

## **KALIBRATE SUBSCRIPTION AND SERVICES**

### **STANDARD TERMS**

**V1.2**

**THIS IS A LEGALLY BINDING AGREEMENT BETWEEN THE CUSTOMER (THE "CUSTOMER") AND KALIBRATE LEGAL ENTITY (THE "COMPANY") IDENTIFIED IN THE RELEVANT COVER PAGE, ORDER FORM AND/OR SOW. ANY PROVISION OF THE SERVICES BY THE COMPANY WILL BE DEEMED TO BE ON THESE TERMS AND CONDITIONS UNLESS THEY ARE SPECIFICALLY EXCLUDED IN WRITING AND SIGNED BY THE COMPANY.**

#### **1. DEFINITIONS**

In this Agreement, unless the context otherwise requires, the following terms shall have the meaning set forth below:

"Affiliate" means, with respect to any legally recognisable entity, any other entity Controlling, Controlled by, or under common Control with such entity. "Control" means direct or indirect (i) ownership of more than fifty percent (50%) of the outstanding shares representing the right to vote for members of the board of directors or other managing officers of such entity, or (ii) for an entity that does not have outstanding shares, more than fifty percent (50%) of the ownership interest representing the right to make decisions for such entity. An entity will be deemed an Affiliate only so long as Control exists.

"Agreement" means the agreement between the Customer and the Company which contains (i) the applicable Order Form; (ii) this Standard Terms; and (iii) any applicable Statement of Work.

"Beta Service" means a product, service or functionality provided by the Company that may be made available to the Customer to try at the Customer's option at no additional charge, which is clearly designated as beta, pilot, limited release, non-production, early access, evaluation, trial, or by a similar description.

"Confidential Information" means confidential or commercially sensitive information relating to a party's business that has been kept confidential by the party from whom the information originates, and which has not come into the public domain in breach of any obligation of confidence, including the terms of this Agreement, the and the Documentation.

"Consumer Price Index" or CPI means, for the purpose of this Agreement, as applicable, the UK Retail Price Index, the US Consumer Price Index, or the equivalent for the country where the Company is registered.

"Cover Page" means the cover page and the attachments of the Master Subscription and Services Agreement, which is a different format from the Order Form.

"Customer Data" means all electronic data or information submitted to and stored in the Subscription Service by the Users.

"Data" means any data, data structure, metadata, metrics, charts, graphs, literature, or other content in any form and/or any derivatives thereof, including, where applicable, all updates delivered thereto provided pursuant to the Data Service (this excludes the Customer Data).

"Data Protection Legislation" shall mean the UK Data Protection Act 2018, the General Data Protection Regulation (EU) 2016/679 ("GDPR") (as applicable) and any other laws relating to the protection of personal data and the privacy of individuals; and "Data Subject", "Controller", "Processor", "Processing" and "Personal Data" have the meaning set out in the Data Protection Legislation in relation to any Personal Data that are Processed under this Agreement.

"Data Service" means that portion of services which provides, distributes, performs, broadcasts, or otherwise makes available any Data (including Third-Party Data Products) pursuant to the terms hereof and the applicable Order Form and/or Statement of Work.

"Documentation" means the applicable documentation describing the Services, features, including user guides, which may be updated by the Company from time to time.

"Effective Date" means, unless otherwise mentioned in the applicable Order Form and/or SOW, the date of last signature of the Order Form and/or SOW by the parties.

"Electronic Communications" means any transfer of signs, signals, text, images, sounds, data or intelligence of any nature transmitted in whole or part electronically received and/or transmitted through the Subscription Service.

"Enhanced Support Services" means the supplemental, fee-based technical support services to be provided to the Customer for the Subscription Service pursuant to the terms hereof and the Support and Maintenance Services Policy.

"Export Laws" shall mean applicable export control laws or regulations, including the export laws and regulations of the United Kingdom, the United States, the European Union, and the country in which the Customer is located.

"Force Majeure Event" shall mean, in relation to either party, any circumstances beyond the reasonable control of that party including (but not limited to) act of God, act of war, law or action taken by a government, epidemic or pandemic, riot, strike, lock-out, trade dispute or labour disturbance, accident, break-down of plant or machinery, fire or flood, unusual physical or electrical stress or any failure or fluctuation in electrical power, air-conditioning or humidity controls or other factors which are subjected to the Services.

"Module" means the service modules made available under the Subscription Service, as set out in the Order Form.

"Order Form" means the Company order document in the name of and executed by the Customer and accepted by the Company which specifies the Subscription Service, any Support Services and/or Professional Services to be provided by the Company subject to the terms of this Agreement.

"Professional Services" means the general consulting, onboarding, implementation, integration, and/or training services to be provided to Customer pursuant to the terms hereof and the applicable Statement of Work.

"Security Practices" means the Company's Information Security Practices found at [www.kalibrate.com/legal/planning/information-security](http://www.kalibrate.com/legal/planning/information-security) as modified from time to time.

"Services" means, as applicable, Subscription Service, Data Service, Beta Service, Support Services, Professional Services and such other services provided to the Customer under an Order Form and/or SOW, subject to the terms of this Agreement.

"Standard Support Services" means standard technical support services to be provided to Customer for the Subscription Service pursuant to the terms hereof and the Support and Maintenance Services Policy.

"Statement of Work" or "SOW" means a separate document executed between the Company and Customer that details the Professional Services to be delivered by the Company.

"Subscription Service" means, collectively, the online business application suite (and any optionally procured Modules) indicated in the Order Form, including its associated components, but excluding Third Party Applications, Beta Service, Data Service, Support Services and Professional Services. Subscription Service may include such other services as specifically mentioned in the Order Form.

"Support and Maintenance Services Policy" means the Company's Support and Maintenance Services Policy available at [www.kalibrate.com/legal/planning/support-policy](http://www.kalibrate.com/legal/planning/support-policy) as modified from time to time.

“Support Services” means Standard Support Services or Enhanced Support Services, as applicable.

“Term” means, together, the Initial Term and the Renewal Term, as further described in Section 6.1.

“Third Party Applications” means applications, integrations, services, or implementation, customization and other consulting services related thereto, provided by a party other than the Company, as further described in the Section below entitled “Third Party Applications” that interoperate with the Subscription Service.

“Third Party Data Products” means any third-party owned Data provided to the Customer and licensed through the Company as part of the Data Services.

“Third Party Data Terms” means any additional end user terms and conditions for the use of the Data provided by any third-party data provider, as applicable. Third Party Data Terms are further described in [www.kalibrate.com/legal/planning/third-party-data-terms](http://www.kalibrate.com/legal/planning/third-party-data-terms) or as set forth in the Order Form or SOW.

“User” means an individual who is authorized by Customer to use the Subscription Service pursuant to this Agreement or as otherwise defined, restricted or limited in an Order Form or amendment to the Agreement. Users may include but are not limited to Customer’s employees, consultants, contractors and agents.

## 2. SERVICES

Subject to the terms and conditions of this Agreement, the Customer shall have the non-exclusive, limited right to use the Services ordered by the Customer during the applicable period set forth in the relevant Order Form and/or SOW, solely for the internal business operations of the Customer. The Customer may allow its Users to use the Services for this purpose, and the Customer is responsible for their compliance with this Agreement and the applicable Order Form and/or SOW. The terms of this Agreement shall also apply to any updates and upgrades subsequently provided by the Company to the Customer for the Subscription Service. The Company shall host the Subscription Service and may update the functionality, user interface, usability, user documentation, training, and educational information of, and relating to the Services from time to time in its sole discretion and in accordance with this Agreement.

## 3. ORDERS

The Services shall be ordered by Customer through applicable Order Form or SOW, as applicable. Each such document shall include, at a minimum, a listing of the Subscription Service and any Support Services and/or Professional Services being ordered and the associated fees.

## 4. SERVICE TERMS

**4.1. Access.** The Customer shall authorize access to and assign unique passwords and usernames to the number of Users procured by Customer on the Order Form. User logins are for designated Users and cannot be shared or used by more than one User, but any User login may be permanently reassigned to another User as needed. The Customer will be responsible for the confidentiality and use of User’s passwords and usernames. The Customer will also be responsible for all Electronic Communications, including those containing business information, account registration, account holder information, financial information, Customer Data, and all other data of any kind contained within e-mails or otherwise entered electronically through the Subscription Service or under the Customer’s account. The Customer shall use commercially reasonable efforts to prevent unauthorized access to or use of the Subscription Service and shall promptly notify the Company of any unauthorized access or use of the Subscription Service and any loss or theft or unauthorized use of any User’s password or name and/or Subscription Service account numbers.

**4.2. Transmission.** The Customer understands that the technical processing and transmission of the Customer’s Electronic Communications is fundamentally necessary to use of the Subscription

Service. The Customer is responsible for securing DSL, cable or another high-speed Internet connection and up-to-date “browser” software in order to utilize the Subscription Service. The Customer expressly consents to the Company’s interception and storage of Electronic Communications and/or Customer Data as needed to provide the Services hereunder, and the Customer acknowledges and understands that the Customer’s Electronic Communications will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by the Company. The Customer further acknowledges and understands that Electronic Communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone, or other electronic means. Without limiting the Company’s applicable obligations under the Security or Confidentiality Sections of this Agreement, the Company is not responsible for any Electronic Communications and/or Customer Data which are delayed, lost, altered, intercepted, or stored during the transmission of any data whatsoever across networks not owned and/or operated by the Company, including, but not limited to, the Internet and the Customer’s local network.

**4.3. Third-Party Applications.** The Company or third party providers may offer Third Party Applications. Except as expressly set forth in the applicable Order Form, the Company does not warrant any such Third Party Applications. Any procurement by the Customer of such Third Party Applications or services is solely between the Customer and the applicable third party provider. The Customer may not use Third Party Applications to enter and/or submit transactions to be processed and/or stored in the Subscription Service unless the Customer has procured the applicable subscription to the Subscription Service for such use and access. The Company is not responsible for any aspect of such Third Party Applications that the Customer may procure or connect to through the Subscription Service, or any interoperation, descriptions, promises, or other information related to the foregoing. If the Customer installs or enables Third Party Applications for use with the Subscription Service, the Customer agrees that the Company may enable such third party providers to access the Customer Data for the interoperation of such Third Party Applications with the Subscription Service, and any exchange of data or other interaction between the Customer and a third party provider is solely between the Customer and such third party provider pursuant to a separate privacy policy or other terms governing the Customer’s access to or use of the Third Party Applications. The Company shall not be responsible for any disclosure, modification or deletion of the Customer Data resulting from any such access by Third Party Applications or third party providers. No procurement of such Third Party Applications is required to use the Subscription Service.

**4.4. Third Party Embedded Applications.** Where applicable, Subscription Service may include Third Party Embedded Applications. Such applications are licensed by the Company and are embedded into the Subscription Service. The Company may enable such third party providers to access the Customer Data for the interoperation of such Third Party Embedded Applications with the Subscription Service. The Company warrants that it has the required rights and licenses to use such Third Party Embedded Applications within the Subscription Service. Except as above, Third Party Embedded Applications are provided as-is and as-available.

**4.5. Support Services.** As part of the Subscription Service, the Company will provide the Standard Support Services subject to the Support and Maintenance Services Policy. The Company may offer Enhanced Support Services for additional fees subject to availability and additional terms.

**4.6. Beta Service.** From time to time, the Company may make the Beta Services available to the Customer at no additional cost. The Customer may choose to try such Beta Services in the Customer’s sole discretion. Unless otherwise determined by the Company, no Order Form is specifically required to enable the Customer’s use of Beta Services. Beta Services are intended for evaluation purposes and not for production use. Beta Services are not supported and may be subject to supplemental terms in addition to those set out in this Agreement, which will be presented to the Customer. Beta Services are not considered part of the Subscription Service, however, all restrictions and the Customer commitments under this Agreement shall apply to the Customer’s use of Beta Services. Unless otherwise

stated, any Beta Services trial period will expire upon the earlier of six (6) months from the trial start date or the date that a version of the Beta Services becomes generally available without the applicable Beta Services designation. The Company may discontinue Beta Services at any time in the Company's sole discretion and may never make Beta Services generally available. The Company will have no liability for any harm or damage arising out of or in connection with a Beta Service. **BETA SERVICES ARE PROVIDED "AS IS" AND AS AVAILABLE, EXCLUSIVE OF ANY WARRANTY, REPRESENTATION, GUARANTEE, CONDITION OR TERM OF ANY KIND, WHETHER EXPRESS OR IMPLIED.**

**4.7. Data Services.** The provisions of this Section shall apply solely to Data Services, where such Data Services are included in an Order Form. The Company (or its licensors, as the case may be) reserves the right to alter or modify Data Services and any portions or configurations thereof from time to time. Such alterations and/or modifications may include, without limitation, addition or withdrawal of features and/or data or changes in instructions and/or Documentation. Without limiting anything else in the Agreement, the Customer shall not (and shall ensure that each User shall not) perform any of the following acts, except as otherwise expressly permitted by the Agreement or with the express written permission of the Company: (a) license, sublicense, transfer, sell, resell, publish, reproduce, and/or otherwise redistribute any data within the Data Service or any components thereof in any manner, including, but not limited to, via or as part of any internet site; or (ii) provide access to the Data Service or any portion thereof to any person, firm or entity other than a User, including, but not limited to, any affiliate not expressly identified in the Agreement. Any provision and use of Data Services shall be subject to the terms and conditions of this Agreement and any applicable Third Party Data Terms. **THE COMPANY MAKES NO REPRESENTATIONS, CONDITIONS OR WARRANTIES REGARDING THE COMPLETENESS OR ACCURACY OF THE DATA SERVICES OR ANY COMPONENT THEREOF. THE DATA SERVICES AND ANY COMPONENTS THEREOF ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND THE CUSTOMER'S USE OF THE DATA SERVICES IS AT THE CUSTOMER'S OWN RISK. THE COMPANY AND ANY THIRD-PARTY PROVIDERS ARE NOT LIABLE FOR THE DATA, DATA STRUCTURE, METADATA, METRICS, CHARTS, GRAPHS, LITERATURE, OR OTHER CONTENT IN ANY FORM AND ANY DERIVATIVES THEREOF, (INCLUDING, WHERE APPLICABLE, ALL UPDATES TO THE FOREGOING) IN EACH CASE INCLUDED IN THE DATA SERVICES OR ANY DECISION OR CONSEQUENCE BASED ON USE OF THE FOREGOING.**

**4.8. Professional Services.** The provisions of this Section shall apply solely to Professional Services, where such Professional Services are included in an Order Form. The Company shall assign employees and subcontractors with qualifications suitable for the work described in the relevant Order Form. The Company may replace or change employees and subcontractors in its sole discretion with other suitably qualified employees or subcontractors. The Customer shall make available in a timely manner at no charge to the Company all technical data, Customer Data, computer facilities, programs, files, documentation, test data, sample output, or other information and resources of the Customer required by the Company for the performance of the Professional Services as specified in the applicable Order Form. The Customer shall be responsible for, and assumes the risk of, any problems resulting from, the content, accuracy, completeness and consistency of all such data, materials and information supplied by the Customer. The Customer shall provide reasonable cooperation as the Company requires to perform the Professional Services. Ownership of all work product, developments, inventions, technology or materials related to any Professional Services (the "Deliverables") shall be solely owned by the Company (except with respect to Customer Data, which shall remain the Customer's sole property), unless otherwise agreed. Solely during the applicable Term and conditioned upon the Customer's compliance with all the terms of the Agreement, the Company grants to the Customer a limited, non-exclusive, non-transferable, and non-sublicensable right to make use of the Deliverables. For the sake of clarity, the Customer will own any reports and its derivatives accessed by the Customer through the Professional Services. For Professional Services, the Customer must notify the Company of any warranty deficiencies within ten (10) days from performance of the deficient Professional Services or delivery of the Deliverables. Unless otherwise

agreed in writing, Professional Services and Deliverables are deemed accepted after ten (10) days from the performance or delivery.

**4.9. Security.** The Company shall maintain commercially reasonable administrative, physical and technical safeguards designed for the protection, confidentiality and integrity of the Customer Data, in accordance with its Security Practices.

**4.10. Updates.** During the Term, the Company may update the Subscription Service, Documentation, Acceptable Use Policy, Support and Maintenance Services Policy, etc. to reflect changes in, among other things, laws, regulations, rules, technology, industry practices, and availability of Third Party Applications. The Company's updates to the Services will not materially reduce the level of performance, functionality, security or availability of the Subscription Service during the term of the Customer's then current Order Form and/or SOW.

**4.11. Service Monitoring.** The Company continuously monitors the Subscription Service to facilitate the Company's operation of the Subscription Service; to help resolve Customer service requests; to detect and address threats to the functionality, security, integrity, and availability of the Subscription Service as well as any content, data, or applications in the Service; and to detect and address illegal acts or violations of the Acceptable Use Policy. The Company monitoring tools do not collect or store any Customer Data residing in the Subscription Service, except as needed for such purposes. The Company does not monitor, and does not address issues with, non-Company software provided by the Customer or any of the Customer's Users that is stored in, or run on or through, the Subscription Service. Information collected by the Company monitoring tools (excluding the Customer Data) may also be used to assist in managing the Company's product and service portfolio, to help the Company address deficiencies in its product and service offerings, and for access management purposes.

**4.12. Service Analyses.** The Company may (i) compile statistical and other information related to the performance, operation and use of the Subscription Service, and (ii) use data from the Subscription Service in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (sub-sections (i) and (ii) are collectively referred to as the "Service Analyses"). The Company may make Service Analyses publicly available; however, Service Analyses will not incorporate the Customer Data, personal information or Confidential Information in a form that could serve to identify the Customer or any individual. The Company retains all intellectual property rights in the Service Analyses.

## 5. RESTRICTIONS

**5.1. Acceptable Use Policy.** The Customer may not, and may not cause or permit the Users or others to: (i) use the Services for illegal purposes; cause damage or injury to any person or property; publish any material that is false, defamatory, harassing or obscene; violate privacy rights; promote bigotry, racism, hatred or harm; send unsolicited bulk e-mail, junk mail, spam or chain letters; infringe property rights; or otherwise violate applicable laws, ordinances or regulations; (ii) perform or disclose any benchmarking, availability or performance testing of the Services; (iii) perform or disclose any performance or vulnerability testing of the Services without the Company's prior written approval, perform or disclose network discovery, port and service identification, vulnerability scanning, password cracking, remote access or penetration testing of the Subscription Service; (iv) use the Data in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person or entity, or that violates any applicable law; (v) place any portion of the Data on any website or retrieval system that may be accessed outside of your immediate organization; (vi) use any portion of the Data for purposes of determining adverse terms and conditions of or eligibility of an individual for employment, credit, healthcare treatment, insurance (including, but not limited to health insurance), or use any portion of the Data in any way that could result in disparate impact or treatment under the US Equal Credit Opportunity Act or the Fair Housing Act; (vii) attempt to identify or re- identify an individual from any portion of the Data; and (viii) use any portion of the Data in any legal or administrative proceeding (together, the "Acceptable Use Policy"). In addition to other rights that the Company has in this Agreement and

applicable Order Form, the Company has the right to take remedial action if the Acceptable Use Policy is violated, and such remedial action may include removing or disabling access to material that violates the policy.

**5.2. Other restrictions.** The Customer may not, and may not cause or permit others to: (i) modify, make derivative works of, disassemble, decompile, reverse engineer (unless required to be permitted by law for interoperability), reproduce, republish, download, or copy any part of the Services (including data structures or similar materials produced by programs); (iii) access or use the Services to build or support, directly or indirectly, products or services competitive to the Company; or (iv) license, sell, transfer, assign, distribute, outsource, permit timesharing or service bureau use of, commercially exploit, or make available the Services to any third party except as permitted by this Agreement or applicable Order Form. Unless specifically included in the Order Form (or applicable SOW), the Customer must not use the Subscription Service to store or process any sensitive or special category data that imposes specific data security or data protection obligations on the Company in addition to or different from those specified or referenced in the Agreement for the Services. The Customer is solely responsible for understanding any regulatory requirements applicable to its business and for selecting and using the Subscription Service in a manner that complies with any applicable requirements.

## 6. TERM AND TERMINATION

**6.1. Term.** The term of this Agreement shall commence on the Effective Date and shall continue for the length of time referenced in the applicable Order Form and/or SOW. The initial subscription term of the Subscription Service and other Services procured by the Customer shall continue for the term applicable to such Services specified in the applicable Order Form and/or SOW ("Initial Term"). Except for any one-off SOW, if the Customer has not entered into an Order Form with the Company regarding renewal of the Customer's Subscription Service or other Services prior to the expiration of the Initial Term, then the subscription term for such Services shall be automatically renewed for successive one (1) year terms (each a "Renewal Term") unless either party provides written notice of non-renewal to the other party at least thirty (30) days before expiration of the applicable Initial Term or then-current Renewal Term. The Company retains the right to increase the fees during the Renewal Term subject to prior notice.

**6.2. Suspension.** The Company reserves the right to suspend the Customer's access to and/or use of the Services if any undisputed payment is due and unpaid and fails to make such payment within reasonable period of payment breach notice. The Company may suspend the Customer's or Users' access to, or use of, the Services if the Company reasonably believes that (i) there is a significant threat to the functionality, security, integrity, or availability of the Services or any content, data, or applications in the Services; (ii) the Customer or the Users are accessing or using the Services to commit an illegal act; or (iii) there is a violation of the Acceptable Use Policy. When reasonably practicable and lawfully permitted, the Company will provide the Customer with advance notice of any such suspension. The Company will use reasonable efforts to re-establish the Services promptly after the Company determines that the issue causing the suspension has been resolved. During any suspension period, the Company will make Customer Data (as it existed on the suspension date) available to the Customer. Any suspension under this Section shall not excuse the Customer from the Customer's obligation to make payments under this Agreement. The Customer agrees that the Company shall not be liable to Customer or other third party for any suspension pursuant to this Section 6.2.

**6.3. Termination.** Either party may terminate this Agreement on immediate written notice to the other party if: (i) the other party is in breach of its obligations under this Agreement and (where such breach is capable of remedy) fails to remedy such breach within thirty (30) days of receipt of written notice from the non-breaching party; (iii) the other party undergoes insolvency or bankruptcy events or its normal business operations ceases or goes under the control of a receiver appointed by the authority; (iv) except with respect to payment obligations hereunder, if a Force Majeure Event delays or prevents the performance of any obligations of either of the parties,

such failure or delay shall not be deemed to constitute a material breach of this Agreement, but such obligation shall remain in full force and effect, and shall be performed or satisfied as soon as reasonably practicable after the termination of the relevant circumstances causing such failure or delay, provided that if such party is prevented or delayed from performing for more than thirty (30) days, the other party may terminate this Agreement upon thirty (30) days' written notice.

**6.4. Effects of Termination.** Upon termination or expiry of this Agreement: (i) applicable provisions of Section 5 to 17 shall survive and continue in full force and effect; (ii) the Customer shall immediately cease using the Services, and access to the Services will be terminated; (iii) upon written request from the Customer, the Company will return the Customer Data in a format and medium determined by the Company, provided that, in the absence of such request, the Customer Data will be retained or destroyed subject to the Company's data retention policy; (iv) if this Agreement is terminated by the Company for the Customer's breach, all sums that would have been due had this Agreement not been terminated prior to the expiry of the Term shall become immediately due and payable to the Company; and (v) if any SOW would not expire but for such termination, such SOW (and this Agreement in respect only of such SOW) shall continue until the completion of the Services under such SOW, provided that the Company shall be entitled to terminate such SOW if it has terminated this Agreement for breach. Any termination of this Agreement shall be without prejudice to any other rights or remedies either party may be entitled to under this Agreement or at law.

## 7. FEES AND PAYMENT

**7.1 Fees and Payment.** All fees shall be set forth in the Order Form. Fees are due and payable within thirty (30) days from the invoice date, unless otherwise specified in the applicable Order Form. All Order Forms are non-cancellable, and the fees are non-refundable, except as otherwise explicitly stated in the applicable Order Form or this Agreement. The fees and the term of use for additional Users and other items procured during an existing subscription term will co-terminate with and be prorated through the end date of the subscription term for the applicable Subscription Service. Pricing for subsequent renewal of the Order Form or the Agreement shall be set at then current pricing, unless otherwise agreed to by the parties. If the fees for a feature or functionality of the Subscription Service are based on usage of the Subscription Service, then the Company may access and use Customer Data as reasonably necessary to determine the fees for the applicable feature or functionality. Unless otherwise agreed in writing, the fees payable under this Agreement shall be adjusted each year during the Term, by an amount which is equal to the percentage increase, if any, in the Consumer Price Index plus 3% for the preceding calendar year.

**7.2. Taxes.** The fees do not include any local, state, federal or foreign taxes, levies or duties of any nature, including value-added, sales use or withholding taxes ("Taxes"). The Customer is responsible for paying all Taxes, excluding only taxes based on the Company's net income. If the Company has the legal obligation to pay or collect Taxes for which the Customer is responsible under this Section, the appropriate amount shall be invoiced to and paid by the Customer unless the Customer provides the Company with a valid tax exemption certificate authorized by the appropriate taxing authority.

**7.3. Non-payment.** If the Customer fails to make any payment on time in accordance with this Agreement, the Company retains the right to charge late payment interest, which shall bear daily interest before and after judgment at the rate of 7 % per annum, and the Customer shall indemnify the Company against all costs and expenses (including reasonable attorneys' fees) incurred by the Company in recovering sums due under this Agreement.

**7.4. Purchase Order.** If the Customer's internal policies require a purchase order to be issued, the Customer shall issue a purchase order to the Company in respect of payment no less than thirty (30) days prior to such payment being due or payable. For the avoidance of doubt, the Customer's failure to issue such purchase order will not prevent the Company from issuing an invoice for payment, nor permit the Customer to avoid or delay payment of any such amounts. The

terms and conditions of this Agreement shall apply to the exclusion of any other terms that the Customer seeks to impose or incorporate, including any terms on a purchase order, or which are implied by trade, custom, practice or course of dealing.

## 8. PROPRIETARY RIGHTS

**8.1. Ownership of the Customer Data.** As between the Company and the Customer, all title and intellectual property rights in and to the Customer Data is owned exclusively by the Customer. The Customer acknowledges and agrees that in connection with the provision of the Services, the Company may store and maintain the Customer Data for a period of time consistent with the Company's standard business processes for the Services. Following expiration or termination of the Agreement or a customer account, if applicable, the Company may deactivate the applicable customer account(s) and delete any data therein. The Customer grants the Company the right to host, use, process, display and transmit the Customer Data to provide the Services pursuant to and in accordance with this Agreement. The Customer has sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of the Customer Data, and for obtaining all rights related to the Customer Data required by the Company to perform the Services.

**8.2. Company Intellectual Property Rights.** All rights, title and interest in and to the Services (including without limitation all intellectual property rights therein and all modifications, extensions, customizations, scripts or other derivative works of the Services provided or developed by the Company), and anything developed or delivered by or on behalf of the Company under this Agreement are owned exclusively by the Company or its licensors. Except as provided in this Agreement, the rights granted to the Customer do not convey any rights in the Services, express or implied, or ownership in the Services or any intellectual property rights thereto. Any rights in the Services or the Company's intellectual property not expressly granted herein by the Company are reserved by the Company.

**8.3. Reports.** The Customer will own any reports and its derivatives downloaded by the Customer through the Services, provided that the Company will own all the rights in any design or model thereto.

**8.4. Trademarks.** The Company service marks, trademarks, logos and product and service names are marks of the Company (the "Company Marks"). The Customer agrees not to display or use the Company Marks in any manner without the Company's express prior written permission. The trademarks, logos and service marks of Third Party Application providers ("Marks") are the property of such third parties. The Customer is not permitted to use these Marks without the prior written consent of such third party which may own the Mark.

**8.5. Feedback.** The Customer grants the Company a royalty free, worldwide, perpetual, irrevocable, transferable right to use, modify, distribute and incorporate into the Services (without attribution of any kind) any suggestions, enhancement request, recommendations, proposals, correction or other feedback or information provided by the Customer, or any Users related to the operation or functionality of the Services.

## 9. DATA PROTECTION

**9.1. Processing Information.** To the extent that the Company is a Processor acting on behalf of the Customer, for the purposes of this Agreement, unless otherwise described in the DPA (as defined below): (i) the type of Personal Data and categories of Data Subjects are: User's names and contact details such as work email address and work phone number; and; (ii) the nature/purpose of the Processing is to enable the Company to grant the subscription and carry out the Services (which form the subject matter of the Processing); and (iii) the duration of the Processing shall be the Term of this Agreement.

**9.2. Compliance.** The Company shall comply with its obligations under the Data Protection Legislation and shall, in particular: (i) process the Personal Data only to the extent necessary for the purposes specified herein, in accordance with the Customer's written instructions and this Section 9; (ii) implement appropriate technical and organisational measures in accordance with the Data Protection Legislation to ensure a level of security appropriate to the risks that

are presented by such Processing; (iii) comply with the applicable data regulation in the event the Company requires to transfer the Personal Data outside of the European Economic Area; (iv) ensure that any employees or other persons authorised to Process the Personal Data are subject to appropriate obligations of confidentiality; (v) not to permit any third party to carry out its Processing obligations under this Agreement without obtaining the Customer's prior written consent. The Customer confirms that it has the necessary authority or consent (where required) from all relevant Data Subjects for enabling the Company to use and process such Personal Data in accordance with this Agreement.

**9.3. Consent.** The Customer warrants that it has the necessary authority and consent from all relevant Data Subjects for the Company to use and process such Personal Data in accordance with this Agreement. The Customer shall indemnify the Company and keep the Company fully and effectively indemnified against all costs, claims, demands, expenses, and liabilities of whatsoever nature arising out of or in connection with any claim arising from the Customer's breach of the foregoing warranty.

**9.4. Data Processing Addendum.** The Company's Data Processing Addendum ("DPA") describes the parties' respective roles for the processing and control of the Personal Data that the Customer provides to the Company as part of the Subscription Services. DPA is available at [www.kalibrate.com/legal/planning/dpa](http://www.kalibrate.com/legal/planning/dpa) and incorporated herein by reference.

## 10. CONFIDENTIALITY

**10.1. Obligations.** In performance of their obligations under this Agreement, the parties may disclose Confidential Information to each other. Subject to below, each party shall hold all such Confidential Information of the other party in the strictest confidence, not disclose it to any third party without the other party's prior written consent and ensure that knowledge of such Confidential Information of the other party is confined only to its employees, representatives, affiliates or subcontractors who require such knowledge in the ordinary course of their employment or engagement for the purposes of this Agreement. Without prejudice to any other rights or remedies which the disclosing party may have, each party acknowledges and agrees that damages may not be an adequate remedy for any confidentiality breach by the recipient and the disclosing party shall be entitled without proof of special damage to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of any such provision by the recipient.

**10.2. Exclusions.** The foregoing shall not apply to any Confidential Information (i) which prior to receipt thereof from one party was in the possession of the other without any restriction on its disclosure or use, or (ii) which is subsequently disclosed to the recipient party without any obligations of confidence by a third party who has not derived it directly or indirectly from the other party, or (iii) which is or becomes generally available to the public through no act or default of the recipient party, or (iv) which is required by law or by any competent authority to be disclosed (but only to the extent that such disclosure is so required, and subject to prior notice where allowed by the law), or (v) which is independently developed by the other party without any breach of confidentiality obligations herein.

## 11. WARRANTIES

**11.1. Warranties.** Each party represents that it has validly entered into this Agreement and that it has the power and authority to do so. The Company warrants that during the Term, the Company will perform (i) the Subscription Service using commercially reasonable care and skill in all material respects as described in the Documentation, and (ii) any Professional Services and Support Services in a professional manner consistent with industry standards (the warranties described by the foregoing sub-sections (i) and (ii), collectively, the "Services Warranty"). If the Services provided to Customer were not performed as warranted, the Customer must promptly provide the Company with a written notice that describes the deficiency in the Services (including, as applicable, the service request number notifying the Company of the deficiency in the Services).

**11.2. Disclaimers.** TO THE EXTENT NOT PROHIBITED BY LAW, ABOVE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. THE COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, THAT THE COMPANY WILL CORRECT ALL SERVICES ERRORS, OR THAT THE SERVICES WILL MEET THE CUSTOMER'S REQUIREMENTS OR EXPECTATIONS. THE COMPANY IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM THE CUSTOMER DATA OR THIRD PARTY APPLICATIONS OR SERVICES PROVIDED BY THIRD PARTIES.

**11.3. Exclusive Remedies.** FOR ANY BREACH OF THE SERVICES WARRANTY, THE CUSTOMER'S EXCLUSIVE REMEDY AND THE COMPANY'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF THE COMPANY CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALLY REASONABLE MANNER AFTER WRITTEN NOTICE FROM THE CUSTOMER, THE CUSTOMER MAY TERMINATE THE DEFICIENT SERVICES IN WRITING AND THE COMPANY WILL REFUND TO THE CUSTOMER THE FEES FOR THE TERMINATED SERVICES THAT CUSTOMER PRE-PAID TO THE COMPANY FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.

## 12. LIMITATIONS OF LIABILITY

NOTHING IN THIS AGREEMENT SHALL LIMIT EITHER PARTY'S LIABILITY FOR PERSONAL INJURY OR DEATH CAUSED BY THE NEGLIGENCE OF THAT PARTY, OR EITHER PARTY'S LIABILITY IN FRAUDULENT MISREPRESENTATION. THE COMPANY SHALL NOT, UNDER ANY CIRCUMSTANCES WHATEVER, BE LIABLE FOR: (i) LOSS OF PROFITS; (ii) LOSS OF BUSINESS; (iii) DEPLETION OF GOODWILL AND/OR SIMILAR LOSSES; (iv) LOSS OF ANTICIPATED SAVINGS; (v) LOSS OF CONTRACTS; (vi) LOSS OF USE; (vii) LOSS OR CORRUPTION OF DATA OR INFORMATION; OR (viii) ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PURE ECONOMIC LOSS, COSTS, DAMAGES, CHARGES OR EXPENSES. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF THE COMPANY AND ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT, APPLICABLE ORDER FORM OR SOW, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNTS ACTUALLY PAID UNDER THE APPLICABLE AGREEMENT, ORDER FORM OR SOW FOR THE SERVICES GIVING RISE TO THE LIABILITY DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

## 13. INDEMNIFICATION

**13.1. Company Indemnity.** The Company will indemnify the Customer against any bona fide third party claim that the grant of a right to, or the access and use by, the Customer and its Users of the Subscription Service (or any Deliverables provided under Professional Services) in accordance with the Agreement infringes a validly existing trademark, copyright, patent or other proprietary rights and pay any final judgment awarded or the Company-negotiated settlement. The Company's obligations under this Section are conditioned upon the Customer providing the Company (i) prompt written notice of any claim; (ii) sole and exclusive control over the defense and settlement of the claim; and (iii) such cooperation as the Company may reasonably request with respect to the defense or settlement of such claim. The Company will defend any claim with counsel of its own choosing and settle such claim as the Company deems appropriate. The Customer may participate in the defense with counsel of its own choosing and at its own cost and expense. The Customer will not admit liability, take any position adverse or contrary to the Company, or otherwise attempt to settle any claim or action without the express written consent of the Company.

**13.2. Exclusive Remedies.** If, in the Company's sole opinion, an infringement claim may have validity, then the Company may, at its option (i) modify the Subscription Service or Deliverables to make it non-infringing, (ii) procure any necessary license, or (iii) replace the

affected item with one that is reasonably equivalent in function and performance. If the Company determines in its sole opinion that none of these alternatives are reasonably available, then the Company may, upon notice, terminate such allegedly infringing services from the Order Form or SOW, the Customer will discontinue using such services, and the Company will refund to the Customer the fees for the terminated services that customer pre-paid to the Company for the period following the effective date of termination.

**13.3. Exclusions.** The Company has no obligation under the Section 13 for, and the Customer will indemnify the Company against, any third-party claim arising from: (i) Customer Data or the Company's compliance with the Customer's or its representatives' designs, specifications, instructions, or technical information; (ii) modifications to the Subscription Service or Deliverables not made by the Company; (iii) the Customer's or User's use of the Subscription Service or Deliverables in any manner that is not authorised or permitted by the Agreement; or (iv) the Customer's or User's use or combination of the Subscription Service or Deliverables with any software, hardware, or services that are not provided or authorised by the Company. The Section 13 states the Company's entire liability and the Customer's exclusive remedy for third party intellectual property infringement claims.

## 14. COMPLIANCE WITH LAWS

The Customer shall comply with all applicable laws and regulations including but not limited to anti-bribery and Export Laws and maintain its own policies and procedures to ensure compliance. Each Party agrees that it has not received or been offered any illegal bribe, kickback payment, gift, or thing of value from any of the other Party's employees or agents in connection with this Agreement. If a party learns of any breach of this Section related to this Agreement, it will use reasonable efforts to promptly notify the other party.

## 15. GOVERNING LAW AND JURISDICTION

The 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 laws of the country where the Company is registered. The courts of such country shall have the exclusive jurisdiction; however, the Company may bring a claim in any jurisdiction if the Company deems such action necessary to protect its intellectual property rights, including claims or actions to enforce judgments or orders in such jurisdiction.

## 16. NON-SOLICITATION

During the term and for a period of one (1) year following termination or expiry of this Agreement, neither party shall, without the prior written consent of the other party, directly or indirectly solicit or entice away (or attempt to solicit or entice away) for employment, any person who is, or has been, engaged as an employee or contractor of the other party in the provision or receipt of the services, within six (6) months of their departure. Parties acknowledge that they have carefully read and considered the restrictions herein, and having done so, agree that the restrictions are fair and reasonable and are reasonably required for the protection of the legitimate business and economic interests of each party. The restrictions herein do not apply where an employee or contractor of a party unilaterally seeks employment or engagement with another party unless that other party has solicited, directly or indirectly, the application from that employee or contractor for that position. In the event that any of the provisions of this section, or any parts thereof, shall be held to be invalid or unenforceable, the remaining provisions or parts thereof shall nevertheless continue to be valid and enforceable as though the invalid and unenforceable portions or parts had not been included herein.

## 17. MISCELLANEOUS

**17.1. Force Majeure Event.** Neither party shall be liable to the other party, for any loss or damage which may be suffered as a direct or indirect result of a party being delayed, prevented or hindered in the performance of any of its obligations under this Agreement by reason of a Force Majeure Event. The affected party shall give notice

to the other party as soon as is reasonably practical about the Force Majeure Event impacting the performance of this Agreement.

**17.2. Notices.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be addressed to the parties at the addresses set forth on the Order Form (or to such other address that may be designated by the receiving party from time to time in writing). Notices shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service, airmail or sent by e-mail (except for legal or termination notices) to the relevant party's email address specified on the Order Form (or any other e-mail address notified by one party to the other in writing for this purpose).

**17.3. Audit.** Upon reasonable written notice and no more than once every calendar year, the Company may audit the Customer's use of the Subscription Service to ensure that the Customer's use of the Subscription Services is in compliance with the terms of the applicable Order Form and this Agreement. Any such audit shall not unreasonably interfere with the Customer's normal business operations. The Customer agrees to cooperate with the Company's audit and to provide reasonable assistance and access to information reasonably requested by the Company. The performance of the audit and non-public data obtained during the audit (including findings or reports that result from the audit) shall be subject to the confidentiality provisions of this Agreement. If the audit identifies non-compliance, the Customer agrees to remedy (which may include, without limitation, the payment of any fees for additional use) such non-compliance within thirty (30) days of written notification of that non-compliance. The Customer agrees that the Company shall not be responsible for any of the Customer's costs incurred in cooperating with the audit.

**17.4. Independent Contractor.** This Agreement does not create any joint venture, partnership, agency, or employment relationship between the parties. The Company's business partners and other third parties, including any third parties with which the Services have integrations or that are retained by Customer to provide consulting services, implementation services or applications that interact with the Services, are independent of the Company and are not the Company's agents. The Company is not liable for, bound by, or responsible for any problems with the Services or Customer Data arising due to any acts of any such business partner or third party, unless the business partner or third party is providing Services as the Company's subcontractor on an engagement ordered under this Agreement and, if so, then only to the same extent as the Company would be responsible for our resources under this Agreement. Except as expressly provided in this Agreement, a person who is not a party to this Agreement shall not have any rights to enforce any term of this Agreement.

**17.5. Entire Agreement.** This Agreement, together with any other documents incorporated herein by reference, and related Order Form, exhibits and schedules, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

**17.6. Amendments.** Except as otherwise provided in the Agreement, this Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto, and any of the terms thereof may be waived, only by a written document signed by each party to this Agreement or, in the case of waiver, by the party or parties waiving compliance.

**17.7. Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**17.8. Assignment.** The Customer shall not assign or transfer its rights or obligations in connection with this Agreement without the prior written consent of the Company. The Company may assign or transfer its rights or obligations in connection with this Agreement to its Affiliates or legal successors.

**17.9. Counterparts.** This Agreement may be executed in multiple counterparts and by electronic signature, each of which shall be deemed an original and all of which together shall constitute one instrument.

End of document.