

Terms and Conditions for the Supply of Managed Services

The Services to be provided to Customer and Customer's payment obligations for same, shall be set forth in one or more Statements of Work which in each instance shall be subject to these Conditions.

These Conditions apply to the exclusion of any other terms that Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

1. Definitions and Interpretation

1.1 Definitions

The following definitions apply in these Conditions:

- (a) **"Business Day"** shall mean a day other than a Saturday, Sunday or public holiday in England when banks are open for business in London, United Kingdom.
- (b) **"Customer"** shall mean the Party designated as the Customer in any Statement of Work.
- (c) **"Effective Date"** shall mean the date on which both of Customer and Kaptio sign a Statement of Works subject to these Conditions.
- (d) **"Intellectual Property Rights"** shall mean patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- (e) **"Kaptio"** shall mean Kaptio ehf incorporated and registered in Iceland with company number 661109-1570 whose registered office is at Hlíðasmári 2201, Kopavogur, Iceland.
- (f) **"Party"** shall mean either of Kaptio and/or Customer as the context so dictates and **"Parties"** shall mean both of Kaptio and/or Customer.
- (g) **"Services"** shall mean the managed services to be performed by Kaptio for Customer pursuant to a Statement of Work subject to these Conditions.
- (h) **"Statement of Work"** shall mean Kaptio's standard form of statement of work, order form, work order or other similar document setting out the Services and the responsibilities for the provision of the Services, to be agreed and executed by both Parties wherever Kaptio agrees to perform Services for Customer.
- (i) **"TUPE"** shall mean the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- (j) Any other capitalized terms shall have the meaning set out in the body of these Conditions.

1.2 Interpretation

- (a) Clause headings shall not affect the interpretation of these Conditions. References to clauses are to the clauses of these Conditions.
- (b) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (c) A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- (d) Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular and a reference to one gender shall include a reference to the other genders.
- (e) Where the Parties enter into a Statement of Work, these Conditions shall be binding on, and enure to the benefit of, the Parties and their respective personal representatives, successors and permitted assigns, and references to any Party shall include that Party's personal representatives, successors and permitted assigns.
- (f) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time, provided that any such amendment does not materially prejudice the position of Kaptio under these Conditions or any Statement of Work in which case it shall apply as was intended by law as at the date on which the first Statement of Work was entered into by the Parties.
- (g) A reference to writing or written includes email.
- (h) Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.
- (i) A reference to these Conditions or to any other agreement or document referred to in these Conditions is a reference of these Conditions as varied from time to time.
- (j) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms

2. Basis of Contract; Ordering and Acceptance

2.1 Basis of Contract

- (a) Each Statement of Work constitutes an offer by the Customer to purchase Services from Kaptio in accordance with these Conditions.
- (b) A Statement of Work shall only be deemed to be accepted when both Parties have signed their agreement to it, at which point and on which date a contractual relationship shall exist between the Parties.
- (c) These Conditions apply to Kaptio's provision of Services to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- (d) Kaptio shall provide the Services to Customer in accordance with these Conditions and each relevant Statement of Work.

- (e) Kaptio shall provide the Services from the date specified in the relevant Statement of Work.
- (f) Each Party agrees its respective employees and agents will reasonably and in good faith cooperate with each other in a professional and courteous manner in the performance of their duties under these Conditions. Either Party may suspend performance of their duties hereunder immediately upon written notice should the other Party's employees or agents fail to act in accordance with this clause.
- (g) Except where the relevant Statement of Work provides otherwise, scheduling of Kaptio's resources must be agreed to no later than ten (10) Business Days prior to the date the relevant Service is scheduled to begin. Subsequent scheduling changes requested by Customer may result in additional fees. Delays caused by Customer under a Statement of Work to which Kaptio has dedicated resources and begun work will be billed at 50% of the planned hours during the period of the delay; and (ii) onsite planned resources will be billed at 100% of the planned hours during the period of the delay (maximum of 8 hours per business day). Delays caused by Customer that exceed ten (10) Business Days shall entitle Kaptio to terminate the relevant Statement of Work for cause immediately upon written notice.

2.2 Who may order

Customer or any wholly owned subsidiary or holding company of Customer as defined under section 1159 of the Companies Act 2006 (each a "**Customer Entity**") may obtain Services from Kaptio under these Conditions. By signing a Statement of Work, a Customer Entity agrees that any Services obtained pursuant to the Statement of Work are subject solely to the provisions of these Conditions and the relevant Statement of Work. Customer represents and warrants that any Customer Entity who purchases Services shall perform its obligations in accordance with these Conditions and the relevant Statement of Work.

2.3 Changes to Scope

Any changes to the scope of work under a Statement of Work shall be made by written change order or amendment to the Statement of Work signed by an authorized representative of each Party prior to implementation of such changes.

2.4 TUPE

The Parties do not consider that the commencement of the provision of the Services shall constitute a "relevant transfer" pursuant to TUPE. However, if any person who is or was employed by Customer claims or it is determined that his contract of employment has been transferred from Customer to Kaptio or claims that his employment would have so transferred had he not resigned, Kaptio may terminate the employment of such person and Customer will indemnify and fully reimburse Kaptio against all direct or indirect actions, claims, demands, actions, proceedings and any award, compensation, damages, liabilities, tribunal awards, fine, costs, loss, order, penalty, disbursement, payment made by way of agreed settlement and costs and expenses reasonably and necessarily incurred in connection with a claim together with reasonable legal costs and expenses incurred by Kaptio in defending any such claims

arising out of such termination or in respect of any period of employment of, or liability relating to, such person.

3. Fees, Invoicing and Payment

3.1 Fees for Services

- (a) In consideration of the provision of the Services by Kaptio, Customer shall pay the charges as set out in the relevant Statement of Work, which will, unless otherwise expressly stated in the applicable Statement of Work, be calculated in accordance with this clause 3.1.
- (b) Unless otherwise expressly stated in the applicable Statement of Work, Services shall be provided on a time and materials ("**T&M**") basis at Kaptio's T&M rates in effect at the time the Services are performed which will be made available to Customer upon request. The T&M rates may be amended from time to time by Kaptio giving not less than one month's written notice to the Customer Entity. On a T&M engagement, if an estimated total amount is stated in the applicable Statement of Work, that amount is solely a good faith estimate for Customer's budgeting and Kaptio's resource scheduling purposes and not a guarantee that the Services will be completed for that amount; the actual amount may be higher or lower. If the estimated amount is expended, Kaptio will continue to provide Services on a T&M basis at the same rates and terms. Kaptio will advise Customer of the applicable rates at the time of signing each Statement of Work.

3.2 Incidental Expenses

Customer shall reimburse Kaptio for material(s) and all reasonable and duly documented travel, administrative, and out-of-pocket expenses incurred in conjunction with the delivery of the Services.

3.3 Invoicing

- (a) Kaptio shall invoice Customer monthly in accordance with the applicable Statement of Work. Unless expressly stated otherwise in the Statement of Work, Charges shall be due and payable within 30 days of the date of the relevant invoice and should be submitted to Kaptio in full and cleared funds to a bank account nominated by Kaptio.
- (b) The invoice shall be deemed overdue if unpaid 14 days after the date of the relevant invoice.
- (c) Any discounting structure that may be agreed by the parties in a Statement of Work shall be factored into Kaptio's monthly invoice, and shall be recoverable from Customer in the event of early termination in accordance with clause 9(a).

3.4 Taxes

Charges for Services hereunder shall be exclusive of value added tax (VAT) or any other taxes that may be implemented on provision of services ("Taxes"). Kaptio shall add any such Taxes to Customer invoice at the appropriate rate.

3.5 Payment

- (a) Without prejudice to any other right or remedy that it may have, if Customer fails to pay Kaptio on the due date, unless such payment is disputed reasonably and in good faith:
 - (i) Customer shall pay interest on the overdue amount at a rate of 5% above the then current base rate of the Bank of England compounded daily. Such interest shall accrue on a daily basis from the due date until payment of the overdue amount, whether before or after judgment.
 - (ii) Kaptio may suspend all Services until payment has been made in full.
 - (iii) Any discounts applicable to the invoiced Services under the Statement of Work may be removed.
- (b) All sums payable to Kaptio under these Conditions or any Statement of Work shall become due immediately on its termination, despite any other provision. This clause 3.5(b) is without prejudice to any right to claim for interest under the law, or any such right under the law, or any such right under these Conditions or relevant Statement of Work.
- (c) All amounts due under these Conditions or any Statement of Work shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

4. Customer's Obligations

- (a) Customer shall:
 - (i) co-operate with Kaptio in all matters relating to the Services and appoint Customer's Manager in relation to the Services, who shall have the authority contractually to bind Customer on matters relating to the Services;
 - (ii) provide, for Kaptio, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to Customer's premises, office accommodation, data and other facilities as reasonably required by Kaptio;
 - (iii) provide, in a timely manner, such information as Kaptio may reasonably require, and ensure that it is accurate in all material respects;
 - (iv) inform Kaptio of all health and safety rules and regulations and any other reasonable security requirements that apply at Customer's premises;
 - (v) ensure that all Customer's equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements;
 - (vi) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of Kaptio's equipment, and the use of Customer's equipment in relation to Kaptio's equipment, in all cases before the date on which the provision of Services are to start;

- (vii) keep, maintain and insure Kaptio's equipment in accordance with Kaptio's instructions as notified in writing from time to time and shall not dispose of or use Kaptio's Equipment other than in accordance with Kaptio's written instructions or authorisation;
 - (viii) comply with any additional responsibilities as set out in the relevant Statement of Work;
 - (ix) assigning a dedicated internal project manager for each Statement of Work to serve as a single point of contact for Kaptio;
 - (x) defining and maintaining its business objectives and requirements that will guide its use of the salesforce.com application;
 - (xi) reviewing customizations made to the salesforce.com application for conformance with relevant requirements;
 - (xii) training its users generally in the use of the software solution; and
 - (xiii) administrating the application generally for its own internal business purposes.
- (b) If Kaptio's performance of its obligations under these Conditions or any Statement of Work is prevented or delayed by any act or omission of Customer, its agents, subcontractors, consultants or employees, Kaptio shall not be liable for any costs, charges or losses sustained or incurred by Customer that arise directly or indirectly from such prevention or delay.
- (c) Customer shall be liable to pay to Kaptio, on demand, all reasonable costs, charges or losses sustained or incurred by Kaptio (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under these Conditions or any Statement of Work, subject to Kaptio confirming such costs, charges and losses to Customer in writing.
- (d) Customer shall not, without the prior written consent of Kaptio, at any time from the Effective Date to the expiry of twelve (12) months after termination of the last Statement of Works between the Parties, solicit or entice away from Kaptio or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of Kaptio in the provision of the Services.
- (e) Any consent given by Kaptio in accordance with clause 4(d) shall be subject to Customer paying to Kaptio a sum equivalent to 40% of the then current annual remuneration of Kaptio's employee, consultant or subcontractor or, if higher, 40% of the annual remuneration to be paid by Customer to that employee, consultant or subcontractor. Any such recruitment will result in Kaptio seeking damages to Customer in the amount of one year professional services fee of the employee in question.

5. Kaptio's Responsibilities

- 5.1 In connection with each and every Statement of Work, Kaptio shall:

- (a) use reasonable endeavours to provide the Services, in accordance with a Statement of Work in all material respects.
- (b) appoint Kaptio's manager in respect of the Services, who shall have authority under these Conditions to contractually bind Kaptio on all matters relating to the Services. Kaptio shall use all reasonable endeavours to ensure that the same person acts as Kaptio's manager throughout the term of each Statement of Work, but may replace that person from time to time where reasonably necessary in the interests of Kaptio's business.
- (c) use reasonable endeavours to observe, all health and safety rules and regulations and any other reasonable security requirements that apply at Customer's premises and that have been communicated to it, provided that it shall not be liable under these Conditions if, as a result of such observation, it is in breach of any of its obligations under these Conditions.

For the avoidance of doubt, any dates for performance under a Statement of Work shall be estimates only and time for performance by Kaptio shall not be of the essence of these Conditions or any Statement of Work.

6. Property Rights and Intellectual Property Rights

6.1 Contract Property

- (a) Kaptio hereby grants Customer a worldwide, non-exclusive, non-transferable, royalty-free license to use for its internal business purposes anything developed by Kaptio specifically for Customer under any Statement of Work ("**Contract Property**"). Kaptio shall retain all ownership rights to the Contract Property.
- (b) As between Customer and Kaptio, all Intellectual Property Rights and all other rights in the Services or any products supplied to Customer in the course of a Statement of Work shall be owned by Kaptio. Subject to this clause 6.1, unless stated otherwise in any Statement of Work, Kaptio licenses all such rights to Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable Customer to make reasonable use of the Services. This licence will automatically terminate on termination of the relevant Services being provided by Kaptio to Customer from time to time.

6.2 Relationship to Online Service

The Services provided under a Statement of Work may be in support of Customer's license, under a separate agreement, to use Kaptio's on-demand software service. Such separate agreement shall govern all use by Customer of such on-demand service. Neither these Conditions nor any Statement of Work grants Customer any license or rights to use such on-demand service. In addition, except for the Services described in all Statements of Work, Customer agrees that its purchase of Services in accordance with a Statement of Work and these Conditions is not contingent upon the delivery of any future functionality or features in Kaptio's on-demand software service, nor is it dependent upon any oral or written public comments made by Kaptio with respect to future functionality or features.

7. Confidentiality

Customer undertakes that it shall not at any time disclose to any person technical or commercial know-how, specifications, inventions, processes or initiatives (whether as part of the Contract Property or otherwise) which are of a confidential nature and have been disclosed to Customer by Kaptio, its employees, agents, consultants or subcontractors and any other confidential information concerning Kaptio's business which Customer may obtain, except as permitted by clause 7(a).

- (a) Customer may disclose Kaptio's confidential information:
 - (i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with these Conditions and/or any Statement of Work. Customer shall ensure that its employees, officers, representatives or advisers to whom it discloses Kaptio's confidential information comply with this clause 4; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (b) Customer shall not use Kaptio's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with any Statement of Work and these Conditions.

8. Term and Termination

8.1 Term

Each Statement of Work shall commence on their respective Effective Date and shall remain in effect until completed or terminated in accordance with their own terms or otherwise terminated in accordance with this clause 8.

8.2 Termination for Material Breach

Without affecting any other right or remedy available to it, either Party may terminate any Statement of Work with immediate effect by giving notice to the other Party, if the other Party is in material breach of these Conditions or such Statement of Work and has not remedied such breach within thirty (30) days of written notice specifying the breach. Either Party may by written notice to the other Party request a grace period of greater than thirty (30) days in which to remedy the breach, consent to such a grace period for remedy shall not be unreasonably withheld, so long as the breaching Party has made reasonable efforts to remedy the breach during the thirty (30) day period and is pursuing such remedy diligently and in good faith.

8.3 Failure to Make Payment

Notwithstanding anything in this clause 8 to the contrary and without affecting any other right or remedy available to Kaptio, if Customer fails to make payment on any due date or within any applicable grace period, Kaptio shall have the right to suspend its performance of the Services hereunder and, if such failure to make payment has not been remedied within fifteen (15) days of notice of such default, Kaptio may immediately terminate any or all outstanding Statements of Work upon written notice.

8.4 Termination for Insolvency

Without affecting any other right or remedy available to it, either Party may terminate any Statement of Work immediately upon written notice if

- (a) the other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party; or
- (b) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party; or
- (c) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other Party (being a company); or
- (d) Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (e) the holder of a qualifying floating charge over the assets of that other Party (being a company) has become entitled to appoint or has appointed an administrative receiver; or
- (f) a person becomes entitled to appoint a receiver over all or any of the assets of the other Party or a receiver is appointed over all or any of the assets of the other Party; or
- (g) a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other Party's assets and such attachment or process is not discharged within 14 days; or
- (h) any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.4(a) to clause 8.4(g) (inclusive); or
- (i) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

8.5 Termination on Customer Change of Control

Any actual or proposed change in control of Customer that results or would result in a direct competitor of Kaptio (as determined by Kaptio in its reasonable opinion) directly or indirectly owning or controlling 50% or more of Customer shall entitle Kaptio to terminate any or all Statement of Works in existence for cause immediately upon written notice.

9. Effect of Termination

- (a) On termination or expiry of any particular Statement of Work:
 - (i) Customer shall immediately pay to Kaptio all of Kaptio's outstanding unpaid invoices and interest and, in respect of the Services supplied under such Statement of Work but for which no invoice has been submitted, Kaptio may submit an invoice, which shall be payable immediately on receipt;
 - (ii) in addition, and without prejudice, to clause 9(a)(i), any discounts stated within the Statement of Work which are either contingent upon completion of all agreed iterations of Kaptio's Services or are otherwise linked to a milestone event under the Statement of Work, shall, upon the occurrence of early termination, be immediately repaid to Kaptio by Customer in accordance with the adjusted rates set out in the terms of the Statement of Work. For the purpose of this clause 9(a)(ii) Kaptio, will upon Customer's request provide such statement or invoice of the amount repayable and it is expressly agreed by the parties that recovery by Kaptio of such amounts is reasonable and proportionate having regard to the pricing structure for Services agreed at the outset of the Statement of Work;
 - (iii) the following clauses shall continue in force: clause 2.1 (Contract Property), clause 3 (Fees, Invoicing and Payment), clause 6 (Property Rights and Intellectual Property Rights), clause 7 (Confidentiality), clause 10 (Indemnity, Warranty and Remedies), clause 11 (Limitation of Liability), clause 12 (Data Protection), clause 15 (Notice), clause 23 (Conflict), clause 26.1 (Governing Law), and clause 26.2 (Jurisdiction).
- (b) Termination of any Statement of Work shall not affect any right, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages or injunctive relief, in respect of any breach of these Conditions or the terms applicable to any Statement of Work which existed at or before termination. Nor shall termination relieve Customer of its obligation to pay all charges and expenses which have accrued due prior to such termination of any Statement of Work.

10. Indemnity, Warranty and Remedies

10.1 Indemnity

- (a) Each Party ("**Provider**") shall defend, the other Party ("**Recipient**") against any claim that any information, design, specification, instruction, software, data or material furnished by the Provider hereunder ("**Material**") infringes a copyright or patent or misappropriates a trade secret of a third party, and will indemnify and hold harmless the Recipient from and against any actual direct losses, damages or costs (including reasonable legal fees) incurred in connection with such a claim provided that:
 - (i) Recipient notifies Provider in writing within thirty (30) days of the claim;

- (ii) Provider has sole control of the defense and all related settlement negotiations; and
 - (iii) Recipient provides Provider with the assistance, information and authority reasonably necessary to perform the above. Provider shall reimburse Recipient for its reasonable out-of-pocket expenses incurred in providing such assistance.
- (b) Provider shall have no liability for any claim of infringement or misappropriation to the extent that
 - (i) the Material is based on specifications provided by Recipient; or
 - (ii) such claim is based upon Recipient's use of a superseded or altered version of some or all of the Material if infringement or misappropriation would have been avoided by the use of subsequent or unaltered release of the Material which was provided to Recipient.
- (c) In the event that some or all of the Material is held or is reasonably believed by Provider to infringe or misappropriate the intellectual property rights of a third party, Provider shall have the option, at its expense, to
 - (i) modify the Material so it no longer infringes or misappropriates;
 - (ii) obtain for Recipient a license to continue using the Material; or
 - (iii) require return of the affected Material and all rights thereto from Recipient.

If Provider is Kaptio, then Customer may, upon thirty (30) days prior written notice to Kaptio, terminate the relevant Statement of Work, in which case Customer shall be entitled to recover the fees paid for that portion of the Material. If Customer is the Provider and such return materially affects Kaptio's ability to meet its obligations under the relevant Statement of Work, then Kaptio may, upon thirty (30) days prior written notice to Customer, terminate such Statement of Work, in which case Customer shall pay Kaptio for Services rendered up to the date of termination on a T&M or percent of completion basis as appropriate.

10.2 **Warranty and Disclaimers**

- (a) Kaptio warrants that the Services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards.
- (b) Customer must report any deficiencies in the Services to Kaptio in writing within thirty (30) days of performance of such services in order to receive warranty remedies.
- (c) To the extent permissible by law, this warranty is exclusive and in lieu of all other warranties, whether express or implied, including any implied warranties of merchantability or fitness for a particular purpose.

10.3 **Remedies**

- (a) For any breach of warranty in clause 10.2, Customer's exclusive remedy, and Kaptio's entire liability, shall be the re-performance of the Services. If Kaptio is unable to re-perform the Services as warranted, Customer shall be entitled to

recover the fees paid to Kaptio for the deficient Services or to terminate the relevant Statement of Work in accordance with clause 8.

- (b) The rights and remedies provided under these Conditions are exclusive of, any rights or remedies provided by law.

11. Limitation of Liability

- (a) Nothing in these Conditions shall limit or exclude Kaptio's liability for:
 - (i) death or personal injury caused by its negligence;
 - (ii) fraud or fraudulent misrepresentation; or
 - (iii) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- (b) Subject to clause 11(a) Kaptio shall not be liable to Customer, whether in contract or in tort, for breach of statutory duty, or otherwise, arising under or in connection with these Conditions or any Statement of Work for any indirect, incidental, special, or consequential loss, reliance or cover damages, loss of or damage to goodwill, or damages for loss of profits, revenue, agreements or contracts, anticipated saving, data or use of software data or information, incurred by Customer or any third party, even if the other Party or any other person has been advised of the possibility of such damages.
- (c) Subject to clause 11(a) Kaptio's total liability to Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with any Statement of Work shall be limited to the total amount of fees paid and/or due by Customer under the applicable Statement of Work.
- (d) The terms implied by sections 3 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from these Conditions.

12. Force Majeure

- (a) Force Majeure Event means any circumstance not within a Party's reasonable control including, without limitation:
 - (i) acts of God, flood, drought, earthquake or other natural disaster;
 - (ii) epidemic or pandemic;
 - (iii) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - (iv) nuclear, chemical or biological contamination or sonic boom;
 - (v) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
 - (vi) collapse of buildings, fire, explosion or accident;

- (vii) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the Party seeking to rely on this clause, or companies in the same group as that Party);
 - (viii) non-performance by suppliers or subcontractors (other than by companies in the same group as the Party seeking to rely on this clause); and
 - (ix) interruption or failure of utility Kaptio Travel Solutions On-Demand Service.
- (b) Provided it has complied with clause 12(d), if a Party is prevented, hindered or delayed in or from performing any of its obligations under any Statement of Work or these Conditions by a Force Majeure Event (“**Affected Party**”), the Affected Party shall not be in breach of these Conditions or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
 - (c) The corresponding obligations of the other Party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
 - (d) The Affected Party shall:
 - (i) as soon as reasonably practicable after the start of the Force Majeure Event but no later than seven days from its start, notify the other Party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under any particular Statement of Work; and
 - (ii) use all reasonable endeavors to mitigate

13. Data Protection

13.1 Processor Obligations

- (a) Customer and Kaptio acknowledge that for the purposes of the Data Protection Act 1998, Customer is the Data Controller and Kaptio is the data processor in respect of any Personal Data (such term having the meaning set out in section 1(1) of the Data Protection Act 1998) and relates only to personal data, or any part of such personal data, in respect of which Customer is the Data Controller (as defined in section 1(1) of the Data Protection Act 1998) and in relation to which Kaptio is providing services under any Statement of Work).
- (b) Kaptio shall process (as such term is defined in section 1(1) of the Data Protection Act 1998) the Personal Data only in accordance with Customer’s instructions from time to time and shall not process the Personal Data for any purpose other than those expressly authorised by Customer.
- (c) Kaptio shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data.

13.2 Data Protection Warranties

- (a) Each Party warrants to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.
- (b) Kaptio warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:
 - (i) take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
 - (ii) take reasonable steps to ensure compliance with those measures.

13.3 Data Protection Indemnity

- (a) Each Party agrees to indemnify and keep indemnified and defend at its own expense the other Party against all costs, claims, damages or expenses incurred by the other Party or for which the other Party may become liable due to any failure by the first Party or its employees or agents to comply with any of its obligations under these Conditions.
- (b) Customer acknowledges that Kaptio is reliant on Customer for direction as to the extent to which Kaptio is entitled to use and process the Personal Data. Consequently, Kaptio will not be liable for any claim brought by an individual who is the subject of Personal Data arising from any action or omission by Kaptio, to the extent that such action or omission resulted directly from Customer's instructions.

13.4 Appointment of Sub-contractors in connection with personal data

Kaptio may authorise a third party sub-contractor to process the Personal Data provided that the sub-contractor's contract:

- (a) is on terms which are substantially the same as those set out in these Conditions; and
- (b) terminates automatically on termination of the applicable Statement of Work for any reason.

14. Relationship between the Parties

Kaptio is an independent contractor; nothing in any Statement of Work or these Conditions shall be construed to create partnership, joint venture or agency relationship between the Parties. Each Party shall be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes. Each Party shall maintain appropriate workers' compensation and general liability insurance for its employees.

15. Notice

All notices hereunder shall be in writing and shall be delivered to the other Party's project manager or to the first address listed in the applicable Statement of Work (if to

Customer) or to Kaptio's address on the Statement of Work (if to Kaptio). Notice shall be effective upon receipt. Notice shall be deemed to have been received

- (a) if delivery by hand, on signature of a delivery receipt;
- (b) if sent by pre-paid first class post or other next Business Day delivery services, at 9am on the second Business Day after posting; or
- (c) if sent by fax at 9.00am on the next Business Day after transmission.

16. Service of Proceedings

- (a) Customer shall in each Statement of Work designate an agent for the receipt of service of process in any proceedings commenced in the English courts.
- (b) Kaptio hereby appoints Oury Clark Solicitors, address 10 John Street, London, WC1N 2EB as its agent for the receipt of service of process in any proceedings commenced in the English courts.

17. Severability

In the event of any provision or part-provision of these Conditions being held to be invalid or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the remaining provisions of these Conditions which shall remain in full force and effect.

18. Waiver

- (a) The waiver by either Party of any right or remedy under these Conditions or by law shall only be effective if given in writing and shall not constitute a waiver of any other or subsequent default or breach.
- (b) A failure or delay by a Party to exercise any right or remedy provided under these Conditions or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.
- (c) Except for actions for nonpayment or breach of either Party's Intellectual Property Rights, each Party agrees that no action, regardless of form, arising out of these Conditions may be brought by either Party more than one (1) year after the cause of action has accrued.

19. Assignment and Other Dealings

- (a) The contract formed by the Parties when entering into a Statement of Works subject to these Conditions is personal to Customer and Customer shall not assign, transfer, mortgages, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under such contract without the prior written approval of Kaptio which will not be unreasonably withheld.

- (b) The contract formed hereunder may be assigned without Customer's consent by Kaptio to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void.

20. Third Party Rights

No one other than Kaptio or Customer shall have any right to enforce any of the terms set out in these Conditions unless stated otherwise in a particular Statement of Works.

21. Entire Agreement

These Conditions together with any Statement of Work entered into by the Parties from time to time constitute the entire agreement between the Parties with respect to each Statement of Work and supersede all previous and contemporaneous agreements, proposals, promises, assurances, warranties, understandings or representations between the Parties, whether written or oral, concerning the subject matter hereof. Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in a Statement of Work or these Conditions. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in any Statement of Work or these Conditions.

22. Variation

Neither these Conditions nor any Statement of Work may be modified or amended except in writing signed by a duly authorized representative of each Party.

23. Conflict

In the event of any inconsistency between these Conditions and any Statement of Work, these Conditions shall prevail.

24. Subcontractors

Kaptio may, in its reasonable discretion, use third party contractors anywhere in the world (whether inside or outside of the EU) to perform any of its obligations hereunder, including but not limited to migration of Customer data.

25. Dispute Resolution Procedure

- (a) The Parties shall attempt to resolve any dispute arising out of or relating to these Conditions or any Statement of Work through negotiations between senior executives of the Parties, who have authority to settle the same.
- (b) If the matter is not resolved by negotiation within 14 days of receipt of a written 'invitation to negotiate' the Parties agree to enter into mediation to settle such a dispute and will do so in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the Parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a Party must give notice in writing (ADR notice) to the other Party to the dispute referring the dispute to mediation. A copy of the referral should be sent to CEDR.
- (c) The mediation will start not later than 28 days after the date of the ADR notice. The commencement of a mediation will not prevent the Parties commencing

court proceedings under clause 26.2 where a delay in such commencement would materially prejudice a Party's position.

26. Governing Law and Jurisdiction

26.1 Governing Law

These Conditions and any Statement of Work and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection their subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

26.2 Jurisdiction

Subject to clause 25, each Party irrevocably agrees that the courts of England and Wales shall have final exclusive jurisdiction to settle any disputes or claim (including non-contractual disputes or claims) arising out of or in connection with these Conditions and/or any Statement of Work or their subject matter or formation.

27. Counterparts

Each Statement of Work may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.