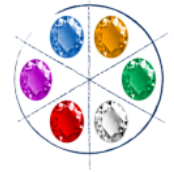




General License and Service Conditions GLSC[1206]



ARTICLE 1. BASIS OF AGREEMENT

- 1.1 The CUSTOMER and the SUPPLIER have entered into: [1] a license to use the SOFTWARE under the SLA; and/or [2] a service agreement to use the SERVICE, in accordance with these general terms and conditions (hereafter known as the 'GLSC'). Together the SLA for SOFTWARE, the GLSC for SOFTWARE and/or SERVICE and its annexes for SOFTWARE and/or SERVICE are referred to as this 'AGREEMENT', except where the CUSTOMER does not require the LICENSE, then the SLA shall not form part of this AGREEMENT.
- 1.2 These GLSC are provided as an annex to the AGREEMENT and all terms and conditions contained herein shall apply to the supply of both LICENSE and SERVICE except where expressly stated otherwise. The order of precedence of the different documents is the following: the SLA for the SOFTWARE, then the Specific License Conditions (SLC) for SOFTWARE and/or SERVICE, then the General License and Service Conditions (GLSC) for SOFTWARE and/or SERVICE. All terms and conditions of this document are therefore valid unless otherwise specified in any other document that has precedence. All definitions used in this AGREEMENT are defined in these GLSC.
- 1.3 The CUSTOMER acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the SUPPLIER which is not set out in this AGREEMENT; and these GLSC apply to this AGREEMENT 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.
- 1.4 Articles 3.2, 3.5, 3.7, 3.8, 4, 6.2 to 6.4 and 8.2 shall not apply where the CUSTOMER solely requires the SERVICE; Articles 6.6 to 6.7, 8.3 and 15 shall not apply where the CUSTOMER solely requires the LICENSE under the SLA; and all articles in this AGREEMENT shall apply where the CUSTOMER requires both the LICENSE and the SERVICE.

ARTICLE 2. INTERPRETATION

2.1 Definitions. In these GLSC, the following definitions apply:

- **AFFILIATE:** any business entity from time to time controlling, controlled by, or under common control with, either party.
- **AGREEMENT:** as defined in Article 1.1 and for the avoidance of doubt meaning the SLA (only for SOFTWARE), with these GLSC and all annexes.
- **CONSULTING:** the delivery by the CONSULTANT of expert work, reporting and advice based on data and information provided by the CUSTOMER to the CONSULTANT.
- **CONSULTANT:** any KTCS employee, associate consultant, instructor, and/or agent who provides the SERVICE to the CUSTOMER for and on behalf of KTCS.
- **CUSTOMER:** means either the company (including its AFFILIATES) or individual: [1] that is granted the LICENSE to use the SOFTWARE; and/or [2] to whom the SERVICE is supplied by KTCS.
- **DELIVERABLES:** all documents, licensed software, products and materials developed by the SUPPLIER or its agents, subcontractors, consultants and employees in relation to the LICENSE, SOFTWARE and/or SERVICE provided in any form.
- **INTELLECTUAL PROPERTY:** all patents, copyrights, design rights, trademarks, 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.
- **KAPPA:** KAPPA Engineering SA, a petroleum software and consulting company incorporated and registered in France with registration number (RCS) #342.067.857 (Paris) whose registered office is at 17, rue Eugène Delacroix, 75116 Paris, France.
- **KEY:** the license protection device, which technically prevents or limits prohibited or illegal use of the SOFTWARE. The KEY may be based on a piece of hardware ('dongle' or 'bitlock' connected to the parallel or USB port of the computer), a piece of software ('FlexLM' license file linked to specific computer identification) or a combination of both (FlexLM license programmed to be run in conjunction with a bitlock).
- **KTCS:** KAPPA Training & Consulting Services Ltd, a training and consulting company dedicated to the delivery of the SERVICE and an AFFILIATE of KAPPA, incorporated and registered in England and Wales with company number 5413231 whose registered office is at 2nd Floor Oakdene House, 34, Bell Street, Reigate Surrey, RH2 7SL, U.K.; or any KAPPA AFFILIATE providing the SERVICE on behalf of KTCS.
- **LICENSE:** the right to use the SOFTWARE for any legal purpose as set out in this AGREEMENT.
- **MAINTENANCE:** the maintenance provided by KAPPA to the CUSTOMER, including: [1] access to all major new releases and minor updates of the SOFTWARE and its documentation, on physical support or from the KAPPA website; and [2] technical support (telephone, fax, e-mail) on the SOFTWARE usage limited for the period defined in the SLA, but excludes any training on methodology or any assistance on interpretations performed with the SOFTWARE.
- **NETWORK or NET:** a license for a defined number of simultaneous uses of the SOFTWARE on a computer network. The KEY is installed on a LICENSE server.
- **PERPETUAL or PERPETUAL LICENSE:** a license where the CUSTOMER acquires the right, for an unlimited time and for any legal purpose as set out in this AGREEMENT, to use all versions of the SOFTWARE contractually delivered during the period of MAINTENANCE. The PERPETUAL LICENSE fee includes one (1) year of MAINTENANCE starting from the date of delivery of the SOFTWARE.
- **PARTY:** means either the SUPPLIER or the CUSTOMER as the parties to this AGREEMENT and PARTIES mean all of them.
- **RENTAL or RENTAL LICENSE:** a license where the CUSTOMER acquires the right, for a limited time and for any legal purpose, to use all versions of the SOFTWARE delivered during the RENTAL PERIOD. The RENTAL LICENSE fee includes MAINTENANCE during the RENTAL period.
- **RENTAL PERIOD:** the limited time period the CUSTOMER acquires the LICENSE right for.
- **SERVICE:** the training and/or consulting services provided in accordance with Article 5 of these GLSC.
- **SLA:** the Software License Agreement between KAPPA and the CUSTOMER (where applicable).
- **SOFTWARE:** any program or set of programs, INTELLECTUAL PROPERTY and commercial property of KAPPA that is the subject of the present AGREEMENT.
- **STAND-ALONE or STAND-ALONE LICENSE:** a license to use the SOFTWARE on only one (1) computer at a time.
- **SUPPLIER:** both KAPPA and KTCS.
- **TRAINING:** the delivery by the CONSULTANT to the CUSTOMER's employee(s) of training in petroleum exploration and production related methodology, theory and/or practice, and/or on the usage of the SOFTWARE.

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- 2.2 Construction: In these GLSC, the following rules apply:
- (i) the headings in these GLSC do not affect interpretation;
 - (ii) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality), an association (whether incorporated or not), a government and a governmental, semi-governmental or local authority or agency;
 - (iii) references to a party includes its personal representatives, successors or permitted assigns;
 - (iv) references to “including” or “includes” shall be deemed to have the words “without limitation” inserted after them;
 - (v) references to articles are to articles of these GLSC as set out in this AGREEMENT;
 - (vi) words in the singular include the plural and those in the plural include the singular; and
 - (vii) in the event this AGREEMENT or any part it is translated into another language, the English language version shall prevail in the event of a conflict.

ARTICLE 3. LICENSE

- 3.1 Articles 3.2, 3.5, 3.7 and 3.8 are not applicable where the CUSTOMER solely requires the SERVICE.
- 3.2 In consideration of the fee paid by the CUSTOMER to KAPPA, KAPPA grants to the CUSTOMER a non-exclusive, non-transferable RENTAL LICENSE or a PERPETUAL LICENSE to use the SOFTWARE on a NETWORK or STAND-ALONE BASIS (all as specified in the SLA), which is subject to the terms and conditions of this AGREEMENT.
- 3.3 KAPPA will grant a non-exclusive, non-transferable LICENSE to KTCS (its AFFILIATE) who may use the SOFTWARE in the process of providing the SERVICE and TRAINING to the CUSTOMER; and where no LICENSE fee has been paid by the CUSTOMER to KAPPA, save for the SERVICE fee paid for the SERVICE, KTCS grants to the CUSTOMER a non-exclusive, non-transferable single use LICENSE to use KTCS’s LICENSE of the SOFTWARE only during provision of the SERVICE and TRAINING (as specified in Article 5), which is subject to the terms and conditions of this AGREEMENT.
- 3.4 KAPPA shall provide the CUSTOMER with a copy of the SOFTWARE. This will be an electronic copy of the SOFTWARE and its documentation, either as a CD-ROM, DVD-ROM or a web download, and a hardware and/or NETWORK KEY.
- 3.5 The CUSTOMER may convert a RENTAL LICENSE into a PERPETUAL LICENSE at any time, with the exception that RENTAL LICENSES are not eligible for conversion when invoiced on a monthly basis. Upon conversion:
- (a) the CUSTOMER is credited an amount equal to the RENTAL fee paid in the last twelve (12) calendar months for the same LICENSE before the conversion;
 - (b) the MAINTENANCE period included in the PERPETUAL LICENSE will be shortened by the number of months of RENTAL credit; and
 - (c) the effective start date of the free MAINTENANCE for the converted PERPETUAL LICENSE will be the beginning of the credited RENTAL period.
- 3.6 The SOFTWARE can be installed on several computers, but usage restriction is enforced by a KEY. The CUSTOMER agrees not to attempt to modify, alter, reverse engineer or in any way interfere with the security provisions incorporated in the SOFTWARE and/or the KEY, and to implement appropriate measures to grant that all users of the SOFTWARE respect such measures.
- 3.7 For the replacement of hardware KEYS:
- (a) failing KEYS which have not failed as a result of the CUSTOMER’s misuse are replaced at no cost;
 - (b) damaged KEYS are replaced at cost;
 - (c) lost PERPETUAL KEYS are not replaced, however:
 - (i) the CUSTOMER may acquire a replacement KEY for 50% of the relevant digressive discount rate; or
 - (ii) if the conditions of usage represent a high risk of loss, the CUSTOMER may decide to obtain a KEY with a RENTAL (limited duration) setting and only the penalty for the loss RENTAL KEY (described in Article 3.7(d) below) will apply; and/or
 - (d) RENTAL KEYS are programmed to stop working after the date of expiration of the LICENSE. Security provisions neutralize the KEY if the computer date is arbitrarily changed, accidentally or in an attempt to by-pass this restriction. The CUSTOMER should therefore notify users to always check that the computer date is correct before using the SOFTWARE. Disabled KEYS can be reset and extended by KAPPA by telephone, e-mail or connection to the KAPPA website. Should the KEY be lost, CUSTOMER will indemnify KAPPA for the cost of the remaining RENTAL period until the limit date of the lost KEY. Alternately, CUSTOMER may decide to only receive the replacement KEY on the date of technical expiration of the lost KEY.
- 3.8 For the replacement of a NETWORK KEY, if the CUSTOMER changes the server on which a SOFTWARE KEY has been installed, KAPPA will require the CUSTOMER to acknowledge, by the completion of a certified signed statement, that replacement of this LICENSE could both potentially and materially allow the CUSTOMER to run the SOFTWARE on two servers. KAPPA will require in the same statement that the CUSTOMER commits to delete and not restore the existing KEY file. CUSTOMER acknowledges that failure to delete, or restoration of the existing KEY file would constitute a material breach of this AGREEMENT.
- 3.9 No replacement of any KEYS will be provided where the CUSTOMER solely requires the SERVICE.

ARTICLE 4. MAINTENANCE OF PERPETUAL LICENSE

- 4.1 This Article 4 is not applicable where the CUSTOMER solely requires the SERVICE.
- 4.2 Unless specifically agreed otherwise, the initial fee for a PERPETUAL LICENSE specified in the SLA includes one year of MAINTENANCE. Beyond this initial period, MAINTENANCE is tacitly extended every year and KAPPA will either: [1] send a quotation e-mail; or [2] directly issue a MAINTENANCE invoice. The CUSTOMER will be allowed to terminate the MAINTENANCE by: [1] rejecting the quotation e-mail; or [2] issuing a formal cancellation letter within one month from receipt of the MAINTENANCE invoice.
- 4.3 KAPPA commits to make at least one new release every year (if KAPPA considers this is reasonably required) that attempts to correct errors detected in the previous version two (2) months before this release. .
- 4.4 In the case of providing technical support, the technical support hours are the usual working hours of KAPPA’s regional offices.
- 4.5 Interruption or termination of MAINTENANCE does not constitute a termination of a PERPETUAL LICENSE. A CUSTOMER that acquired a PERPETUAL LICENSE maintains the right to use, in perpetuity, the versions of the SOFTWARE that were released during the active MAINTENANCE period.

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- 4.6 No technical support will be delivered beyond the MAINTENANCE period, even on versions of the SOFTWARE released during this period, and only SOFTWARE errors ('bugs') formally notified to KAPPA by the CUSTOMER before the end of the MAINTENANCE period will be corrected.
- 4.7 MAINTENANCE is a continuous process. If the CUSTOMER interrupts and later elects to resume MAINTENANCE, back-dated MAINTENANCE is due from the date at which the last MAINTENANCE fee ceased to the end of the current calendar year. However such fees will not exceed 75% (seventy five percent) of the purchase digressive price.

ARTICLE 5. SERVICE

- 5.1 This Article 5 is not applicable where the CUSTOMER solely requires the LICENSE under the SLA.
- 5.2 The CUSTOMER requires that KTCS provides the SERVICE, and KTCS is willing to provide such SERVICE subject to the terms and conditions of this AGREEMENT. KTCS will appoint a CONSULTANT to provide the SERVICE to the CUSTOMER. KTCS agrees to perform the said SERVICE as an independent contractor, and no CONSULTANT sent by KTCS shall be construed as being the agent or employee of the CUSTOMER.
- 5.3 If the CUSTOMER has been granted a limited LICENSE of the SOFTWARE by KTCS for use during the provision of the SERVICE and at no additional cost to the CUSTOMER, the CUSTOMER agrees to be bound by these GLSC.

**ARTICLE 6. CHARGES, PAYMENTS AND ADJUSTMENTS
LICENSE**

- 6.1 Articles 6.2 to 6.4 are not applicable where the CUSTOMER solely requires the SERVICE.
- 6.2 The fees and financial conditions in relation to the RENTAL or PERPETUAL LICENSE are set out in the SLA.
- 6.3 The KAPPA digressive price list is based on the number of STAND-ALONE LICENSES. The fee for a NETWORK LICENSE is based on an equivalent number of STAND-ALONE users. A NET LICENSE for N concurrent users is equivalent to [1.5 * N] STAND-ALONE LICENSES.
- 6.4 Adjustment fees for LICENSE users:
 - (a) KAPPA shall be entitled, every year, to revise and adjust the fees (including MAINTENANCE fees) related to the SOFTWARE. Unless specifically agreed otherwise with the CUSTOMER, the increase will not exceed the cumulative European Union Consumer Price Index (or EU-CPI) since the date of the previous increase. The reference date of the last increase of the KAPPA price list applicable to this document was January 1, 2005. If the European Union Consumer Prices index ceases to exist in its current form, the index shall be replaced by a similar index that reflects as closely as possible the evolution of the EU-CPI.
 - (b) By default all prices are quoted in Euros from the reference price list available on the KAPPA website. By specific prior agreement between the CUSTOMER and KAPPA, invoicing may be in an alternative currency. In this case prices will be converted at the spot rate of the day based on the official rate quoted in the Financial Times with a quoted validity period.
 - (c) Although an invoice may be in an alternative currency, in all cases this AGREEMENT will be denominated in Euros. In the case of MAINTENANCE, payment will be quoted in Euros in accordance with the indexed MAINTENANCE price or the price list in force at the time MAINTENANCE falls due. In the event that the MAINTENANCE price list exceeds the indexed price specific prior agreement will be sought from the CUSTOMER.
 - (d) In the event that additional LICENSES of the same SOFTWARE type are purchased, a digressive discount will apply to all centralized LICENSES of the same SOFTWARE type in line with the price list in force at the time of the new acquisition. For the avoidance of doubt, additional purchases will invoke the current price list for all LICENSES of the same type and provide the commensurate digressive discount to all centralized LICENSES of the same SOFTWARE type.

SERVICE

- 6.5 Articles 6.6 to 6.7 are not applicable where the CUSTOMER solely requires the LICENSE under the SLA.
- 6.6 The fees and payment conditions in relation to the SERVICE are set out in the quotation.
- 6.7 Invoicing, settlements and payments for SERVICE provided:
 - (a) On or before the tenth (10th) day of each month, KTCS or any KAPPA AFFILIATE or agent designated by KTCS shall submit to the CUSTOMER its invoice for any part of the SERVICE performed during the preceding month.
 - (b) Invoices shall reference this AGREEMENT by the assigned CUSTOMER number and shall if KTCS considers appropriate be accompanied by supporting documentation and timesheets. VAT or its equivalent will be added if applicable.
 - (c) All invoices shall be paid within thirty (30) calendar days after receipt by the CUSTOMER.

ARTICLE 7. TAXES AND IMPORT/EXPORT LICENSES

- 7.1 The CUSTOMER shall be solely responsible for the payment or reimbursement to KAPPA, KTCS and/or the CONSULTANT for all taxes and payment incurred by KAPPA, KTCS and/or the CONSULTANT arising from this AGREEMENT or all transactions in connection with this AGREEMENT, including but not limited to all sales, use, property or similar taxes, customs duties, import or export charges, fees, levies, direct payment of any withholding taxes, payroll taxes, income tax, contributions imposed by governmental authority, social security payments, payments under workmen's compensation or other insurance premiums, or other charges of any kind or nature, except as specifically outlined herein, including any taxes determined to be due by an audit of either KAPPA or the CUSTOMER. The LICENSE fee however includes any taxes due to the French fiscal authorities for the execution of this AGREEMENT.
- 7.2 If KTCS has to pay any such taxes for the CONSULTANT(s), the CUSTOMER shall indemnify KTCS for all such taxes paid by KTCS, together with any penalties and interest.
- 7.3 If any withholding taxes are applicable on payments due from the CUSTOMER to KTCS as allowed for, KTCS shall invoice these taxes to the CUSTOMER.
- 7.4 The CUSTOMER agrees to provide KAPPA with any certificate requested to facilitate the exportation from France, whether due to French law or any agreement with the CUSTOMER's national authorities, and will comply in all respects with all requirements and procedures with regards to the importation of the SOFTWARE in and to the CUSTOMER's country, and thereafter on any procedure to import/export the SOFTWARE between CUSTOMER locations or otherwise.

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ARTICLE 8. SUPPLIER’S WARRANTIES

- 8.1 Article 8.2 is not applicable where the CUSTOMER solely requires the SERVICE; and Article 8.3 is not applicable where the CUSTOMER solely requires the LICENSE under the SLA
- 8.2 KAPPA warrants that the SOFTWARE is intended to operate according to its written specification for a period of thirty (30) days. If, within thirty (30) days from delivery of the SOFTWARE or the release of any new version of the SOFTWARE (**“WARRANTY PERIOD”**), the CUSTOMER evidences that the SOFTWARE does not meet this written specification, it will formally notify KAPPA by way of written courier letter to KAPPA’s registered office with the description of the SOFTWARE failure to be received prior to the expiry of the 30 day period and thereafter provide all such further information reasonably required by KAPPA. Upon receipt of such letter, KAPPA will then have thirty (30) days to: [1] prove that there is no failure; or [2] rectify the problem and deliver a corrected version of the SOFTWARE. If KAPPA fails to do either of the above within thirty (30) days, the CUSTOMER will be eligible for reimbursement upon termination by CUSTOMER and the reference date will be the date of formal notification, under the following conditions:
 - (a) For PERPETUAL LICENSES: CUSTOMER will be eligible for reimbursement of the difference (if positive) between the PERPETUAL LICENSE fee paid by the CUSTOMER and the full RENTAL fee for the period between the delivery of the LICENSE and the date of formal notification. In other words, the CUSTOMER charge will be limited to the RENTAL fee for the period during which the SOFTWARE was either satisfactory or such dissatisfaction had not been notified to KAPPA.
 - (b) For RENTAL LICENSES: Any RENTAL fee paid in advance will be refunded in proportion to the amount of time left to run in respect of the period for which advance payment was made. In this case, the minimum RENTAL durations described in Article 16.3(d) will not apply.
- 8.3 KTCS warrants that the CONSULTANT(s) will make reasonable efforts to diligently perform this SERVICE in a workmanlike manner.
- 8.4 The SUPPLIER does not warrant that the use of the SOFTWARE will be uninterrupted or error-free.
- 8.5 The CUSTOMER accepts responsibility for the selection of the SOFTWARE to achieve its intended results and acknowledges that the SOFTWARE has not been developed to meet the individual requirements of the CUSTOMER. Further, the SERVICE includes training on and effective interpretations of test or other data. The CUSTOMER agrees that any recommendation or reservoir description based upon such interpretations are opinions based upon inferences from measurements, empirical relationships and theoretical assumptions, which are not infallible, and with respect to which professional engineers or analysts may differ. Accordingly, KTCS cannot and does not warrant the accuracy, correctness or completeness of any such interpretation, recommendation or reservoir description. Under no circumstances should any such interpretation, recommendation or reservoir description be relied upon as the sole basis for any drilling, completion, well treatment, production or financial decision or any procedure involving any risk to the safety of any drilling venture, drilling rig or its crew or any other individual.
- 8.6 The CUSTOMER has full responsibility for any such decisions and for all decisions concerning other procedures relating to the drilling or production operation. No responsibility is therefore accepted or implied for any errors in the derived parameters or any losses arising from the use of these results either directly or consequentially. The validation and the use of the results are therefore wholly the responsibility of the CUSTOMER.
- 8.7 So far as and to the extent permitted by the applicable governing law of these GLSC, all other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this LICENSE or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

ARTICLE 9. LIMITS OF LIABILITY

- 9.1 This Article 9 sets out the entire financial liability of the SUPPLIER (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the CUSTOMER in respect of:
 - (a) any breach of this AGREEMENT however arising;
 - (b) any use made by the CUSTOMER of the SERVICE, the DELIVERABLES or any part of them; and
 - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this AGREEMENT.
- 9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this AGREEMENT.
- 9.3 Nothing in this AGREEMENT limits or excludes the liability of the SUPPLIER:
 - (a) for death or personal injury resulting from negligence;
 - (b) for any damage or liability incurred by the CUSTOMER as a result of fraud or fraudulent misrepresentation by the SUPPLIER;
 - (c) breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - (d) any other liability which may not be excluded by law.
- 9.4 Subject to Articles 9.2, 9.3 and 10.2:
 - (a) the SUPPLIER shall not under any circumstances whatever be liable for loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss of corruption of data or information, or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
 - (b) the SUPPLIER’s 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 in all circumstances be limited to the fees paid by CUSTOMER within the last twelve (12) months before the breach.
- 9.5 This Article 9 shall survive termination of this AGREEMENT.

ARTICLE 10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 The Customer acknowledges that all INTELLECTUAL PROPERTY rights in the SOFTWARE, use during the SERVICE, all SOFTWARE updates and/or modifications supplied during MAINTENANCE, and all DELIVERABLES provided in this AGREEMENT belong and shall belong to KAPPA and/or KTCS, and the CUSTOMER shall have no rights in or to the SOFTWARE other than the right to use it in accordance with the terms of this AGREEMENT.

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- 10.2 KAPPA shall defend the CUSTOMER at its sole expense (excluding fault or willful misconduct by CUSTOMER) against any and all legal proceedings, or, at its option, settle any claim or action, brought against CUSTOMER or KAPPA, claiming infringement of any INTELLECTUAL PROPERTY rights based upon any method, material or equipment (excluding any such method, material or equipment provided by CUSTOMER to KAPPA) used or provided by KAPPA in performance of the SERVICES (**INFRINGEMENT CLAIM**), and KAPPA shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or entitled to any sums awarded to the CUSTOMER as a result of or in connection with any such INFRINGEMENT CLAIM.
- 10.3 If any third party makes an INFRINGEMENT CLAIM, or notifies an intention to make an INFRINGEMENT CLAIM against the CUSTOMER, KAPPA's obligations under Article 10.2 or otherwise are conditional on the CUSTOMER:
- (a) as soon as reasonably practicable, giving written notice of the INFRINGEMENT CLAIM to KAPPA, specifying the nature of the claim in reasonable detail;
 - (b) not making any admission of liability, agreement or compromise in relation to the INFRINGEMENT CLAIM without the prior written consent of KAPPA (such consent not to be unreasonably conditioned, withheld or delayed);
 - (c) giving KAPPA and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the CUSTOMER, so as to enable KAPPA and its professional advisers to examine them and to take copies (at KAPPA's expense) for the purpose of assessing the INFRINGEMENT CLAIM; and
 - (d) subject to KAPPA providing security to the CUSTOMER to the CUSTOMER's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as KAPPA may reasonably request to avoid, dispute, compromise or defend the INFRINGEMENT CLAIM.
- 10.4 If any INFRINGEMENT CLAIM is made, or in KAPPA's reasonable opinion is likely to be made, against the CUSTOMER, KAPPA may at its sole option and expense:
- (a) procure for the CUSTOMER the right to continue using or maintaining the SOFTWARE (or any part thereof) in accordance with the terms of this AGREEMENT;
 - (b) modify the SOFTWARE so that it ceases to be infringing;
 - (c) replace the SOFTWARE with non-infringing software; or
 - (d) terminate this LICENSE immediately by notice in writing to the CUSTOMER and refund any of the fee paid by the CUSTOMER as at the date of termination (less a reasonable sum in respect of the CUSTOMER's use of the SOFTWARE to the date of termination) on return of the SOFTWARE and all copies thereof in accordance with Article 16.4,
- provided that if the SUPPLIER modifies or replaces the SOFTWARE, the modified or replacement SOFTWARE must comply with the warranties contained in Article 8 and the CUSTOMER shall have the same rights in respect thereof as it would have had under those articles had the references to the date of this AGREEMENT been references to the date on which such modification or replacement was made.
- 10.5 This Article 10 constitutes the CUSTOMER's exclusive remedy and KAPPA's only liability in respect of INFRINGEMENT CLAIMS and, for the avoidance of doubt, is subject to Article 9.

ARTICLE 11. CONFIDENTIALITY

- 11.1 Each PARTY agrees not to permit disclosure to any third party any confidential information, INTELLECTUAL PROPERTY and proprietary rights belonging or granted to the other PARTY without prior written authorization by the owner/holder.
- 11.2 The CUSTOMER agrees not to provide to or permit the use of the SOFTWARE, INTELLECTUAL PROPERTY or any proprietary rights of the SUPPLIER by any third party, without prior written authorization by a director of SUPPLIER.
- 11.3 The CUSTOMER agrees to implement appropriate measures to grant that such measures are respected by all employees and external persons having authorized access to the SOFTWARE, confidential information, INTELLECTUAL PROPERTY and proprietary rights.
- 11.4 Each PARTY agrees not to make any use whatsoever of the confidential information obtained via occasional and/or indirect access to the other PARTY's data for support, training and/or consulting except in relation to the performance under this AGREEMENT.
- 11.5 Any person having legitimate access to any confidential information will be informed about the confidential nature of this INFORMATION.
- 11.6 Confidential information will not include information from a PARTY that: [1] was or became part of the public domain for a cause different from an act or omission from the other PARTY; [2] was the legitimate possession of the other PARTY before its disclosure, and or had already been obtained by the other PARTY, directly or indirectly from the disclosing PARTY; and/or [3] was legitimately disclosed to the other PARTY by a third person who gained legitimate access to the confidential information independently of the other PARTY.
- 11.7 This Article 11 shall survive any termination of this AGREEMENT.

ARTICLE 12. UNFAIR COMPETITION

- 12.1 The CUSTOMER has the right to use any competitor software. However the CUSTOMER will not use its knowledge of the SOFTWARE, the DELIVERABLES, any other INTELLECTUAL PROPERTY and/or any proprietary rights of the SUPPLIER, to develop, help develop or give specifications to improve a third party product that compete with the SOFTWARE. If the CUSTOMER decides to develop or help develop a product competing with the SOFTWARE, the CUSTOMER will formally inform the SUPPLIER in writing in advance and ensure that the conditions of this AGREEMENT are strictly enforced during the development of this competing product.

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ARTICLE 13. ETHICS

- 13.1 With respect to any activity undertaken in connection with this AGREEMENT, the SUPPLIER agrees that any SUPPLIER director, officer, employee, agent and sub-contractor have been formally instructed to comply with the following rules of ethics ('**RULES OF ETHICS**')
- (a) not to violate nor fail to comply with any laws, regulations, rules, decrees and orders of any Governmental entity of the country(ies) where this AGREEMENT will be executed;
 - (b) never offer, give or loan money or anything of value to any CUSTOMER employee or persons acting on behalf of the CUSTOMER;
 - (c) limit CUSTOMER employee entertainment and commercial gifts to levels accepted in the industry, such as (1) lunch or dinner invitations for a cost not exceeding 50 € per person, (2) reasonable tour of local places of interest in case of CUSTOMER employee visit to a KAPPA office, for a cost not exceeding 100 € per person, (3) promotional gifts of no resale value, for an amount not exceeding 20 € per gift;
 - (d) enforce even stricter rules if and when formally requested by the CUSTOMER; and
 - (e) the SUPPLIER always favors direct transactions with the CUSTOMER; when a third party is imposed by the CUSTOMER or Governmental authorities as an intermediary for the transaction, SUPPLIER will strictly apply these same RULES OF ETHICS in its transaction with the third party. Any royalty and commission attributed to the third party (and deducted from the retail price) will have to be approved by the SUPPLIER, in exchange of a real service, and once approved the information on the amount will be provided to CUSTOMER at their request. The SUPPLIER will not guarantee the contents or the ethics of any transaction beyond its control if the third party was not selected by the SUPPLIER.

ARTICLE 14. COMPLIANCE WITH BRIBERY ACT 2010

- 14.1 Each PARTY shall:
- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
 - (b) not engage in any activity, practice or conduct which would constitute an offence under Sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - (c) comply with the SUPPLIER's ethics, anti-bribery and anti-corruption policies in each case as the SUPPLIER or the relevant industry body may update them from time to time;
 - (d) promptly report to the SUPPLIER any request or demand for any undue financial or other advantage of any kind received by the CUSTOMER in connection with the performance of this AGREEMENT; and
 - (e) immediately notify the SUPPLIER (in writing) if a foreign public official becomes an officer or employee of the CUSTOMER or acquires a direct or indirect interest in the CUSTOMER.

ARTICLE 15. HEALTH, SAFETY AND INSURANCE

- 15.1 This Article 15 is not applicable where the CUSTOMER does not require the SERVICE.
- 15.2 KTCS guarantees that the CONSULTANT, whether a KTCS employee, an employee of another KAPPA AFFILIATE or an independent consultant, is legally entitled to perform this work and is personally covered for medical insurance and repatriation. In the event that the CONSULTANT needs to be hospitalized as a matter of urgency and in the event there is no health centre nearby the CUSTOMER premises or if the health centre is not in compliance with the emergency requirements, the CUSTOMER accepts to allow the CONSULTANT to get to its private health centre if there is a health centre in the CUSTOMER's premises. The medical costs implied will be borne by the CONSULTANT.
- 15.3 If the CUSTOMER requires any insurance in addition to that stated in Article 15.2 above, this will be provided under the following conditions:
- (a) If KTCS fails to locate a provider for this additional coverage, the CUSTOMER will communicate to KTCS the name of a provider who can offer such coverage. In the event the CUSTOMER is unable to suggest a provider capable of underwriting this additional insurance this additional insurance request will be considered void.
 - (b) KTCS will recharge to CUSTOMER the cost of this additional coverage plus a 20% administrative fee.
- 15.4 KTCS and the CUSTOMER accept that the SERVICE may be provided in locations that may be subject to unrest, war, terrorism or health risk and that the safety of personnel is of paramount importance and overrides any commercial interest in this AGREEMENT. This AGREEMENT is made on an assessment of the risks to KTCS and CUSTOMER personnel in good faith and based on best knowledge at the time of offer of this AGREEMENT. Both PARTIES accept that circumstances may change or more information may come to light that may change this risk assessment and that ultimately it is the decision of the CONSULTANT due to perform said SERVICE that shall override both KTCS and CUSTOMER in the decision to travel to the location of the SERVICE. In the event that KTCS is unable to perform such service due to the decision of the CONSULTANT not to travel based on CONSULTANT's assessment of the risk involved, KTCS will attempt to replace CONSULTANT with an alternative CONSULTANT prepared to travel. If this proves to be impossible KTCS will not be held responsible for cancellation or postponement of this AGREEMENT and any losses, neither direct nor, consequential incurred.

ARTICLE 16. TERMINATION

- 16.1 Without prejudice to any rights that have accrued under this AGREEMENT or any of its rights or remedies:
- (a) KAPPA and/or KTCS may terminate this AGREEMENT upon any default by the CUSTOMER in the payment provisions or upon any breach of the provisions of this AGREEMENT by giving thirty (30) days written notice to the CUSTOMER of such termination;
 - (b) the CUSTOMER may terminate this AGREEMENT at any time by sending a cancellation letter to KAPPA and/or KTCS by registered mail thirty (30) days prior to the cancellation date. Any relevant payment is due until the end of the notice period;
 - (c) KAPPA and/or KTCS may terminate this AGREEMENT upon the commencement of any insolvency or bankruptcy proceedings against the CUSTOMER or the CUSTOMER making an arrangement with creditors;
 - (d) either PARTY may terminate if the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; and/or

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- (e) KAPPA or KTCS may terminate this AGREEMENT if any event occurs (or circumstances exist) which, in its reasonable opinion, is likely to materially and adversely affect the CUSTOMER's or SUPPLIER's ability to perform all or any of its obligations under, or otherwise comply with the terms of, this AGREEMENT.
- 16.2 Termination by either PARTY in accordance with the rights contained in this Article 16 shall not affect the accrued rights, remedies, obligations or liabilities of the PARTIES existing at termination.
- 16.3 On termination for any reason:
 - (a) all rights granted to the CUSTOMER under this AGREEMENT shall cease;
 - (b) the CUSTOMER shall cease all activities authorised by this AGREEMENT;
 - (c) the CUSTOMER shall immediately pay to the SUPPLIER any sums due to the SUPPLIER under this AGREEMENT and termination shall not be a waiver of any monies due; and
 - (d) for the RENTAL LICENSE, the termination reference date will be the date the SOFTWARE leaves the CUSTOMER's office by registered or courier mail. Any RENTAL fee paid in advance will be refunded '*pro rata temporis*'. However RENTAL fees are defined for a minimum RENTAL duration. No refund will be made if the effective RENTAL duration has not reached this minimum value, except under the conditions described in Article 8.2(b).
- 16.4 In the case of materials, on termination for any reason:
 - (a) the CUSTOMER will immediately return any hardware KEY, delete and never restore any SOFTWARE KEY, return or destroy the physical support of the SOFTWARE, delete and never restore any copy of the SOFTWARE, and, in the case of destruction, certify in a signed statement to the SUPPLIER that it has done so. However it is acknowledged that installations may be performed on computer networks where regular and systematic back-ups are performed by the CUSTOMER. The CUSTOMER will not have to delete the SOFTWARE from the back-up media provided that the SOFTWARE is not restored;
 - (b) the applicable material should be returned by hand, by special carrier (DHL, FedEx, UPS, etc) or registered courier (France only). When reimbursement or complementary invoicing is applicable, the reference date will be the date at which the material leaves the CUSTOMER's office by courier delivery. In the case of loss, standard mail delivery will not be considered as a suitable method of returning the LICENSE; and
 - (c) files created by the SOFTWARE during the period of legitimate usage of the SOFTWARE remain the sole property of the CUSTOMER. For some KAPPA products, a subset of the SOFTWARE called a "Reader" is freely available on the KAPPA website. A Reader can load SOFTWARE files, print reports and export SOFTWARE data to ASCII format. The CUSTOMER has the right to keep permanently a copy of this Reader.
- 16.5 Any provision of this AGREEMENT which expressly or by implication is intended to come into or continue in force on or after termination of this AGREEMENT including Articles 1, 7, 8 (except Articles 8.2 to 8.3), 9, 10, 11, 12 and 16 shall remain in full force and effect.

ARTICLE 17. GENERAL

17.1 FORCE MAJEURE:

- (a) Each PARTY shall not be liable for failure to perform any of its obligations under this AGREEMENT if such failure is caused by, or arises, as a result of an event of force majeure ("**FORCE MAJEURE EVENT**"). Force majeure may result directly or indirectly from any cause which is beyond reasonable control including, but not limited to the following examples: fire, flood, strike, acts of God, changes of the regulatory environment, acts of governmental or military authorities, strike, civil unrest, terrorism and war.
- (b) As soon as reasonably possible, the PARTY facing force majeure shall notify the other PARTY in writing of any occurrence of a FORCE MAJEURE EVENT, the estimated extent and duration of its inability to perform its obligations under this AGREEMENT. The PARTY facing force majeure shall use all reasonable endeavors to minimize the effects of the FORCE MAJEURE EVENT.
- (c) If a FORCE MAJEURE EVENT subsists for more than 40 days then either PARTY may terminate this AGREEMENT with written notice to the other.

17.2 **ASSIGNMENT:** This AGREEMENT is not assignable by any PARTY without the prior written agreement of the other PARTY.

17.3 NOTICES:

- (a) Any notice required to be given under this AGREEMENT shall be in writing in English (or accompanied by a properly prepared translation in English) and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each PARTY required to receive the notice as set out below:
 - (i) KAPPA: [CONTACT], [17, rue Eugène Delacroix, 75116 Paris, France].
 - (ii) KTCS: [CONTACT], [2nd Floor Oakdene House, 34, Bell Street, Reigate Surrey, RH2 7SL, U.K.]; or
 - (iii) as otherwise specified by the relevant PARTY by notice in writing to each other PARTY.
- (b) Any notice shall be deemed to have been duly received:
 - (i) if delivered personally, when left at the address and for the contact referred to in this Article 17.3(a);
 - (ii) if sent within the United Kingdom by pre-paid first-class post or recorded delivery, at 9.00 am on the second (2) business day after posting;
 - (iii) if sent by airmail, five (5) business days from date of posting; or
 - (iv) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

17.4 **VARIATION:** No variation, amendment, modification and addition to or cancellation of any provision of this AGREEMENT shall be effective unless it is in writing and signed by the PARTIES.

17.5 WAIVER AND CUMULATIVE REMEDIES:

- (a) A waiver of any right under this AGREEMENT is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a PARTY in exercising any right or remedy under this AGREEMENT or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under this AGREEMENT are cumulative and do not exclude rights provided by law.

17.6 **ENTIRE AGREEMENT:** This AGREEMENT and any documents referred to in it constitute the entire agreement between the PARTIES and supersede and extinguish all previous drafts, arrangements, understandings or agreements between them, whether written or oral, relating to the subject matter of this AGREEMENT.

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17.7 SEVERANCE:

(a) If a court or any other competent authority finds that any provision of this AGREEMENT (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of this AGREEMENT shall not be affected.

(b) If any invalid, unenforceable or illegal provision of this AGREEMENT would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

17.8 NO PARTNERSHIP OR AGENCY: Nothing in this AGREEMENT is intended to, or shall operate to, create a joint venture or partnership between the PARTIES, or to authorise either PARTY to act as agent for the other, and neither PARTY shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

17.9 RIGHTS OF THIRD PARTIES: A person who is not a party to this AGREEMENT shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this AGREEMENT, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

17.10 GOVERNING LAW AND JURISDICTION: This AGREEMENT, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

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