (i) all necessary co-operation in relation to this Agreement on a timely and responsive basis;
    - (ii) all necessary access to such information as may be reasonably be required by KINTO to provide the Services, Platform(s), Documents and Deliverables including but not limited to Customer Data, technology systems, protocols or configuration, security or access information; and
    - (iii) reasonable access to Customer personnel, facilities and systems, as necessary for KINTO to perform the Professional Services,
- and Customer acknowledges that delays in providing such co-operation, information or access may impact delivery timelines and costs.

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- (b) without affecting any other obligations of the Customer under this Agreement, comply with all applicable laws and regulations with respect to Customer's use of the Platform(s) and the Customer's performance of its obligations under this Agreement; and
- (c) ensure that the Customer's network and systems comply with such specifications or requirements which may be provided by KINTO from time to time.

**13. RESTRICTIONS**

13.1 Except as expressly set out in this Agreement or as permitted by applicable law which is incapable of exclusion by agreement between the parties, the Customer shall not:

- (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Platform(s), Services and/or Documents (as applicable) in any form or media or by any means; or
- (b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Platform(s) or Services;
- (c) access all or any part of the Services, Platform(s) or Documents to build a product or service which competes with the Services, Platform(s) or the Documents;
- (d) use the Services, Platform(s) or Documents to provide services to third parties;
- (e) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services, Platform(s) or Documents available to any third party except the Authorised End Users;
- (f) attempt to undertake any security testing of the Platform(s) without the prior written consent of KINTO;
- (g) attempt to obtain, or assist third parties in obtaining, access to the Platform(s), Services or Documents, other than as provided under this Agreement; or
- (h) use the Services, Platform(s) or Documents for any resale, marketing and/or advertising purposes.

13.2 The Customer shall not use the Services to:

- (a) distribute or transmit to KINTO or introduce into the Platform(s) any Viruses or Vulnerability and shall implement procedures in line with Good Industry Practice to prevent such distribution, transmission or introduction;
- (b) store, access, publish, disseminate, distribute or transmit any material which:
  - (i) is in breach of the relevant Platform Terms of Use;
  - (ii) is unlawful, harmful, threatening, defamatory, obscene, infringing of any rights of any third party, harassing or racially or ethnically offensive;
  - (iii) facilitates illegal activity;
  - (iv) depicts sexually explicit images;
  - (v) promotes unlawful violence;
  - (vi) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
  - (vii) is otherwise illegal or causes damage or injury to any person or property,

and KINTO reserves the right immediately upon notice to the Customer to disable the Customer's and any relevant Admin's and/or Authorised End Users' Account(s) and suspend access to the Platform(s), Services and Documents for the duration of time that the breach remains unremedied. KINTO also reserve the right to remove any material from the Platform(s) at any time and without notice where it deems it to be in breach of this Clause 13.2. The Customer shall use its best endeavours to prevent any unauthorised access to, or use of, the Platform(s) and shall notify KINTO promptly of any such unauthorised access or use.

13.3 No more frequently than once per year, KINTO may audit the Customer's compliance with this Clause 13 by any lawful, technical means and the Customer shall provide all reasonable assistance and information to KINTO necessary to establish that the Platform(s) are only being accessed and used in accordance with this Agreement.

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**14. KINTO INDEMNITIES**

- 14.1 Subject to the provisions of this Clause 14.1 and Clauses 14.2 to 14.4, KINTO shall indemnify the Customer and hold the Customer harmless in respect of all damages and reasonable costs (including court costs and legal fees) and expenses arising directly from an IPR Claim which is valid and enforceable in the legal jurisdiction in which the IPR Claim is commenced provided that:
- (a) the Customer shall give KINTO prompt notice of any actual or threatened IPR Claim;
  - (b) the Customer shall not admit any liability or agree to any settlement or compromise of an IPR Claim without the prior written consent of KINTO;
  - (c) KINTO shall be entitled at any time to assume exclusive conduct of the IPR Claim (which shall include, but not be limited to, the exclusive right to conduct any proceedings or action, negotiate the settlement of the IPR Claim and to conduct all discussions and dispute resolution efforts in connection with the IPR Claim);
  - (d) the Customer shall, at KINTO's request, cost and expense, give KINTO all reasonable assistance in connection with the conduct of the IPR Claim (including taking such steps as is necessary to enable KINTO to assume conduct of the IPR Claim pursuant to Clause 14.1(c); and
  - (e) the Customer takes all reasonable steps to mitigate any liabilities which are the subject of the indemnity in this Clause 14.1.
- 14.2 If any IPR Claim is made, or in KINTO's reasonable opinion is likely to be made, against the Customer, KINTO may at its option and expense:
- (a) obtain for the Customer the right to continue using the Platform in the manner permitted under this Agreement; or
  - (b) modify or replace the infringing part of the Platform to avoid the infringement or alleged infringement, but in such a way that does not materially adversely affect the functionality of the Platform; or
  - (c) terminate this Agreement immediately on notice to the Customer.
- 14.3 Under no circumstances shall KINTO or any KINTO personnel be liable to the Customer under Clause 14.1 or 14.2 (or otherwise) to the extent that the infringement (whether actual or threatened) is based on: (a) any changes, modifications, updates or enhancements made to the Platform(s) other than by KINTO or KINTO personnel; (b) any use of the Platform(s) by the Customer or its Authorised End Users in a manner contrary to KINTO's instructions and/or in breach of this Agreement; or (c) the Customer's or its Authorised End Users' use of the Platform after notice or becoming aware of the actual or threatened IPR Claim.
- 14.4 The provisions of Clauses 14.1 to 14.3 inclusive state the entire liability of KINTO to the Customer in connection with an IPR Claim and shall be the Customer's sole and exclusive remedy in that regard.

**15. LIMITATION OF LIABILITY**

- 15.1 The Customer accepts responsibility for the selection of the Services to achieve its intended results and acknowledge that the Services, Platform(s) and Documents have not been developed or designed to meet or support any individual requirements that the Customer may have, including any cybersecurity requirements the Customer might be subject to, or any regulated activity that the Customer may be engaged in. If the Customer uses the Services for any regulated activity, the Customer agrees to comply with any requirements that apply to such regulated activity from time to time (including in any jurisdiction in which the Customer operates or where the regulated activity is undertaken).
- 15.2 Subject to Clause 15.4, KINTO shall not in any circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), misrepresentation (whether innocent or negligent), breach of statutory duty, restitution or otherwise, arising under or in connection with this Agreement for:
- (a) (i) loss of profits, sales, business, or revenue; (ii) business interruption; (iii) loss of anticipated savings; (iv) wasted expenditure; (v) loss or corruption of data or information; (vi) loss of business opportunity, goodwill or reputation; (regardless of whether the loss or damage set out in this Clause 15.2(a)(i) to (vi) are direct, indirect or consequential); or
  - (b) any special, indirect or consequential loss or damage,

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in each case however arising under or in connection with this Agreement and even if KINTO was aware of the possibility that such loss or damage might be incurred.

- 15.3 Subject to Clauses 15.2 and 15.4, and excluding any liability under clause 15.4, the total aggregate liability of KINTO in respect of any breach by KINTO of any of KINTO's obligations under Clause 19 and any relevant Data Processing Agreement, shall in all circumstances be limited to the greater of (i) a sum equal to one hundred and fifty percent (150%) of the Fees paid or payable by the Customer pursuant to this Agreement in 12 months prior to the date on which the relevant claim or claims arose; or (ii) seven thousand pounds (£7,000).
- 15.4 Subject to Clauses 15.2 and 15.4, and excluding any liability under Clause 15.3, KINTO's maximum aggregate liability under or in connection with this Agreement whether in contract, tort (including negligence), misrepresentation (whether innocent or negligent) or otherwise, shall in all circumstances be limited to the greater of (i) a sum equal to the total Fees paid or payable by the Customer pursuant to this Agreement in 12 months prior to the date on which the relevant claim or claims arose; or (ii) three thousand pounds (£3,000).
- 15.5 Nothing in this Agreement shall limit or exclude the liability of either party to the other for:
- (a) the indemnities under Clause 14.1 and 15.6;
  - (b) death or personal injury caused by negligence;
  - (c) fraud or fraudulent misrepresentation by it or its employees; or
  - (d) any liability that cannot be excluded or limited by law.
- 15.6 The Customer agrees to compensate, defend and keep KINTO and its Affiliates and each of its respective officers, directors, employees, successors, assigns and licensees harmless and fully indemnified against any liabilities, costs, expenses (including other reasonable professional and legal costs and expenses), losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties (calculated on a full indemnity basis), and/or damages suffered or incurred by KINTO arising out of or in connection with any claims, actions or legal proceedings ("**Claims**") arising out of or in connection with:
- (a) any misuse or exploitation of the Services (or part thereof) by the Customer or on its behalf in contravention of the relevant Platform Terms of Use (including use or exploitation by Admins and/or Authorised End Users in contravention of the relevant Platform Terms of Use);
  - (b) any breach by the Customer or on its behalf of any applicable laws, regulations or related guidance; or
  - (c) any breach by the Customer of the warranty in Clause 18.4(b).
- 15.7 KINTO shall have full control of all Claims to which KINTO is a named party and the Customer shall cooperate with KINTO in the defence or settlement of such Claim. Upon prior written notice to KINTO, the Customer may have the opportunity to participate (at its own cost and expense) in any defence or settlement of any Claim subject to Clause 15.6, provided that the Customer shall not make any admission (whether orally or in writing) to any third party in respect of such Claims and the Customer shall not undertake any act, omission or forbearance which may prejudice KINTO in relation to such Claims, including the settlement of any such Claim, without prior written consent of KINTO.

**16. TERMINATION AND SUSPENSION**

- 16.1 Without affecting any other right or remedy available to it, either party may, on no less than three months' notice, give notice in writing to the other party to terminate this Agreement upon which the following arrangements shall apply from the Agreement Termination Date:
- (a) If one or more SOW in respect of Platform Services and/or Professional Services made under this Agreement is active any and all such SOW shall remain in force and Services shall continue to be fulfilled in accordance with the terms of relevant SOW, this Agreement shall remain in force for the period needed to support such ongoing service provisioning through to completion of the applicable services or expiry of the services term, for example until the end of the Platform Subscription Term, if relevant;
  - (b) If no SOW in respect of Platform Services and/or Professional services made under this Agreement is active this Agreement shall be terminated and no further services shall be provisioned nor SOW entered into pursuant to the Agreement, unless exceptionally agreed by the parties.
- 16.2 Neither SOW nor services listed in SOW may be terminated for convenience during the period of service provisioning unless otherwise stated in the relevant SOW. All Services ordered under this Agreement are subject to the payment arrangements and terms of this Agreement, including Clause 10 (Payment Terms).

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- 16.3 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so; or
  - (b) the other party suffers an Insolvency Event.
- 16.4 Without affecting any other right or remedy available to KINTO, KINTO may terminate this Agreement with immediate effect by giving notice if:
- (a) the Customer fails to pay any Fees due under this Agreement on the due date for payment and remains in default not less than thirty (30) days after being notified in writing to make such payment;
  - (b) the Customer commits a persistent breach of this Agreement; or
  - (c) KINTO decides, in its sole discretion, to discontinue operating, maintaining and/or offering all or any of the Services. If the Customer has paid any Platform Subscription Fees (as defined in the SOW) for any Services which KINTO has discontinued and for which, by reason of such discontinuance, the Customer has not received, then KINTO will provide a pro-rata refund for Platform Subscription Fees paid for the period such Services have not been received.
- 16.5 On termination for any reason:
- (a) all rights granted to the Customer (including any Admins and/or Authorised End Users) under this Agreement shall cease;
  - (b) KINTO may immediately end the Customer's and the Authorised Users' use of and access to the Platform(s);
  - (c) the Customer must immediately cease all activities authorised by this Agreement;
  - (d) the Customer must immediately and permanently delete or disable interfaces to the Services from all computer equipment in their possession, and immediately destroy, delete or return to KINTO (at KINTO's option) all copies of the Documents and Platform(s) then in the Customer's possession, custody or control and, in the case of destruction or deletion, certify to KINTO that it has been done;
  - (e) any outstanding sums, or unpaid invoices and interest, due to be paid to KINTO pursuant to this Agreement shall immediately become payable. KINTO shall have the right to issue invoices upon termination in respect of Services supplied but for which no invoice has been submitted, which shall be payable immediately on receipt;
  - (f) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination shall not be affected or prejudiced; and
  - (g) any provisions which are necessary for the interpretation or enforcement of this Agreement shall continue in force notwithstanding termination.
- 16.6 KINTO may suspend the Customer's, and its Authorised End Users', right to access the relevant Platform(s) or use any portion or all of the Platform(s) immediately upon notice to the Customer if it determines acting reasonably:
- (a) that the Customer's (or an Authorised End User's) use of or access to the Platform(s) (i) poses a security risk to KINTO, the Platform(s) or any third party; (ii) may adversely impact availability or performance of the Platform(s), the KINTO Technology or the systems or software of any other customer of KINTO; (iii) may subject KINTO or any third party to any liability; or (iv) may be fraudulent; or
  - (b) that the Customer, or any Authorised End User, is in breach of this Agreement or any other agreement by which software being used on or in conjunction with the Platform(s) is licensed (save that in respect of non-payment the provisions of Clause 10.14(a) shall apply).
- 16.7 KINTO shall reinstate the suspended Platform(s) once it has established the cause of the suspension has been remedied or ceased to exist. Where the cause of the suspension under this Agreement persists for more than thirty (30) days, KINTO may immediately terminate this Agreement without incurring any liability to the Customer.
- 16.8 KINTO shall have no liability whether under this Agreement or at law to the Customer for any exercise of its rights pursuant to Clauses 16.6 or 16.7.

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**17. CONFIDENTIALITY**

- 17.1 Each party undertakes that it shall not at any time disclose to any person any Confidential Information of the other party or of any member of the group to which the other party belongs, except that:
- (a) each party may disclose the other party's Confidential Information to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under this Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this Clause 17; and
  - (b) each party may disclose the other party's Confidential Information to any regulator, law enforcement agency or other third party as may be required by law, regulation, or similar authority.
- 17.2 Neither party shall use any other party's Confidential Information for any purpose other than to perform its obligations under this Agreement.
- 17.3 Each party undertakes that it shall not disclose Confidential Information to the other party except as reasonably necessary for KINTO to perform the Services under this Agreement or as otherwise expressly authorised in writing by the other party.
- 17.4 All Confidential Information shall remain the property of the disclosing party and the disclosing party reserves all rights in its Confidential Information. Nothing in this Agreement or the disclosures envisaged by this Agreement shall (except as expressly agreed otherwise in this Agreement) operate to transfer, or operate as a grant of any licences or right to use, to any Intellectual Property Rights in the Confidential Information.
- 17.5 Each party acknowledges that damages alone would not be an adequate remedy in the event of breach by the other party of the provisions of this Clause 17. Accordingly, it is agreed that either party shall be entitled, without proof of special damages, to seek an injunction or other interim remedy for any threatened or actual breach of this Clause 17 by the other party, without prejudice to any other rights and remedies which that first party may have.
- 17.6 The parties' obligations under this Clause 17 shall continue in force notwithstanding the termination or expiry of this Agreement.

**18. CUSTOMER DATA: RIGHTS AND ASSURANCE**

- 18.1 The Customer shall:
- (a) have sole responsibility for the legality, reliability, integrity, accuracy and quality of any and all Customer Data and the Customer Materials; and
  - (b) have sole responsibility for ensuring that the use of the Customer Data and the Customer Materials do not infringe the rights of any third parties.
- 18.2 The Customer hereby grants to KINTO, on and subject to the terms of this Agreement, a non-exclusive, royalty-free non-transferable licence to use, copy and modify the Customer Data and the Customer Materials for the purpose of providing the Platform(s), the Services, Deliverables and the Documents and the exercise of KINTO's rights and obligations under this Agreement and for requirements ancillary to the provisions of the relevant Platform. KINTO may grant sublicences of the Customer Data and Customer Materials to its subcontractors and other suppliers where necessary for the performance of the Services.
- 18.3 KINTO shall be entitled to use Customer Data to enhance the functionality of and otherwise improve the Platform Services and/or develop new products or services, provided that such data is anonymised and aggregated with the equivalent data from other customers of the Platform Services such that any Customer Data will not be separately identifiable as relating to the Customer ("**Anonymised Data**"). The rights under this clause 18.3 are irrevocable. For the avoidance of doubt, Anonymised Data shall not be regarded as the Customer's Confidential Information.
- 18.4 The Customer warrants to KINTO that the use of Customer Data and the Customer Materials in accordance with this Agreement will not:
- (a) breach any laws, statutes or regulations;
  - (b) infringe the Intellectual Property Rights or other rights of any person; or
  - (c) give rise to any cause of action against KINTO, in each case in any jurisdiction and under any applicable law.

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**19. DATA PROTECTION**

- 19.1 KINTO will process personal data in accordance with applicable Data Protection Laws and applicable KINTO Privacy Notice/s published on KINTO technology resources and updated from time to time.
- 19.2 If KINTO acts as a data processor in provisioning certain Services, KINTO will comply with the detailed provisions of the Data Processing Agreement Module DPAP, which is hereby incorporated into this Agreement by reference and applicable to relevant data processing operations.
- 19.3 If KINTO acts as a data controller in provisioning certain Services, KINTO will comply with the detailed provisions of the Data Processing Agreement Module DPAC, which is hereby incorporated into this Agreement by reference and applicable to relevant data processing operations.

**20. PUBLICITY**

Subject to Customer's prior consent, KINTO may refer to Customer as a client of KINTO in its marketing materials. In which case, Customer grants KINTO a non-exclusive, non-transferable licence during and after the Term to use the Customer's name and logo solely for identifying the Customer as a client of KINTO and in accordance with Customer's branding guidelines where provided.

**21. FORCE MAJEURE**

- 21.1 KINTO will not be liable or responsible for any failure to perform, or delay in performance of, any of its obligations under this Agreement that is caused by any act or event beyond its reasonable control, including failure of public or private telecommunications networks ("**Force Majeure Event**").
- 21.2 If a Force Majeure Event takes place that affects the performance of KINTO's obligations under this Agreement:
- (a) the relevant obligations under this Agreement will be suspended and the time for performance of such obligations will be extended for the duration of the Force Majeure Event; and
  - (b) KINTO will use reasonable endeavours to find a solution by which the obligations under this Agreement may be performed despite the Force Majeure Event.

**22. MISCELLANEOUS TERMS**

- 22.1 KINTO may transfer its rights and obligations under this Agreement to another organisation, but this will not affect the Customer's rights or KINTO's obligations under this Agreement. The Customer may only transfer its rights or obligations under this Agreement to another person with prior written consent from KINTO.
- 22.2 This Agreement and any document expressly referred to in it constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings, whether written or oral, relating to its subject matter.
- 22.3 The Customer acknowledges that in entering into this Agreement it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement or any document expressly referred to in it.
- 22.4 The Customer agreed that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement or any document expressly referred to in it.
- 22.5 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 22.6 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 22.7 Each of the conditions of this Agreement operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.
- 22.8 A person who is not a party to this Agreement may not enforce any of its provisions under the Contracts (Rights of Third Parties) Act 1999.
- 22.9 Nothing in this Agreement is intended to, or shall be deemed to, establish or constitute any partnership or joint venture between the parties, create a relationship of principal and agent for any purpose between the parties, or authorise either party to make or enter into any commitments for or on behalf of the other party.

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- 22.10 No variation of this Agreement shall be effective unless made in writing and signed by or on behalf of each of the parties or by their duly authorised representatives. If the Customer wishes KINTO to proceed with any proposed variation, KINTO has no obligation to do so unless and until the parties have agreed in writing the necessary variations to the Platform Subscription Fees and any other relevant terms of this Agreement to take account of the change.
- 22.11 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (and any non-contractual disputes or claims) are governed by and construed in accordance with English law. The parties irrevocably agree to the exclusive jurisdiction of the courts of England and Wales to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

**23. NOTICES**

- 23.1 Any notices by the Customer concerning this Agreement shall only be valid if in writing by email or letter.
- 23.2 Deemed service of any notice shall be (a) 24 hours after an email is sent, (b) or 3 Business Days after the date of posting of any letter. This Clause 23.2 shall not apply to the service of any legal proceedings.

**24. DEFINITIONS**

- 24.1 The following definitions apply to this Agreement:

**“Account”** has the meaning given in Clause 6.2.

**“Admin”** means the Customer’s employee(s) who the Customer authorises to use any part of functionality of the Platform Services, the Platform(s) and the Documents as administrators of the Customer’s Account on the Platform.

**“Affiliate”** in respect of a party, any entity that from time to time, directly or indirectly, Controls, is Controlled by, or is under common Control with that party and any other entity agreed in writing by the parties as being an Affiliate in respect of either party.

**“Agreement”** is defined in Module CMOF.

**“Agreement Term”** means the later of the term end date specified in Module CMOF and the last Platform Subscription Term or Professional Services Term under this Agreement.

**“Agreement Termination”** means the termination of this Agreement in accordance with its terms.

**“Agreement Termination Date”** means the date on which this Agreement is terminated in accordance with its terms.

**“Authorised End Users”** means the Customer’s employees, agents and independent contractors who the Customer authorises to have access to certain Platform Services, the Platform(s) and Documents limited to the Territory and in accordance with this Agreement.

**“Business Days”** means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**“Confidential Information”** means all information in any medium or format (including written, oral, visual or electronic and whether or not marked or described as “confidential”), together with any copies, which relate to either party, or to its employees, offices, customers or suppliers, and which is directly or indirectly disclosed by the other party under or in connection with this Agreement, whether before or after the date of this Agreement, and which would reasonably be regarded as confidential but shall not include (i) information which is in public domain other than as a result of a breach of this Agreement or any separate confidentiality undertaking between the parties; (ii) information which the receiving party received from a third party free of any obligation of confidence; or (iii) information which the receiving party can show by its written or other records was developed or created independently by such party.

**“Control”** means the power, directly or indirectly, to direct or cause the direction of an undertaking, regardless of whether through the ownership of assets or shares, by contract, or in any other way, and Controls and Controlled will be construed accordingly.

**“Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures”** has the same meaning as set out in the Data Protection Legislation.

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**“Customer Data”** means the data provided or inputted by or on behalf of the Customer (including any personal data relating to Admins and/or Authorised End Users), for the purpose of using or facilitating the use of the Services, the Platform(s) or the Documents and any data generated by, or derived from the Customer’s use of the Services, the Platform(s) or the Documents, whether hosted or stored within the Platform Services, the Platform(s) or the Documents or elsewhere.

**“Customer Materials”** means all documents, information, software, items and materials (whether owned by the Customer or a third party), which are provided by the Customer to KINTO in connection with the Services.

**“Data Protection Legislation”** means, to the extent the UK GDPR (as defined in section 3(10) (as supplemented by section 205(4) of the Data Protection Act 2018) applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; to the extent the General Data Protection Regulation ((EU) 2016/679) applies, the law of the European Union or any member state of the European Union to which the party is subject, which relates to the protection of personal data, the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended, and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data.

**“Deliverables”** means any documentation, materials or other output developed by or on behalf of KINTO specifically for Customer in performing the Professional Services as described in the SOW.

**“Documents”** means any reports, information or other documents provided as part of the Services.

**“Effective Date”** means the effective date of this Agreement specified in the Module CMOF.

**“Fees”** means the fees (including the Platform Subscription Fees and Professional Service Fees) payable under this Agreement.

**“Good Industry Practice”** means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.

**“Insolvency Event”** means the occurrence of any one or more of the following events in relation to a party: (a) the party becomes unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), admits its inability to pay its debts or becomes insolvent; (b) a petition is presented, an order made or a resolution passed for the liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction), administration, bankruptcy or dissolution of the party; (c) an administrative or other receiver, manager, trustee, liquidator, administrator or similar person or officer is appointed to the party and/or over all or any part of the assets of the party; (d) the party enters into or proposes any composition or arrangement concerning its debts with its creditors (or any class of its creditors) generally; or (e) anything equivalent to any of the events or circumstances listed in limbs (a) to (d) (inclusive) occurs in any applicable jurisdiction.

**“Intellectual Property Rights”** means (a) patents, inventions, designs, copyright and related rights, database rights, knowhow and Confidential Information, trade marks (whether registered or unregistered) and related goodwill, trade names (whether registered or unregistered), and rights to apply for registration; (b) all other rights of a similar nature or having an equivalent effect anywhere in the world which currently exist or are recognised in the future; and (c) all applications, extensions and renewals in relation to any such rights.

**“IPR Claim”** means any claim, action, demand, proceeding or investigation by a third party that:

- (a) the access or use by the Customer of the Platform(s) or Deliverables under this Agreement;
- (b) the provision, or the Customer taking the benefit, of any of the Services,

infringes the Intellectual Property Rights of any person.

**“KINTO Technology”** means one or more software applications, websites or other technology products used by KINTO and/or KINTO Affiliates or sub-contractors in delivering the Services.

**“Platform”** means KINTO Technology available to paying KINTO Customers and/or their employees or contractors.

**“Platform Services”** means the provision of a Platform in accordance with the Service Specification and any bundled Platform Support specified in the SOW.

**“Platform Subscription Fees”** means the fees payable for the Platform Services specified in the SOW.

**“Platform Subscription Term”** means the time period during which KINTO provides the Platform Services to the Customer as specified in the SOW.

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**“Platform Support”** means the provision of support and/or maintenance for a Platform as set out in the relevant SLA.

**“Platform Terms of Use”** means the applicable terms governing the use of a Platform by Authorised End Users and the interactions amongst Authorised End Users made available from time to time and upon an Authorised End User’s registration to the Platform.

**“Professional Services”** means professional services specified in the SOW which are not bundled as a component of Platform Services, such as ESG consulting, technology development or additional technology or other support.

**“Professional Services Fees”** means the fees payable for Professional Services specified in the SOW.

**“Professional Services Term”** means the period during which KINTO provides Professional Services specified in the SOW.

**“Sales Tax”** means any applicable national, federal, state and local sales, use, value added, excise and other similar taxes, fees and surcharges that are legally or by custom borne by a purchaser of goods or services.

**“Services”** means the Platform Services and Professional Services.

**“Service Level Agreement or SLA”** means detailed service assurance metrics set out in the SOW.

**“Service Specification”** means a detailed description of a service set out in the SOW.

**“SOW or Statement of Work”** means a document annexed to agreed between KINTO and the Customer concerning the provision of Services by KINTO.

**“Territory”** means the territory set out in the SOW.

**“Viruses”** means any thing or device (including any software, code, file or programme) which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

**“Vulnerability”** means a weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.

24.2 The following rules of interpretation shall apply in this Agreement:

- (a) The Clause headings are for convenience only and shall not affect the interpretation of this Agreement.
- (b) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (c) A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- (d) Unless the context otherwise requires: (a) words in the singular shall include the plural and in the plural include the singular; and (b) a reference to one gender shall include a reference to the other genders.
- (e) A reference to writing or written includes e-mail.
- (f) References to Clauses are to the Clauses of this Module TC.
- (g) A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement and as amended by any subsequent statute or statutory provision. Where a change to a statute or statutory provision results in KINTO and/or any KINTO Affiliates or sub-contractors incurring additional or increased costs to achieve compliance in relation to the Services, KINTO reserves the right to charge fees to reflect such additional or increased costs on no less than thirty (30) days' prior written notice.
- (h) Any phrase introduced by the expressions including, includes, in particular or any similar expression shall be construed as illustrative only and shall not limit the sense of the words preceding those terms.