

Terms and Conditions for Support

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THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 6 (LIMITATION OF LIABILITY).

1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Agreement Schedule: the agreement schedule to the Support Agreement to which these Conditions are attached.

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 4.

Commencement Date: has the meaning given in clause 2.1.

Conditions: these terms and conditions as amended from time to time in accordance with clause 9.5.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Customer: the person or firm who purchases Services from Kubus as identified in the Support Agreement.

Customer Default: has the meaning set out in clause 3.4.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time including the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); UK GDPR (as defined by section 3(10) (as supplemented by section 205(4)) of the DPA 2018; and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).

Documentation: means the operating manuals, user instructions, technical literature and other written materials provided by Kubus and relating to a Product

Domestic Law: the law of the United Kingdom or a part of the United Kingdom.

EULA: any end user licence agreement which applies to the use of Supported Software by the Customer.

EU Law: the law of the European Union or any member state of the European Union.

Excluded Causes:

- (a) Problems arising directly or indirectly out of third party components, equipment, or software (whether provided by Kubus or not) which do not form part of the Products;
- (b) Problems with Supported Hardware or Supported Software that have been maintained, repaired, altered, added to, modified, or adjusted without the relevant manufacturer's approval;
- (c) Problems relating to the incompatibility of the Supported Hardware or Supported Software with any third party devices or software not provided by Kubus as part of the overall solution;
- (d) the Customer or a third party moving the Supported Hardware from the Location;
- (e) Problems caused by the use of the Products other than in accordance with the application Documentation or by neglect, misuse or abuse of the Products generally;
- (f) Problems caused by the Customer's material breach of its obligations under the Support Agreement
- (g) Problems with Supported Software if an Update has been provided but not installed;
- (h) Problems with Supported Hardware or parts thereof which are no longer supported as notified to the Customer by Kubus from time to time;
- (i) damage to the supported Hardware caused by negligence, willful misconduct or misuse by the Customer or its agents, subcontractors and employees;
- (j) a failure, interruption, fluctuation or surge in the electrical power or its related infrastructure connected to the Supported Hardware;
- (k) a failure, malfunction or fluctuation in the air conditioning, humidity control or other environmental controls required for the normal operation of the Maintained Equipment, or an error or omission in the correct use of that air conditioning or other environmental controls by the Customer;
- (l) any excluded cause set out in the Vendor Support Terms;

Kubus: Kubus Group Limited (registered in England and Wales with company number 04197529).

Kubus Materials: has the meaning set out in clause 3.1(k).

Location: the location of the Products as identified in the Agreement Schedule

Out-of-Scope Services: any maintenance services required to rectify a Problem with a Product where the Problem results from or is caused by an Excluded Cause or any maintenance services required in relation to an Unsupported Product or for rescheduled visits as set out in clause 3.4.

Portal: the portal made available by Kubus to the Customer.

Problem: a non-conformance to Documentation in a Product (which may be given differing priorities in the Agreement Schedule).

Product: Supported Hardware and/or Supported Software

Services: any required maintenance services in order to rectify a Problem in connection with a Product where the Problem is not an Excluded Cause as more specifically set out in the Specification.

Service Levels: the service levels (if any) set out in the Agreement Schedule

Specification: the description or specification of the Services as set out in the Agreement Schedule.

Support Agreement: the support agreement to which these Conditions are attached and which incorporates these Conditions and the Agreement Schedule.

Supported Hardware: those items of hardware which are identified as being supported in the Agreement Schedule by reference to part codes and a serial number.

Supported Software: those items of software which are identified as being supported in the Agreement Schedule by reference to part codes and a serial number.

Term: the term as set out in the Support Agreement subject to earlier termination in accordance with clause 7

Update: any release of the Supported Software which corrects Problems

Unsupported Product: means a product which is neither Supported Hardware or Supported Software.

Vendor Support Terms: the vendor support terms applicable to the Products.

1.2 Interpretation:

- (a) Unless expressly provided otherwise in these Conditions, a reference to legislation or a legislative provision:
 - (i) is a reference to it as amended, extended or re-enacted from time to time; and
 - (ii) shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- (b) 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.
- (c) A reference to **writing** or **written** includes fax and email unless otherwise stated.

2. SERVICES

- 2.1 The Support Agreement shall commence on the date notified to the Customer by Kubus via the Portal (**Commencement Date**) and shall continue for the Term unless terminated earlier in accordance with clause 7.

- 2.2 During the Term, Kubus shall provide the Customer with the Services in connection with the Products in accordance with the Specification and the Vendor Support Terms in all material respects.
- 2.3 The Vendor Support Terms shall be incorporated into and apply to the Support Agreement. If there is an inconsistency between any of the provisions of the Agreement Schedule, Vendor Support Terms, and these Conditions, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list
- 2.4 Out-of-Scope Services shall be charged at Kubus's then applicable standard rates for each of Kubus's personnel involved in the performance of Out-of-Scope Services.
- 2.5 Kubus shall procure that its personnel shall, while on site at the Location, comply with the Customer's reasonable health and safety and security policies provided that these policies have been brought to the attention of its personnel.
- 2.6 Kubus shall not be required to perform any Out-of-Scope Services nor any Services in relation to either:
 - (a) Unsupported Products.
 - (b) Products where Customer is in breach of this agreement;
 - (c) Supported Software where the Customer is in breach of the relevant EULA.
- 2.7 Kubus shall use reasonable endeavours perform the Services in accordance with the Service Levels, but any such service levels shall be targets only and time shall not be of the essence for performance of the Services.
- 2.8 Kubus reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Kubus shall notify the Customer in any such event.
- 2.9 All spare parts and/or replacements provided by Kubus to the Customer may be refurbished or reconditioned or of a similar or higher specification if exact replacement spares are unavailable and such spare parts and/or replacements shall become part of the Product and the property of the Customer. Kubus will assign to the Customer, with full title guarantee and free from all third-party rights, all spare parts and/or replacements provided by Kubus. All parts and components removed from the Products by Kubus in the course of performing the Services and/or Out-of-Scope Services shall no longer constitute part of the Products and will be the property of Kubus. The Customer will assign to Kubus, with full title guarantee and free from all third-party rights, all parts and components removed from the Products by Kubus in accordance with this clause 2.9. For the purposes of this sub-clause, 'assign' includes 'transfer ownership of'.
- 2.10 Where Kubus supplies a replacement part to the Customer but does not fit it and if the Customer does not despatch replaced part to Kubus within 7 Business Days, Kubus shall be entitled to charge the Customer the most recent published manufacturer's list price for such part. Unless the parties have previously agreed in writing, all faulty parts must be returned to the RMA return address within ten (10) Business Days of receipt of the advance replacement. Return instructions can be obtained through the Kubus Support Services Portal.

- 2.11 Consumable Parts shall mean non-repairable pre-assembled or pre-fabricated parts, assemblies or sub-assemblies not covered under the maintenance service that must be replaced on a regular basis to ensure proper equipment function. This includes, but is not limited to, parts deemed consumable by the original equipment manufacturer (OEM).
- 2.12 Where the Proposal states that Kubus requires a setup period from the start of this Support Agreement, Kubus shall be entitled to charge for any repairs required during that setup period will be charged on a time and materials basis.
- 2.13 Kubus warrants to the Customer that the Services will be provided using reasonable care and skill.

3. CUSTOMER'S OBLIGATIONS

3.1 The Customer shall:

- (a) nominate a contact person or persons to be available to liaise with Kubus and respond to queries from Kubus with respect to the Services;
- (b) co-operate with Kubus in all matters relating to the Services including in diagnosing any Problem;
- (c) ensure that the Supported Hardware is installed and kept at the Location, under suitable environmental conditions, as specified in the applicable operating manuals for the Supported Hardware and permit only trained and competent personnel to use it and follow any operating instructions as Kubus may give from time to time;
- (d) take all reasonable steps to ensure that the Products are maintained and operated in a proper manner and in accordance with the Documentation by individuals who have an appropriate level of manufacturer training on the Products they are operating to limit damage through incorrect use;
- (e) notify Kubus promptly of any faults or abnormal functioning of the Product or of any abnormalities in the operating environment which may affect the Products including without limitation, failure of air conditioning, power failure or power surge;
- (f) at all reasonable times permit full and free access to the Location and to the Products to Kubus, its employees, contractors and agents, and provide them with adequate and safe working space, and any telecommunications facilities as are reasonably required to enable Kubus to perform the Services and the Out-of-Scope Services while at the Location;
- (g) provide Kubus with any information that is reasonably requested in the performance of the Services and the Out-of-Scope Services;
- (h) ensure that an adequate and suitable supply of electricity is available for the correct operation of the Supported Hardware and take reasonable care to ensure that such supply is not affected by other equipment connected to the same circuit;
- (i) ensure that the electrical supply is protected from external factors such as power spikes and interference to protect the equipment connected to it;
- (j) keep full back-up copies of all of its data, including equipment configuration files, and ensure that such back-up copies are fully functional and can be fully restored.

- (k) take any steps reasonably necessary to ensure the safety of Kubus's personnel when attending the Location;
 - (l) not move the Products from the Location without the prior written approval of Kubus (such approval not to be unreasonably withheld or delayed);
 - (m) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - (n) keep all materials, equipment, documents and other property of Kubus (**Kubus Materials**) at the Customer's premises (if applicable) in safe custody at its own risk, maintain Kubus Materials in good condition until returned to Kubus, and not dispose of or use Kubus Materials other than in accordance with Kubus's written instructions or authorisation; and
 - (o) comply with any additional obligations as set out in the Support Agreement.
- 3.2 Kubus is not obliged to perform any Out-of-Scope Services. Where Kubus is performing or has performed the Services in circumstances where it is established that the Problem was caused or contributed to by an Excluded Cause, such services shall be Out-of-Scope Services and Kubus may charge, and the Customer shall pay, fees which shall be calculated at Kubus's then applicable standard rates
- 3.3 Where Kubus provides the Customer with access to the Kubus Support Services Portal the Customer shall:
- (a) Use the portal strictly in accordance with its terms of use;
 - (b) Not share access with third parties unless authorised by Kubus in writing;
 - (c) Ensure that each Customer user shall keep a secure password for their use of the portal and that each Customer user shall keep their password confidential;
- 3.4 In order to provide the Services:
- (a) The Products must be located in a safe position and correctly installed in accordance with the manufacturer's specifications;
 - (b) The Products must be fully accessible for the engineer to carry out the repair and/or replacement without potential danger to safety.
- Where Kubus is unable to provide the Services due to the Customer's failure to comply with this clause 3.4, Kubus shall be entitled to charge for any rescheduled visit as an Out-of-Scope Service.
- 3.5 If Kubus's performance of any of its obligations under the Support Agreement is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) without limiting or affecting any other right or remedy available to it, Kubus shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Kubus's performance of any of its obligations;

- (b) Kubus shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Kubus's failure or delay to perform any of its obligations as set out in this clause 3.4; and
- (c) the Customer shall reimburse Kubus on written demand for any costs or losses sustained or incurred by Kubus arising directly or indirectly from the Customer Default.

4. CHARGES AND PAYMENT

- 4.1 The Charges for the Services shall be as set out in the Support Agreement and Charges for any Out-of-Scope Services shall be made in accordance with Kubus's then applicable standard rates. Kubus shall also be entitled to charge the Customer for replacement parts supplied to the Customer and/or used in a repair in connection with Supported Hardware in the event that the Customer does not return the replaced part within 30 days of removal. Where such replaced part is returned after the 30 days period, Kubus shall also be entitled to charge a restocking fee to the Customer.
- 4.2 Kubus shall invoice the Customer on execution of the Support Agreement.
- 4.3 The Customer shall pay each invoice submitted by Kubus:
 - (a) upon receipt of the invoice or in accordance with any credit terms agreed by Kubus and confirmed in writing to the Customer; and
 - (b) in full and in cleared funds to a bank account nominated in writing by Kubus, and time for payment shall be of the essence of the Support Agreement.
- 4.4 All amounts payable by the Customer under the Support Agreement are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Support Agreement by Kubus to the Customer, the Customer shall, on receipt of a valid VAT invoice from Kubus, pay to Kubus such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 4.5 If the Customer fails to make a payment due to Kubus under the Support Agreement by the due date, then, without limiting Kubus's remedies under clause 7, the Customer shall pay interest and compensation on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment as set out in the Late Payment of Commercial Debts (Interest) Act 1988.
- 4.6 All amounts due under the Support Agreement 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).

5. DATA PROTECTION

- 5.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 5.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and Kubus is the Processor. Clause 5.7 sets out the scope, nature

and purpose of processing by Kubus, the duration of the processing and the types of Personal Data and categories of Data Subject.

- 5.3 Without prejudice to the generality of clause 5.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Kubus and/or lawful collection of the Personal Data by Kubus on behalf of the Customer for the duration and purposes of this agreement.
- 5.4 Without prejudice to the generality of clause 5.1, Kubus shall, in relation to any Personal Data processed in connection with the performance by Kubus of its obligations under this agreement:
- (a) process that Personal Data only on the documented written instructions of the Customer which are set out in clause 5.7 unless Kubus is required by Domestic Law or EU Law to otherwise process that Personal Data. Where Kubus is relying on Domestic Law or EU Law as the basis for processing Personal Data, Kubus shall promptly notify the Customer of this before performing the processing required by the Domestic Law or EU Law unless the Domestic Law or EU Law prohibits Kubus from so notifying the Customer;
 - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - (d) not transfer any Personal Data outside of the UK or EEA unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or Kubus has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) Kubus complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) Kubus complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection

Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- (f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
 - (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Domestic Law or EU Law to store the Personal Data; and
 - (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 5.
- 5.5 The Customer provides its prior general authorisation to Kubus appointing any of its third party subcontractors as a third-party processor of Personal Data under this agreement. Kubus confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement which reflects and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and Kubus, Kubus shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 5.
- 5.6 Either party may, at any time on not less than 30 (thirty) days' notice, revise this clause 5 by replacing it with any applicable controller to processor standard clauses or similar terms adopted under the Data Protection Legislation or forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).
- 5.7 Data processing details:
- (a) Subject matter of processing - the provision of the Services which involves Kubus communicating with Customer employees and attending the Locations.
 - (b) Duration of processing - the Term
 - (c) Nature and purpose of processing - to enable Kubus to carry out the Services
 - (d) Types of personal data to be processed - name, email address, telephone number
 - (e) Categories of data subject - Customer employees, subcontractors and agents.

6. LIMITATION OF LIABILITY

- 6.1 References to liability in this clause 6 include every kind of liability arising under or in connection with the Support Agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 6.2 Nothing in this clause 6 shall limit the Customer's payment obligations under the Support Agreement.
- 6.3 Nothing in the Support Agreement limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and

- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 6.4 Subject to clause 6.3 (Liabilities which cannot legally be limited), Kubus's total liability to the Customer for all loss or damage suffered in each calendar year shall not exceed a sum calculated as follows:
- $$\frac{A}{B} \times 12 \quad \text{plus any Charges paid in respect of Out-of-Scope Services.}$$
- Where:
- A = total Charges paid by the Customer under the Support Agreement for Services
- B = number of months in the Term
- 6.5 Subject clause 6.2 (No limitation of customer's payment obligations) and clause 6.3 (Liabilities which cannot legally be limited), this clause 6.5 sets out the types of loss that are wholly excluded:
- (a) loss of profits.
 - (b) loss of sales or business.
 - (c) loss of agreements or contracts.
 - (d) loss of anticipated savings.
 - (e) loss of use or corruption of software, data or information.
 - (f) loss of or damage to goodwill; and
 - (g) indirect or consequential loss.
- 6.6 Kubus has given commitments as to quality of the Services in clause 2. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Support Agreement.
- 6.7 Unless the Customer notifies Kubus that it intends to make a claim in respect of an event within the notice period, Kubus shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 6.8 This clause 6 shall survive termination of the Support Agreement.
- 7. TERMINATION**
- 7.1 Without affecting any other right or remedy available to it, Kubus may terminate the Support Agreement with immediate effect by giving written notice to the Customer if:
- (a) the Customer fails to pay any amount due under the Support Agreement on the due date for payment; or

- (b) the Customer commits a material breach of any other term of the Support Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of the Customer being notified in writing to do so;
- (c) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), 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, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (d) the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (e) the Customer's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Support Agreement has been placed in jeopardy.
- (f) Kubus reasonably determines that any Products has been or is continually being operated outside manufacturer specifications, specified operating or environmental conditions (for example including, but without limitation, failure to maintain a constant power supply, air conditioning or humidity control), or, is subject to excessive usage, or which has been subjected to unusual physical electrical stress; or
- (g) Any Product has required repeated repairs due to misuse, excessive use or any other cause other than manufacturer failure; or
- (h) there is a change of control of the Customer.

7.2 Without affecting any other right or remedy available to it, Kubus may suspend the supply of Services under the Support Agreement or any other contract between the Customer and Kubus if:

- (a) the Customer fails to pay any amount due under the Support Agreement on the due date for payment;
- (b) the Customer becomes subject to any of the events listed in clause 7.1(d) or clause 7.1(e), or Kubus reasonably believes that the Customer is about to become subject to any of them; and
- (c) Kubus reasonably believes that the Customer is about to become subject to any of the events listed in clause 7.1(c).

8. CONSEQUENCES OF TERMINATION

8.1 On termination or expiry of the Support Agreement:

- (a) the Customer shall immediately pay to Kubus all of Kubus's outstanding unpaid invoices and interest and, in respect of Out-of-scope Service supplied but for which no invoice has been submitted, Kubus shall submit an invoice, which shall be payable by the Customer immediately on receipt;

(b) the Customer shall not be entitled to a refund of the Charges.

8.2 Termination or expiry of the Support Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Support Agreement which existed at or before the date of termination [or expiry].

8.3 Any provision of the Support Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Support Agreement shall remain in full force and effect.

9. GENERAL

9.1 **Force majeure.** Neither party shall be in breach of the Support Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Support Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control.

9.2 Assignment and other dealings.

(a) Kubus may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Support Agreement.

(b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Support Agreement without the prior written consent of Kubus.

9.3 Confidentiality.

(a) Each party undertakes that it shall not at any time during the Support Agreement, and for a period of two years after termination or expiry of the Support Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 9.3(b).

(b) Each party may disclose the other party's confidential information:

(i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Support Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 9.3; and

(ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

(c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Support Agreement.

9.4 Entire agreement.

(a) The Support Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances,

warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

(b) Each party acknowledges that in entering into the Support Agreement it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Support Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in the Support Agreement.

(c) Nothing in this clause shall limit or exclude any liability for fraud.

9.5 **Variation.** Except as set out in these Conditions, no variation of the Support Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

9.6 **Publicity.** Subject to the Customer's prior approval (such approval not to be unreasonably withheld or delayed), Kubus may make a public announcement regarding the Support Agreement, use the Customer's logo in its public marketing and use its work for the Customer in a case study (subject always to clause 9.3).

9.7 **Waiver.** A waiver of any right or remedy under the Support Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Support Agreement 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. No single or partial exercise of any right or remedy provided under the Support Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

9.8 **Severance.** If any provision or part-provision of the Support Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this Support Agreement deleted under this clause 9.8 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

9.9 **Notices.**

(a) Any notice given to a party under or in connection with the Support Agreement shall be in writing and shall be:

- (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (ii) sent by email to the address set out in the Support Agreement (if any) (or an address substituted in writing by the party to be served):

(b) Any notice shall be deemed to have been received:

- (i) if delivered by hand, at the time the notice is left at the proper address;

- (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

9.10 Third party rights.

- (a) Unless it expressly states otherwise, the Support Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Support Agreement.
- (b) The rights of the parties to rescind or vary the Support Agreement are not subject to the consent of any other person.

9.11 Governing law. The Support Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

9.12 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Support Agreement or its subject matter or formation.