

This document sets out the relationship between us. Such documents can be long and complex, but we have tried to keep this to a minimum in two ways:

- We tried to use plain English but if there are areas you do not understand; please ask.
- The Terms are divided into parts: these are the General Terms that apply to all contracts with us and there are Appendices for the supply of support, compliance with GDPR and the supply of Products.
- The Appendices are:
 - Support
 - Data Protection
 - Products

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in this agreement.

1.2 The following words and phrases have the following meanings:

Agreement: these Terms, the Proposal and the Appendices.

Commencement Date: means the date specified on the Proposal or, if later, when access to the System is provided to you.

Data: the data inputted by you, your Authorised Users, or Kudos on your behalf for the purpose of using the Services or facilitating your use of the Services.

Fee: the fees set out in the Proposal.

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

Hardware: all physical items listed in the Proposal.

Intellectual Property Rights: all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world.

Kudos: Kudos Software Limited

Products: the Hardware and Third Party Software agreed to be purchased by you from us as set out in the Proposal or subsequently requested by you. The Products Appendix shall apply to such supplies.

Proposal: the proposal produced by Kudos and accepted by you.

Services: the provision of the System and other services detailed in the Proposal.

Support Services: the provision of email and telephone support as detailed in the Support Appendix.

System: all Kudos on line software applications and locally installed software detailed in the Proposal.

Third Party Software: software not written by Kudos.

Term: the period of one year from the Commencement Date.

Users: means the users of the System, limited as set out in the Proposal.

You: the person firm or company to whom the Proposal is addressed.

1.3 The headings in this agreement do not affect its interpretation.

1.4 Unless the context otherwise requires references to any gender include all genders and words in the singular include the plural and, in the plural, include the singular.

2. THE TERMS THAT APPLY TO THE AGREEMENT

2.1 These terms and conditions shall apply to all dealings between us and you and take precedence over anything inconsistent in or referred to in your purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

2.2 Only additions to, variations of, exclusions or attempted exclusions of any term of the agreement will be binding on us if they are in writing and signed by a Director.

3. QUOTATIONS AND ORDERS

3.1 A binding agreement shall not come into existence between us and you unless and until we receive an acceptance of the Proposal from you, or, if earlier, when we begin to deliver the Products or Services.

3.2 The Products and the Services shall be as set out in our Proposal or (if there is no Proposal), our quotation.

3.3 Upon our request, you will appoint an individual with authority to bind you and through whom all communication will be passed.

3.4 All drawings, descriptive matter, specifications and advertising issued by us are provided for illustrative purposes only and do not form part of the agreement.

3.5 Our employees are not authorised to make any contractually binding promises or representations concerning the Products or the Services. In

entering into the agreement, you acknowledge that you do not rely on, and waive any claim for breach of, any such representations which have not been confirmed in writing by a Director.

4. LICENCE AND TERM

4.1 In consideration of the Fee paid by you in accordance with condition **Error! Reference source not found.**, Kudos grants to you a non-exclusive, non-transferable agreement for your Users to use the System during the Term for your business activities.

4.2 Kudos will, during the Term, provide the Support Services, subject to clause 7.4, at the rate set out in the Proposal.

4.3 You acknowledge that this agreement is granted for the Term being one year and that, if it is not renewed, then the System will cease to be accessible but condition 5.4 will remain in force.

4.4 In relation to scope of use:

- (a) use of the System shall be restricted to use for your normal business purposes and does not permit you to use the System to provide services to any other organisation;
- (b) you may not allow any third party to use the System or any unique access code;
- (c) you may not access all or any part of the System, or allow any third-party access, in order to build a product or service which competes with the System or any of its functions;
- (d) you may not add to or alter the Data, add triggers or alter structures or functions;
- (e) except as required by law, you have no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make corrections to any part of the System.

4.5 Kudos shall use commercially reasonable endeavours to make the System available 24 hours a day, seven days a week, except for:

- (a) planned maintenance carried out during the maintenance window of 8.00 pm to 6.00 am UK time; and
- (b) unscheduled maintenance performed outside Normal Business Hours, provided that the Kudos has used reasonable endeavours to give you at least 6 normal Business Hours' notice in advance.

5. DATA

5.1 You own all right, title and interest in and to all the Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Data.

5.2 Where the Data is hosted by Kudos, Kudos shall follow its standard archiving procedures for Data as set out in its Business Continuity Policy, as such document may be amended by Kudos in its sole discretion from time to time.

5.3 In the event of any loss or damage to Data, your sole and exclusive remedy shall be for Kudos to use reasonable commercial endeavours to restore the lost or damaged Data from the latest back-up of such Data maintained by Kudos in accordance with its archiving procedure.

5.4 On termination for any reason, provided there are no sums outstanding, Kudos will promptly provide you with a copy of the SQL server database files. The data tables can be supplied in a flat file format such as CSV, but this is chargeable. A quotation will be supplied on request.

5.5 Kudos shall comply with its Privacy and Security Policy relating to the privacy and security of the Data

6. DATA PROTECTION

The provisions of the Data Protection Appendix will have effect.

7. FEES

7.1 All prices shall be as stated in our Proposal. All prices are exclusive of VAT.

7.2 Invoices shall be paid, unless otherwise specified, within 30 days of their date, whether or not delivery has taken place or title in the Products has passed to you.

7.3 Time for payment of our invoices shall be of the essence of the agreement.

7.4 Kudos reserves the right to increase its fees from time to time by giving 30 days' notice in writing. Such increase shall not take place more often than annually.

7.5 If you do not pay on time, the whole of the balance of the price of the Products and the Services then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to us, we may appropriate any payment made by you to any

outstanding sum, charge interest on the amount and suspend all further delivery of Products and the provision of any services.

8. TRAINING

- 8.1 We undertake to provide training in the use of the System and Products for your staff as set out in our Proposal.
- 8.2 Any additional training required by you will be provided in accordance with our then current scale of charges.

9. AD HOC SUPPORT

- 9.1 We will, on request and subject to availability provide ad hoc support to assist you when required. This can include software configuration, training and general support.
- 9.2 The charges for ad hoc support will be in accordance with our then current scale of charges.

10. KUDOS' WARRANTIES

- 10.1 Kudos warrants that the System is, so far as Kudos is aware, free of material defects and has been created in accordance with Good Industry Practice. If you discover a defect, and such defect or fault does not result from you, or anyone acting with your authority, having amended the System or used it for a purpose or in a context for which it was not designed, Kudos shall, at Kudos' sole discretion, do one of the following:

- (a) repair the System in accordance with the Support Service; or
- (b) replace the System,

provided you provide all the information that may be necessary to assist Kudos in resolving the defect or fault, including sufficient information to enable Kudos to replicate the defect or fault.

- 10.2 Kudos does not warrant that the use of the System will be uninterrupted or error-free or that the System will be interoperable with third party software not listed in the Proposal.
- 10.3 You accept responsibility for the selection of the System to achieve its intended results.
- 10.4 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

11. LIMITATION OF LIABILITY

- 11.1 The following provisions set out our entire liability (including any liability for the acts or omissions of our employees) to you in respect of any breach of the agreement and any representation, statement or tortious act or omission (including negligence) arising out of or in connection with the agreement.
- 11.2 All warranties, conditions and other terms implied by statute or common law are excluded from the agreement to the fullest extent permitted by law.
- 11.3 Nothing in these conditions excludes or limits our liability for death or personal injury caused by our negligence or fraud or fraudulent misrepresentation.
- 11.4 Subject to condition 11.3:

- (a) because we cannot work out the potential harm to your organisation, we will not be liable for any loss of profits, loss of business, depletion of goodwill or similar losses or for any special, indirect or consequential loss, costs, damages, charges or expenses howsoever arising; and
- (b) our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to two times the price paid for the Products and Services in the previous 12 months.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 You acknowledge that all Intellectual Property Rights in the System and any enhancements created for you by Kudos belong and shall belong to Kudos, and you shall have no rights in or to the System other than the right to use it in accordance with the terms of this agreement.
- 12.2 Kudos undertakes at its own expense to defend you or, at its option, settle any claim or action brought against you alleging that the possession or use of the System in accordance with the terms of this agreement infringes the UK Intellectual Property Rights of a third party (**Infringement Claim**) provided you notify Kudos in writing, as soon as reasonably practicable, of any Infringement Claim, making no admission and having conduct of and the right to settle all negotiations and litigation arising.
- 12.3 If any Infringement Claim is made, or in Kudos' reasonable opinion is likely to be made, against you, Kudos may at its sole option and expense modify the System so that it ceases to be infringing; replace the System with non-infringing software or terminate this agreement and refund any of the Fee paid by you as at the date of termination (less a reasonable sum in respect of your use of the System to the date of termination).

13. TERMINATION

- 13.1 Either party may terminate this agreement at any time on written notice to the other if the other:
- (a) is in material or persistent breach of any of the terms of this agreement and either that breach is incapable of remedy, or the other party fails to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach; or
 - (b) ceases to carry on business.

- 13.2 Termination by either party in accordance with the rights contained in condition 13 shall be without prejudice to any other rights or remedies of that party accrued prior to termination.

- 13.3 On termination for any reason your right to use the System will cease and you shall immediately pay to Kudos any sums due.

14. FORCE MAJEURE

No party shall be liable to the other for any delay or non-performance of its obligations under this agreement arising from any cause beyond its control. For the avoidance of doubt, nothing in condition 14 shall excuse you from any payment obligations under this agreement.

15. CONFIDENTIALITY AND PUBLICITY

- 15.1 Each party shall, during the term of this agreement and thereafter, keep confidential, and shall not use for its own purposes nor without the prior written consent of the other disclose to any third party, any information of a confidential nature which may become known to such party from the other party and which relates to the other party, unless such information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this agreement, or subsequently comes lawfully into the possession of such party from a third party.
- 15.2 The terms of this agreement are confidential and may not be disclosed by you without the prior written consent of Kudos.
- 15.3 The provisions of conditions 15 and 20 shall survive termination of this agreement.

16. WAIVER

No forbearance or delay by either party in enforcing its rights shall prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach.

17. VARIATIONS

Any amendment, waiver or variation of this agreement shall not be binding on the parties unless set out in writing, expressed to amend this agreement and signed by or on behalf of each of the parties.

18. THIRD PARTY RIGHTS

- 18.1 No term of this agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this agreement.

19. NOTICES

- 19.1 Any notice required to be given pursuant to this agreement shall be in writing and shall be sent to the other party marked for the attention of the person at the address set out for such party in this agreement. Notices may be sent by first-class mail or e-mail. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered 72 hours after posting. Correctly addressed notices sent by e-mail shall be deemed to have been given at the end of the day of effective transmission of the e-mail.

20. DISPUTE RESOLUTION PROCEDURE

- 20.1 If any dispute arises in connection with this agreement, directors or other senior representatives of the parties with authority to settle the dispute will, within 7 days of a written request from one party to the other, meet either in person or by telephone, promptly and in good faith to resolve the dispute.
- 20.2 If the dispute is not resolved in accordance with condition 20.1, the dispute shall be referred to mediation and the mediator shall be appointed by the Centre for Dispute Resolution.

21. ENTIRE AGREEMENT

This agreement contains the whole agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter, save for any fraudulent misrepresentations.

22. GOVERNING LAW AND JURISDICTION

This agreement shall be governed by and construed in accordance with English law and each party hereby submits to the non-exclusive jurisdiction of the English courts.

SUPPORT APPENDIX

SUPPORT SERVICES

1. GENERAL SUPPORT PROVIDED BETWEEN THE HOURS OF 9.00AM – 5.30 MONDAY TO FRIDAY

Kudos provide first line support in the forms of telephone and remote desktop access support for systems not working or ad hoc enquiries with the current released version of the software.

Support enquiries receive a grading which determines the expected response time from Kudos.

- Please note that resolution times on occasion may be out of Kudos' control as they will involve other parties, including you and your hardware suppliers.
- Kudos will provide updates on progress of any issues as appropriate.

Grading	Type of Issue	Resolution targets
Critical	System Offline	Immediate Response
High	Data writing incorrectly or Serious restriction on processing	3 working days
Medium	Reconfigurations Identification of bugs	Where deliverable within a bug fix release – typically 10 working days
Low	General enquiries as to system functionality	Depending on query – between 1 - 5 working days
Wish list Development	Change requests	Dependent on development cycle

2. RESTORATION & BACK UP

Kudos are pleased to advise on backup, and to help setup backup routines. For Data not held on Kudos' servers it is your responsibility to monitor the arrangements and ensure that timely backups are successfully taken.

Support for restoration of backups is provided under this SLA but work to restore from old data or out of date backups may be chargeable. This work will be treated as 'critical'

Guidance on re-installation of systems after major hardware/platform failure is also chargeable.

3. UPGRADES/SCHEDULED RELEASES

Kudos provides periodic updates of the System. You will be informed prior to the release and appropriate documentation will be provided.

4. ESCALATION

Any concerns regarding service levels should be escalated via:
Customer Service Director: service.director@kudos-software.co.uk
Managing Director: managing.director@kudos-software.co.uk
Chairman: chair@kudos-software.co.uk

5. SERVICES NOT COVERED BY THE SERVICE LEVEL AGREEMENT

Kudos reserves the right to charge for the following:

- Additional hours of support outside of the 9am-5.30pm can be provided by arrangement for booked chargeable tasks at the 'Out of Hours' rate set from time to time;
- Extended first line support is also available under the provisions of onsite hardware support arrangements with partner contractors;
- Support required as a result of you breaching the terms of the agreement, modifying the Data other than by use of the System;
- Programming of user specified modifications;
- On line work installing and configuring new installations;
- Work on database and price list maintenance (e.g. dialling in to run queries to change data at Licensee request);
- Installing Kudos and databases and transferring data to a new PC/Server; and
- Training on areas new to the user where the session will last over 15 minutes (this is covered by the use of training tickets).

6. FEES

You will be informed of any such charges prior to booking. The current charging rates are available on request.

- Support charges will be at the then current hourly rate (which may be varied from time to time with a minimum purchase of half hour. This may be varied from time to time depending on your request.

- Programming is provided at the then current daily rate (which may be varied from time to time, pro rata, with a minimum purchase of 2 hours.

DATA PROTECTION APPENDIX

1. DATA PROTECTION AND IT SECURITY

- The following words and phrases have the following meanings:

Data Protection Legislation: unless and until the General Data Protection Regulation ((EU) 2016/679) ("GDPR") is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

Personal data, controller, processor, data subject and processing have the meanings respectively set out in GDPR.

- Both parties will comply with all applicable requirements of the Data Protection Legislation.

- The parties acknowledge that for the purposes of the Data Protection Legislation, Kudos is the processor, and you are the controller. The parties shall ensure that they complete a data processing register which details the scope, nature, duration and purpose of the processing prior to the transfer of any personal data.

- You will ensure that you have all necessary consents (or have complied with another processing condition) and have the appropriate notices in place to enable the lawful transfer of your Data to Kudos for the duration and for the purposes of this agreement.

- Kudos warrants that to the extent it processes any personal data on behalf of you:

- it shall act only on instructions from you;
- it has in place appropriate technical and organisational security measures (which may be subject to approval by you) against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data. Such measures shall be appropriate to the harm that might result from the unauthorised or unlawful processing;
- ensure all personnel who have access to the Data are obliged to keep it confidential;
- assist you to respond to a data subject's request to enforce their rights of subject access, rectification, erasure and any other rights conferred by the Data Protection Legislation;
- assist you if requested with respect to security breach notifications, impact assessments and any investigations by a supervisory authority or regulator;
- notify you without undue delay in the event of a data security breach and assist you with any investigations;
- at your direction, delete or return to you all personal data and copies on termination unless required by law to retain the same;
- maintain complete and accurate records to demonstrate its compliance with this condition and allow for audits by Kudos; and
- keep up to date a data processing register.

- Kudos shall not appoint a new third-party processor without giving prior written notice to you. Kudos shall ensure that any third-party processor will enter into an agreement with the same or substantially similar terms in relation to the Data Protection Legislation.

- Kudos shall at all times comply with its obligations under the Data Protection Legislation including maintaining any valid and up-to-date registration or notification required.

- Kudos will not transfer of any personal data outside the UK unless your prior consent has been obtained and, if required by applicable law, Kudos and you will enter into a data transfer agreement that is consistent with the requirements of applicable law. Kudos shall also ensure that:

- appropriate safeguards have been provided;
- the data subjects have enforceable rights and effective legal remedies in relation to any transferred personal data; and
- adequate levels of protection in relation to any personal data that is transferred.

PRODUCTS APPENDIX

1. DELIVERY AND INSTALLATION OF PRODUCTS

- 1.1 Hardware prices are based on the manufacturers price at the date of our Proposal. If we notify you of an increase prior to delivery, then you may cancel this agreement by giving notice within 3 working days of being notified of the increase.
- 1.2 We may, by notice to you before delivery, increase the price of any undelivered Products to reflect any change in delivery dates, quantities or specifications requested by you, or any delay caused by you.
- 1.3 We reserve the right to make any changes in the specification of the Products which do not materially affect their quality or performance.
- 1.4 We will use our reasonable endeavours to deliver the Products and provide the Services on the date or dates specified in our Proposal, but any such date is approximate only. If no dates are so specified, delivery shall be within a reasonable time. Time is not of the essence as to the delivery of the Products or the provision of the Services.
- 1.5 Delivery shall be made during normal business hours and we may levy additional charges for any deliveries made outside such hours at your request.
- 1.6 You are responsible (at your cost) for preparing the location for the delivery and installation of the Products.
- 1.7 Where we are not installing the Products:
- (a) We will be responsible for any damage, shortage or loss in transit, provided you notify us (or our carrier, if applicable) within 3 working days of delivery or the proposed delivery date of the Products. Any remedy under this condition shall be limited, at our option, to the replacement or repair of such Products which is proven to our satisfaction to have been lost or damaged in transit; and
 - (b) You will be deemed to have accepted the Products when you have had 3 working days to inspect it after delivery or, if earlier, when you use the Products other than for test purposes.

2. RISK AND OWNERSHIP

- 2.1 You will not own the Products (or be entitled to the relevant agreement, in the case of Third Party Software) until you have paid everything due to us (or if later, on installation).
- 2.2 You grant us and our employees an irrevocable agreement at any time to enter any premises where the Products is or may be stored to inspect them, or where your right to possession has terminated, to remove them. All costs incurred by us in repossessing the Products shall be borne by you.
- 2.3 On termination of the agreement for any reason, our rights in this condition shall remain in effect.

3. REMEDIES

- 3.1 We will not be liable for any non-delivery of Products (even if caused by our negligence) unless you notify us in writing of the failure to deliver within 7 days after the scheduled delivery date.
- 3.2 Our liability for non-delivery of the Products shall be limited to replacing the Products within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Products.
- 3.3 In respect of Third Party Software not produced by us, we will during the manufacturer's warranty period, provide assistance in communicating with that manufacturer regarding faults, so far as it is reasonable to do so. In respect of Hardware, we undertake, at its option, to repair or replace Products (other than Third Party Software or consumable items) which is found to be defective as a result of faulty materials or workmanship within the manufacturer's warranty period.