

KINSPEED LIMITED
STANDARD TERMS OF SUPPLY (Terms)
Sept 2024

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Kinspeed Limited is a company registered in England and Wales under company number 019494563 and with address at Albion House, Ravenshorn Way, Renishaw, Sheffield, South Yorkshire. Kinspeed and BHP are trading names Kinspeed Limited

(1) Kinspeed provide a range of services to business clients.

(2) The Client wishes to engage Kinspeed to provide the services set out in Order Form to which these Terms are attached or expressly referred to in.

(3) Kinspeed agrees to provide the services set out in the Order Form to the Client, subject to the Agreement.

1. Definitions and Interpretation

1.1 In the Agreement, unless the context otherwise requires, the following expressions have the following meanings:

Agreement	means a signed Order Form and includes documents referred to in it, including these Terms;
Applicable Laws	means all laws, statutes, regulations, and similar instruments from time to time in force applicable to the Parties, the Services, and to the Agreement;
Business Day	means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in London;
Business Hours	means 9.00am, to 5.00pm on a Business Day;
Change Order	means a document issued pursuant to Clause 7 (Change Orders) setting out proposed changes to the Services, in particular the effect of such changes on the nature and scope of Services, the provision of the Services, the Fees, and the terms of the Agreement;
Client	means the person, business or company set out as such in an Order Form;
Client Equipment	means any and all equipment including computer hardware, systems, software and applications provided or otherwise made accessible by the Client to Kinspeed in relation to the provision of the Services (whether directly or indirectly) but excluding Deliverables;
Client Materials	means any and all information, documents, and other materials provided by the Client to Kinspeed in relation to the provision of the Services;
Client's Premises	means any Client's premises as identified in the Order Form;
Client's Representative	means the individual nominated by the Client and shall have the authority to legally bind the Client in respect of all aspects of the Services;

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- Commencement Date** means the date on which the Agreement comes into effect, as set out in the Order Form and is, for the purposes of these Terms an anniversary date;
- Confidential Information** means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with the Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
- Data Protection Legislation** means all applicable legislation in force from time to time in the United Kingdom applicable to data protection and privacy including, but not limited to, the UK GDPR (the retained EU law version of the General Data Protection Regulation ((EU) 2016/679), as it forms part of the law of England and Wales, Scotland, and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018); the Data Protection Act 2018 (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 as amended;
- Deliverables** means the deliverables resulting from Kinspeed's provision of the Services as may be specified in the Order Form and any Products whether provided by Kinspeed to the Client or procured by Kinspeed on the Client's behalf from a Third Party Provider in the course of providing the Services;
- Fees** means the sums payable by the Client to Kinspeed in consideration of the Services, as set out in Clause 7 (Fees and Payment) and the Order Form;
- Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, moral rights, trade marks, service marks, business names, domain names, rights in get-up and trade dress, goodwill and the right to passing off actions, design rights, database rights, rights subsisting in software, rights to use confidential information and the right to protect the same, and any and all other intellectual property rights, whether registered or unregistered, including applications and the right to apply for (and be granted) renewals or extensions of, and rights to claim priority from, any such rights and any and all equivalent rights or other forms of protection subsisting now or in the future anywhere in the world;
- Minimum Term** means a period of 12 months from the Commencement Date or any alternative term stated as Minimum Term in an Order Form and further described in Clause 2.2;

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Order Form	any ordering document (including an order form, statement of works, proposal or other document) which expressly incorporate these Terms by reference and is executed by the parties;
Products	means computer hardware, software and associates equipment which may be supplied by Kinspeed;
Professional Services	means those Services which encompass for installation of Products, integration, custom development, bespoke software Development, training, custom reports, document production and similar services;
Renewal Date	means successive anniversaries of the Commencement Date;
Rolling Renew	means a rolling renewal of 12 months at a Renewal Date and further described in clause 2.3;
Services	means the services to be provided by Kinspeed (or a Third Party Provider) to the Client in accordance with the Agreement, as specified in the Order Form, and subject to the terms of the Agreement;
Term	means the term of this Agreement, (unless otherwise terminated in accordance with the provisions of Clause 25 (Termination)) and includes any renewal terms where Rolling Renewal applies;
Third Party Provider	means a third party provider of services, software or hardware;
Third Party Terms	means the terms of supply of a Third Party Provider.

1.2 Any reference to "writing", and any similar expression, includes a reference to any communication sent by email.

1.3 Unless expressly stated otherwise, legislation or a provision thereof is a reference to that legislation or provision as amended or re-enacted from time to time.

1.4 Unless expressly stated otherwise, legislation or a provision thereof, shall include all subordinate legislation made from time to time under that legislation or provision.

1.5 A reference to a "Party" or the "Parties" refer to the parties to the Agreement.

1.6 A reference to any other agreement or document is a reference to that agreement or document as amended or supplemented at the relevant time.

1.7 Any obligation on either Party not to do a particular thing includes an obligation to not allow that thing to be done.

1.8 Words imparting the singular number shall include the plural and vice versa.

1.9 References to any gender shall include any other gender.

1.10 References to persons shall include natural persons, corporate, or unincorporated bodies (whether or not the same have a separate legal personality).

1.11 References to a company shall include companies, corporations, or other bodies corporate, however so and wherever incorporated or established.

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2. Commencement and Duration

2.1 The Agreement is binding on the parties when signed and governs the provision of Services to the exclusion of any other terms and conditions.

2.2 The Agreement shall commence on the Commencement Date and shall continue in force for the Term as set out in the Order Form, unless terminated earlier in accordance with the provisions of Clause 25 (Termination).

2.2 Minimum Term: Subject always to Clause 25, where an Order Form sets out a Minimum Term the Client may terminate that service on written notice of not less than 3 months (or any alternative period set out in an Order Form), however no notice shall take effect prior to the expiry of the Minimum Term.

2.3 Rolling Renew: Subject always to Clause 25, where an Order Form sets out that Rolling Renew applies the Client may terminate that service on written notice of not less than 3 months to expire on any Renewal Date (+/- 2 days).

3. Provision of the Services and Kinspeed's Obligations

3.1 Kinspeed shall, throughout the Term;

- a) provide the Services to the Client in accordance with the terms of the Agreement;
- b) provide the Services with reasonable skill and care;
- c) act in accordance with all reasonable instructions given by the Client and co-operate with the Client with respect to the provision of the Services;
- d) use any Client Materials provided by the Client from time to time only to the extent reasonably necessary for and only for the purposes of the provision of the Services;
- e) use any Client Equipment provided (or made accessible) by the Client from time to time only to the extent reasonably necessary for and only for the purposes of the provision of the Services. Kinspeed shall use all such Client Equipment with care and in accordance with best practice at all times. Kinspeed shall return Client Equipment in its possession on the Client's written instruction; and
- f) ensure that any and all of its personnel involved in the provision of the Services are suitably skilled, qualified, and experienced to perform the part(s) of the Services to which they are assigned.

4. Client's Obligations

4.1 The Client shall provide:

- a) all co-operation that is reasonably required by Kinspeed to enable Kinspeed to provide the Services;
- b) any and all Client Materials that are agreed upon by the Parties or as otherwise reasonably required from time to time by Kinspeed to enable Kinspeed to provide the Services;
- c) any and all Client Equipment (or access thereto) that is agreed upon by the Parties or as otherwise reasonably required from time to time by Kinspeed to enable Kinspeed to provide the Services; and
- d) where required, access to the Client's Premises and any other facilities that is or are agreed upon by the Parties or as otherwise reasonably required from time to time by Kinspeed to enable Kinspeed to provide the Services and shall inform Kinspeed of any applicable health and safety rules and regulations and security requirements.

4.2 In the event that Kinspeed requires the decision, approval, consent, or any other communication from the Client in order to continue with the provision of the Services (or any

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part thereof) at any time, the Client shall provide the same in a reasonable and timely manner.

4.3 In the event that any licences or consents are required to enable Kinspeed to provide the Services the Client shall obtain the same before the date on which the provision of the Services is due to begin, and shall maintain the same to the extent required for the provision of the Services. This requirement shall include licences and subscriptions from a Third Party Provider even where included in Deliverables.

5. Client's Representative

The Client warrants that the Client's Representative has the authority to legally bind the Client in respect of all aspects of the Services.

6. Change Orders

6.1 Either Party may propose changes to the Services, provided that no change shall take effect until a Change Order setting out that change is agreed upon and signed by both Parties.

6.2 In the event that the Client wishes to propose a change to the Services, it shall notify Kinspeed in writing, providing as much detail as is reasonably required in order to enable Kinspeed to draft a Change Order.

6.3 If Kinspeed receives a notice from the Client under Clause 6.2, Kinspeed shall respond to the Client with a draft Change Order within 5 Business Days of receipt.

6.4 In the event that Kinspeed wishes to propose a change to the Services, it shall submit a draft Change Order to the Client.

6.5 When the Parties agree on a Change Order, each Party shall sign the Change Order and this Agreement shall be deemed amended effective from the time and date that the Change Order has been signed by both Parties.

7. Fees and Payment

7.1 The Client shall pay the Fees to Kinspeed, in consideration of the provision of Services, in accordance with the provisions of this Clause 7 and the Order Form.

7.2 All Products and Services provided by Third Parties are subject to their own End User Licence Agreements, and Kinspeed will invoice for Products and Services in accordance with those Agreements.

7.3 The Fees shall exclude the following costs which shall be invoiced to the Client in arrears:

- a) travel, accommodation, subsistence, and other such expenses incurred by any individuals engaged by Kinspeed for the provision of the Services; and
- b) Products procured from a Third Party Provider.

7.4 Fees stated in an Order Form are exclusive of VAT which shall be payable by the Client and are correct at the time of signing and apply until further notice of change as follows;

- a) Kinspeed may increase Fees on an anniversary of the Commencement Date to reflect CPI and inflation changes during the intervening changes period. A notice of Fee increase will be sent no later than 30 days prior to the anniversary date and shall take effect from the anniversary date; and / or
- b) Kinspeed may increase Fees at any time where the Client exceeds or wishes to increase the number of users relevant to services. The increase shall apply for the remainder of any Minimum Term or up to a Renewal Date on a pro rata basis and then be applied as the Fee.

7.5 Kinspeed shall invoice the Client for the Fees and any sums due under Clause 7.3 at the frequency set out in the Order Form.

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7.6 Any sum paid as a deposit is non – refundable.

7.7 Unless otherwise set out in an Order Form all payments required to be made pursuant to this Agreement shall be made within 30 days of invoice date unless that invoice is disputed in good faith in accordance with Clause 7.9.

7.8 All payments required to be made pursuant to this Agreement shall be made in sterling in cleared funds to a bank account set out in Kinspeed's invoice or otherwise directed by Kinspeed in writing.

7.9 If the Client receives an invoice and reasonably believes that it is incorrect, it may dispute that invoice in good faith as follows:

- a) the Client shall notify Kinspeed in writing as soon as reasonably possible and practicable;
- b) the Client shall not be deemed to be in breach of this Agreement for failure to pay the disputed sums while such a dispute is ongoing;
- c) the Client shall pay any sum which is not in dispute by the due date for payment;
- d) following the resolution of the dispute, the Client shall pay the sum agreed between the Parties including any interest charged on that sum by Kinspeed, as calculated in accordance with Clause 7.10 (from the original due date for payment);
- e) in the event that Kinspeed is required to refund any sums to the Client, interest shall be added to such sums, as calculated in accordance with Clause 7.10; and
- f) following the resolution of the dispute, in the event that either Party is required to make a balancing payment, that Party shall make such payment within 5 Business Days and, in the event that Kinspeed is required to issue a credit note, it shall issue the same within 5 Business Days.

7.10 Without prejudice to Clause 25.1(a) (termination for late payment), any sums which remain unpaid by the due date for payment under this Agreement shall incur interest and other compensation in accordance with the Late Payments Commercial Debts (Interest) Act 1998.

7.11 Without prejudice to Clause 25.1(a), 7.10 or any other rights and remedies, Kinspeed may, if any amounts invoiced by Kinspeed are not paid within 40 days, immediately and without notice suspend any services until the Client has paid all due sums in full.

8. Audit

The Client shall at the reasonable request of Kinspeed (and during normal Business Hours), provide Kinspeed or its agent or professional advisers (on not less than 5 Business Days' notice) with access to such records and books of account and with access to its premises, systems (including via remote access), and personnel to the extent reasonably required and to the extent that the same relate to the calculation of sums payable pursuant to this Agreement, and to allow Kinspeed or its agent or professional advisers to take copies of such records and books of account, screen shots and other records in order to clarify such use.

9. Intellectual Property Rights and Grant of Rights

9.1 The Client (and, where applicable, its licensors) shall retain ownership of the Intellectual Property Rights subsisting in any and all Client Materials and Client Equipment.

9.2 The Client hereby grants to Kinspeed a non-exclusive, royalty-free, non-transferable, non-sublicensable licence to use, copy, and modify the Client Materials and Client Equipment and, where relevant, the Third Party software, for the Term only to the extent reasonably necessary for and only for the purposes of the provision of the Services.

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9.3 Kinspeed (and, where applicable, its licensors) shall retain ownership of the Intellectual Property Rights subsisting in the Deliverables, except to the extent that any Client Materials are integrated into the Deliverables.

9.4 Save as provided in Clause 9.5, upon payment in full of the relevant Fee, Kinspeed grants to the Client a non-exclusive, fully paid-up, royalty-free, non-transferable, non-sub-licensable, licence for the Term to use, copy, and modify the Deliverables to the extent reasonably necessary for using and receiving the Services and the Deliverables in the course of business.

9.5 Third Party Provider software: Where this is applicable to an Order Form, upon Client's (continued-where this is applicable) payment of the relevant costs for the licence or subscription pursuant to Clause 7.3, Kinspeed shall procure that the Client is granted a non-exclusive, fully paid-up, royalty-free, non-transferable, non-sub-licensable, licence for the Term to use, copy, and modify the Third Party Provider software subject always to the Client's adherence to the Third Party Provider Terms. These rights shall remain with the Client after termination of the Agreement subject to Third Party Provider Terms.

10. Product Specifications

10.1 Kinspeed shall use reasonable endeavours to advise the Client of variations to Product specifications following formal notification to Kinspeed of such variations by the Third Party Provider.

10.2 Where changes to Product specifications significantly alter the price or fitness for purpose of the Products Kinspeed and the Client shall agree upon such changes in writing or arrange for the supply of alternative Products.

10.3 Changes to Product specifications shall not provide grounds for cancellation of Client orders unless such cancellation is agreed to in writing by Kinspeed and the Client.

11. Hardware and Software Products

11.1 Products shall be supplied by Kinspeed on the terms and conditions of use for such Products as defined by the Third Party Providers at the time of delivery.

11.2 Kinspeed gives no warranty to the Client in respect of Product that is purchased by Kinspeed from a Third Party Provider for resale to the Client but shall take reasonable steps to assist Client in pursuing warranty claims against the relevant Third Party Provider.

11.3 The Client must comply with the terms of the Third Party Provider's software licenses.

12. Delivery and Acceptance of Products

12.1 Unless it is agreed otherwise delivery shall be to the Client's address as specified in the Agreement.

12.2 Kinspeed shall not be liable for any shortfalls in delivery or variation from Product specification on delivery unless a claim in writing is made by the Client within 7 days of delivery.

12.3 In circumstances where Kinspeed has attempted to physically deliver Products to the Client and the Client is unable or unwilling to accept such delivery, the Client will be charged for the cost of the failed delivery in addition to any and all subsequent attempts. If the Client is unable to accept delivery, a new date shall be set by mutual agreement of the parties. If the Client is unwilling to accept delivery, the parties shall seek to vary the Agreement as appropriate by mutual agreement or the Client shall seek to terminate the Agreement in accordance with Clause 18 of these Terms..

12.4 Where the necessity for such has been agreed in advance and not otherwise the Client shall

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sign Kinspeed's Acceptance Certificate stating on signature any defects or exclusions.

12.5 Acceptance of a delivery requiring an Acceptance Certificate is deemed to occur on the signing of the Certificate on the date of delivery, which date shall be recorded on the Certificate and where this applies Kinspeed shall on the signing of the Acceptance Certificate be entitled to invoice the Client. In other circumstances the invoice provisions of the Order Form apply.

12.6 If, as a result of defects or exclusions in a delivery of Products or the provision of Services, the Client does not sign a required Acceptance Certificate, further work may be agreed between the parties to remedy such defects. Kinspeed shall use all reasonable endeavours to undertake such work without delay and this shall be the sole remedy of the Client for the same.

12.7 If, as a result of defects or exclusions in a delivery of Products or the provision of Services, the Client does not sign a required Acceptance Certificate and subsequently uses the Hardware or Software or the results of Services provided without prior Agreement as to any remedial work on the part of Kinspeed then the Client is deemed to have accepted the same.

13. Warranty

13.1 Subject to Clause 13.2 and in respect of Product which is directly produced by Kinspeed or Services provided directly by Kinspeed, the only warranty given by Kinspeed to the Client is that Kinspeed shall in accordance with normally accepted professional standards make good as quickly as is reasonably possible and at its own expense any defects identified on any relevant Acceptance Certificate or which develops during a period of 30 days after delivery of the Product or performance of the Services.

13.2 Kinspeed does not warrant that the Products are free from minor errors not materially affecting performance. Such errors shall not be rectified in the absence of a prior written agreement to the contrary.

13.3 The undertaking given in this Clause shall not apply if the Product has been altered by any party other than Kinspeed or has been operated or run on any platform or in any environment inappropriate for the Product.

14. Return of Products

14.1 The return of Products shall be at the sole discretion of Kinspeed but in any circumstance where Kinspeed agrees to accept return of Products for any reason then the Client shall:

- a) advise Kinspeed within 5 days from the date of delivery of Products by Kinspeed of the reason(s) for the return of Products;
- b) properly pack the Products in the original packing where possible and include a detailed packing list;
- c) return the Products in the condition in which they were received to arrive at Kinspeed within 14 days from the date of delivery of Products by Kinspeed; and
- d) take no action to effect any warranties that may cover the Products.

14.2 Kinspeed shall be entitled to levy to the Client a reasonable administration charge in respect of return of Products.

15. Title and Risk

15.1 Risk of loss or damage in respect of any tangible item shall pass to the Client on delivery or collection of the item by the Client or his agent.

15.2 The legal and beneficial ownership of Products and/or associated material supplied as part of

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Products and/or Services shall remain with Kinspeed until payment in full in respect of all such Products and associated material supplied as part of Products and/or Services has been received by Kinspeed in accordance with the terms of the Agreement.

15.3 Until such payment is received in full Kinspeed may without prejudice to any of its rights recover or resell any of the Products and/or associated material and may enter upon the Client's premises by its servants or agents for that purpose.

15.4 Where a licence shall be granted by a Third Party Provider and/or Kinspeed to the Client then the Client shall not have the benefit of the licence until payment in full has been received by Kinspeed.

16. Cancellation (Third Party Provider Products / Services)

The Client shall not be entitled to cancel any order for Product(s) and/or Service(s) or any part thereof except upon terms which reimburse Kinspeed for loss of Profit and all costs, charges and expenses incurred by Kinspeed in respect of the Product(s) and/or Service(s) or any part thereof up to the date of receipt by Kinspeed of written notification of cancellation from the Client.

17. Cancellation (Professional Services)

17.1 If the Customer and Kinspeed have agreed to specific dates for delivery of Professional Services, and for any reason the Client cancels or defers the arrangements or the Kinspeed Professional Services cannot be provided by Kinspeed due to the Client's actions or failure to act (including but not limited to the Client failing to meet the pre-requisites specified by Kinspeed), the Client agrees to pay:

- a) 50% of the relevant fee if the cancellation/deferment takes place between six (6) and ten (10) Business Days prior to the date of delivery of the Kinspeed Professional Services; or
- b) 100% of the fee if the cancellation/deferment (including non-provision of the Kinspeed Professional Services) takes place five (5) Business Days or less prior to the date of delivery of the Kinspeed Professional Services; and
- c) any costs which Kinspeed incurs as a result of the cancellation (for example, travel or accommodation costs).

17.2 In the event of deferment/cancellation/non-provision of the Kinspeed Professional Services due to the acts or omissions of the Client, Kinspeed shall use all reasonable endeavours to redeploy the affected staff and will only charge this fee where it is unable to redeploy staff on other chargeable work.

18. Intellectual Property Indemnity (Kinspeed proprietary software only)

18.1 Kinspeed shall indemnify the Client from and against all loss and damage and cost and expense resulting from or arising out of any threatened or actual infringement of patents, copyright, registered designs or other intellectual property rights belonging to any party provided that the Client shall:

- a) notify Kinspeed in writing of any allegation or infringement;
- b) make no admission without Kinspeed's consent; and
- c) at Kinspeed's request allow Kinspeed to conduct and/or settle all negotiations in or prior to litigation and give Kinspeed all reasonable assistance in respect thereof.

19. Confidentiality

19.1 Each Party undertakes that, except as provided by Clause 19.2 or as authorised in writing by the other Party (such authorisation not to be unreasonably withheld), it shall, at all times during the

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Term of this Agreement and for 3 years after its termination or expiry:

- a) keep confidential all Confidential Information;
- b) not disclose any Confidential Information to any other party;
- c) not use any Confidential Information for any purpose other than as contemplated by the Agreement;
and
- d) ensure that (as applicable) none of its employees, directors, officers, agents, or sub-contractors does any act which, if done by that Party, would be a breach of the provisions of this Clause 10.

19.2 Subject to Clause 19.3, either Party may disclose any Confidential Information to:

- a) any sub-contractors, substitutes, or suppliers;
- b) any governmental or other authority or regulatory body; or
- c) a relevant Third Party Provider; or
- d) any employee or officer of that Party or any of the aforementioned persons, parties, or bodies.

19.3 Disclosure under Clause 19.2 may be made only to the extent that it is necessary for the purposes contemplated by this Agreement, or as required by law. In each case, the disclosing Party must first inform the recipient that the Confidential Information is confidential. Unless the recipient is a body described in Clause 10.2(b) or is an authorised employee or officer of such a body, the Party disclosing the Confidential Information under Clause 19.2 must obtain and submit to the other Party a written undertaking from the recipient to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made.

19.4 Either Party may use any Confidential for any purpose, or disclose it to any other party, where that Confidential Information is or becomes public knowledge through no fault of that Party.

19.5 When using or disclosing Confidential Information under Clause 19.4, the Party using or disclosing that Confidential Information must ensure that it does not use or disclose any part of that Confidential Information which is not public knowledge.

19.6 The provisions of this Clause 19 shall continue in force in accordance with their terms, notwithstanding the termination or expiry of this Agreement for any reason.

20. Law and Policies

20.1 Kinspeed shall at all times and at its own expense when performing its obligations under this Agreement:

- a) comply with the Applicable Laws; and
- b) comply with all applicable health and safety rules and regulations and security requirements in place at the Client's Premises and any other facilities that is or are agreed upon by the Parties.

20.2 Each Party shall inform the other Party as soon as reasonably possible and practicable when it becomes aware of any changes to the Applicable Laws.

20.3 In the event that a change to the Applicable Laws requires a change to the Services, Clause 6 (Change Orders) shall apply, and Kinspeed shall submit the required Change Order to the Client as set out in Clause 6.4.

21. Data Protection

Kinspeed shall only use the Client's personal data as set out in Kinspeed's Privacy Notice.

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22. Data Processing

All personal data to be processed by Kinspeed on behalf of the Client under this Agreement shall be processed in accordance with the terms of the Data Processing Notice.

23. Liability

23.1 Nothing in this Agreement shall limit or exclude Kinspeed's liability for death or personal injury caused by negligence or for fraud or fraudulent misrepresentation or any other form of liability which cannot be limited or excluded by law.

23.2 Nothing in this Clause 23 shall exclude claims for direct financial loss that are not expressly excluded by categories (a) to (i) of Clause 23.3.

23.3 Subject to Clauses 23.1 and 23.3 and to any other provision to the contrary in this Agreement, Kinspeed shall not be liable to the Client for any loss suffered, whether suffered directly or indirectly, or whether immediate or consequential, arising in contract, tort (including negligence), breach of statutory duty, or otherwise, which falls within any of the following categories:

- a) loss of profits;
- b) loss of sales or business;
- c) loss of business opportunity;
- d) loss of agreements or contracts;
- e) loss of anticipated savings;
- f) loss or corruption of data;
- g) loss of, or damage to, goodwill;
- h) indirect or consequential loss; or
- i) special damages, even in the event that Kinspeed was aware of the circumstances in which the same could arise.

23.4 Subject to Clauses 23.1 to 23.3, the total liability of Kinspeed whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the greater of £100,000 or Fees paid in the prior 12 months under the Agreement (which shall not, in any circumstances include amounts paid under Clause 7.3).

23.5 The Client's rights under this Agreement are in addition to, and not exclusive of, any common law rights or remedies.

24. Force Majeure

24.1 For the purposes of this Agreement, "Force Majeure Event" means, in relation to either Party, any circumstances beyond that Party's reasonable control including, but not limited to, any strike, lockout, or other form of industrial action; lack of, interruption to, or failure of any utility service, or lack of available facilities; non-performance by suppliers or sub-contractors; collapse of buildings, fire, explosion, accident, acts of God, storm, flood, drought, earthquake, epidemic, pandemic, or other natural disaster; terrorist attack, civil commotion or riots, war, civil war, threat of preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off diplomatic relations; nuclear, chemical, or biological contamination, or sonic boom; or any law or action taken by a government or public authority including, but not limited to, imposing an export or import restriction, quota, or prohibition.

24.2 If any Force Majeure Event occurs in relation to Kinspeed which affects or may affect Kinspeed's performance of its obligations under this Agreement, Kinspeed shall notify the Client as soon as reasonably possible and practicable of the nature and extent of the

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circumstances in question. Kinspeed shall use reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

24.3 Subject to compliance with Clause 15.2, Kinspeed shall not be deemed to be in breach of this Agreement or shall otherwise be liable to the other by reason of any delay in performance or non-performance of any of its obligations under this Agreement to the extent that performance of that obligation is prevented, hindered, or delayed by a Force Majeure Event of which it has notified the Client, and the time for that performance shall be extended accordingly.

24.4 If the performance by Kinspeed of any of its obligations under this Agreement is prevented, hindered, or delayed by a Force Majeure Event for a continuous period in excess of 60 days the Parties shall enter into bona fide discussions with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable.

25. Termination

25.1 Without prejudice to any other right or remedy available to it, either Party may terminate the Agreement immediately by giving written notice to the other Party in the event that:

- a) the other party fails to pay an amount due under this agreement on the due date for payment and remains in default not less than 20 days after being notified in writing to make such payment;
- b) the other party commits a material breach of any term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 20 days after being notified in writing to do so;
- c) the other party takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors, applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court), being struck off the register of companies, having a receiver appointed to any of its assets, or its entering a procedure in any jurisdiction with a similar effect to a procedure listed in this clause 25.2(c);
- d) the other party suspends or ceases, or threatens to suspend or cease, carrying on business; or
- e) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the agreement is in jeopardy.

25.2 Kinspeed may terminate the Agreement immediately by giving written notice to the Client in the event that there is a change of control of the Client within the meaning of section 1124 of the Corporation Tax Act 2010).

25.3 For the purposes of Clause 25.1(b), a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.

25.4 Without prejudice to any other rights or remedies available to it, Kinspeed may terminate the Agreement (in whole or in part) by giving not less than 30 days written notice to the Client.

26. Effects of Termination

26.1 Upon the termination or expiry of the Agreement for any reason:

- a) any sum owing by either Party to the other Party under any of the provisions of this Agreement shall become immediately due and payable;
- b) the Intellectual Property Rights licence granted to the Client under Clauses 9.1 to 9.5

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(Intellectual Property Rights) shall terminate, and the parties shall immediately cease to use, either directly or indirectly, those rights so granted.

26.2 The clauses which are required to have effect after termination shall remain in full force and effect.

26.3 Termination shall not affect or prejudice any right to damages or any other remedy which the terminating Party may have in respect to the event giving rise to the termination or any other right to damages or any other remedy which either Party may have in respect of any breach of this Agreement which existed at or before the date of termination or expiry.

27. General Provisions

27.1 Rights and Remedies: The rights and remedies provided for in this Agreement are in addition to, and shall not limit or exclude, any rights or remedies provided by law.

27.2 No Waiver: No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

27.3 Limited warranties: To the fullest extent permitted by Applicable Laws all warranties save as set out herein are excluded.

27.4 Variation: Subject to the provisions of Clause 6 (Change Orders), no variation of the Agreement shall be effective unless it is in writing and signed by the duly authorised representatives of the Parties.

27.5 Entire Agreement: The Agreement and all documents referred to in it and the Order Form and all document referred to in it) contains the entire agreement between the Parties with respect to its subject matter. Each Party acknowledges that, in entering into the Agreement, it does not rely on any representation, warranty, assurance or other provision (made innocently or negligently) except as expressly provided in the Agreement.

27.6 Counterparts: The Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts, each of which, when so executed and delivered, shall be an original, but all the counterparts together shall constitute one and the same instrument.

27.7 Severance: In the event that one or more of the provisions of the Agreement is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Agreement. The remainder of the Agreement shall be valid and enforceable.

27.8 Conflict: In the event that there is an inconsistency between any provision in the body of the Agreement and a provision contained in the Order Form, the provisions contained in the Order Form shall prevail.

27.9 Further Assurance: Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Agreement into full force and effect.

27.10 Assignment and Sub-Contracting: The Agreement is personal to the Client. Kinspeed shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of the Agreement, be deemed to be an act or omission of the Party in question.

27.11 Relationship of the Parties: Nothing in the Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency, or other fiduciary relationship between the

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Parties other than the contractual relationship expressly provided for in the.

27.12 Time: Save for payment obligations the Parties agree that the times and dates referred to in the Agreement are for guidance only and are not of the essence of the Agreement and may be varied by mutual agreement between the Parties.

27.13 Non-Solicitation: Neither Party shall, for the term of the Agreement and for a period of 24 months after its termination or expiry, solicit or entice away or employ or contract the services of any person who is or was employed or otherwise engaged by the other Party at any time in relation to the Agreement without the express written consent of that Party.

27.14 Third Party Rights: No part of the Agreement is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

27.15 Notices: All notices under the Agreement shall be in writing and deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice. All notices under the Agreement shall be addressed to the most recent address or email address given in the Agreement or as otherwise notified in writing by either Party to the other from time to time. Notices shall be deemed to have been duly given:

- a) when delivered, if delivered by courier or other messenger during the normal business hours of the recipient, on signature of a delivery receipt; or
- b) when sent, if transmitted by email and a successful confirmation of receipt or read receipt is generated during Business Hours of the recipient or, if sent outside Business Hours, when Business Hours resume; or
- c) or at the delivery time recorded by the relevant delivery service if mailed by first-class mail, postage prepaid or by any other next working day delivery service.

28. Law and Jurisdiction

28.1 The Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

28.2 Any dispute, controversy, proceedings or claim between the Parties relating to the Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the exclusive jurisdiction of the courts of England and Wales.