



## UK Master T&Cs of Business

THE TERMS AND CONDITIONS SET OUT BELOW CONSTITUTE THE ENTIRE AGREEMENT BETWEEN KHIPU NETWORKS LTD ("KHIPU") AND THE CUSTOMER, UNLESS OTHERWISE AGREED TO IN WRITING AND SIGNED BY A DIRECTOR OF KHIPU.

### 1 INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

<b>Business Day:</b>	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
<b>Charges:</b>	the charges payable by the Customer for the supply of the Goods and/or Services.
<b>Conditions:</b>	these terms and conditions (and, as applicable, the Support Schedule) as amended from time to time in accordance with clause 19.9.
<b>Contract:</b>	the contract between KHIPU and the Customer for the supply of Goods and/or Services set out in an Order and in accordance with these Conditions.
<b>Customer:</b>	the person, firm or company who purchases the Goods and/or Services from KHIPU.
<b>Deliverables:</b>	the deliverables set out in the Order or otherwise produced by KHIPU for the Customer in the course of any Services, but not the Goods.
<b>Excluded Reason:</b>	has the meaning given to its in clause 4.5.
<b>Force Majeure Event:</b>	has the meaning given to it in clause 18.
<b>Goods:</b>	the goods (or any part of them) to be supplied or made available by KHIPU to the Customer as set out in the Order or as part of the Services, including but not limited to goods sold to the Customer or provided as spare parts under the Managed Services or provided as Hired Goods.
<b>Hired Goods:</b>	Goods hired to the Customer under the Managed Services, or provided as a loan item to temporarily replace Supported Equipment.
<b>Intellectual Property Rights:</b>	patents, rights to inventions, copyright and related rights, trade 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.
<b>KHIPU:</b>	KHIPU Networks Limited registered in England and Wales with company number 05218573 and whose registered address is at 3 Waterfront Business Park, Fleet, Hampshire, GU51 3TW.
<b>KHIPU Materials:</b>	has the meaning given to it in clause 7.1.7.
<b>Maintenance Services:</b>	any maintenance service (including but not limited to repairs, supply of replacement parts and issuing of software updates) described in the Order.



<b>Managed Services:</b>	any managed services (including but not limited to monitoring, configuration and provision of Hired Goods) described in the Order.
<b>Order:</b>	has the meaning set out in clause 2.2.
<b>Services:</b>	the services, including the Deliverables and any Support Services, supplied or made available by KHIPU to the Customer as set out in the Order.
<b>Support Schedule:</b>	the schedule to (and forming part of) these Conditions setting out provisions in relation to the Support Services.
<b>Support Services:</b>	the Maintenance Services and/or Managed Services which KHIPU has agreed to provide as set out in the Order.
<b>Supported Equipment:</b>	means the equipment specified in the Order either owned by the Customer or provided by KHIPU as Hired Goods, and such additions or changes as may be made under the Contract or agreed in writing by the parties from time to time.

- 1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a party includes its successors or permitted assigns.
- 1.4 A reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted from time to time. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted from time to time.
- 1.5 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.6 A reference to writing or written includes e-mails but not fax.

## 2 APPLICATION OF CONDITIONS

- 2.1 These Conditions shall apply to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, acceptance of quotation, specification or other document or which are implied by trade, custom, practice or course of dealing).
- 2.2 Submitting a purchase order, accepting a KHIPU proposal or quotation or signing a scope of work constitutes an offer by the Customer to purchase or hire Goods and/or Services in accordance with these Conditions (notwithstanding any attempted inclusion of or reference to any Customer terms and conditions) and (if applicable) in accordance with KHIPU's proposal, quotation or scope of work. Such offer shall only be deemed to be accepted once KHIPU has provided written confirmation of its acceptance or, if earlier, KHIPU commences delivery of the Goods and/or the provision of the Services. Such offer (once accepted by KHIPU, and including any quotation provided by KHIPU which it references or relates to) shall be an "Order".
- 2.3 These Conditions, together with the Order, shall be deemed to constitute the Contract for the supply by KHIPU of its Goods and/or Services. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of KHIPU which is not set out in the Contract.
- 2.4 Any error (whether typographical, clerical or omission) made by KHIPU in a service proposal, scope of work or any quotation may be corrected by KHIPU (whether before or after commencement of the Contract) without any liability to the Customer.



- 2.5 Any samples, drawings, descriptive matter or advertising issued by KHIPU and any descriptions of the Goods or illustrations or descriptions of the Services contained in KHIPU's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 Any quotation given by KHIPU shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.
- 2.7 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.8 Subject to clause 2.1 if there is any conflict between these Conditions and the Order, the Order shall take precedence.
- 2.9 No Order which has been accepted by KHIPU may be cancelled by the Customer except with the agreement in writing by a director of KHIPU and on terms that the Customer shall pay KHIPU in full for all losses (including loss of profit), costs (including the cost of labour and materials used), damages, charges and expenses suffered or reasonably incurred by KHIPU as a direct result of cancellation and/or irrevocably committed to by KHIPU prior to cancellation.

### 3 DELIVERY OF GOODS

- 3.1 KHIPU shall deliver the Goods to the location set out in the Order or such other location as the parties may agree in writing (**Delivery Location**).
- 3.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location or if KHIPU is providing any staging or pre-configuration services on behalf of the Customer on their arrival to KHIPU's premises for such purpose.
- 3.3 Unless otherwise agreed in writing with KHIPU, the method of carriage will be determined by KHIPU at its sole discretion.
- 3.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence nor shall it be made of the essence by mere notice by the Customer, time shall only be of the essence when specifically agreed in writing by KHIPU. KHIPU shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide KHIPU with adequate access or delivery instructions or any other instructions or information that are relevant to the supply of the Goods.
- 3.5 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery or following any staging or pre-configuration services, or KHIPU is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
  - 3.5.1 risk in the Goods shall pass to the Customer (including for loss or damage caused by KHIPU's negligence);
  - 3.5.2 the Goods shall be deemed to have been delivered; and
  - 3.5.3 KHIPU may store the Goods until delivery, upon which the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 3.6 The Customer must inspect the Goods as soon as reasonably practicable following delivery. In any event, the Goods shall be deemed to have been delivered in accordance with KHIPU's (or the relevant courier's) records relating to their despatch in a good and undamaged condition and in full working order and in the correct quantity unless KHIPU receives written notice of any visible damage or apparent defect or of any issues regarding the quantity of Goods delivered within 3 Business Days of delivery.

- 3.7 Any liability of KHIPU for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or at KHIPU's sole discretion issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

#### 4 **GOODS WARRANTY**

- 4.1 KHIPU is not the manufacturer of the Goods provided under these Conditions, which are subject to the warranties provided by the manufacturer, KHIPU will (where it is able to) use its reasonable endeavours to pass on the benefit to the Customer of warranties provided by the manufacturer of any such Goods. Subject to clause 15.1 (but otherwise notwithstanding any other provision of the Contract), this shall be KHIPU's sole liability in respect of the Goods.
- 4.2 KHIPU warrants to the Customer (subject to the other provisions of these Conditions) that, where it sells the Goods to the Customer, on delivery of the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 4.3 KHIPU shall not be required to pass on the benefit of any warranty under clause 4.1 or liable for a breach of the warranty in clause 4.2 unless:
- 4.3.1 the Customer gives written notice of the defect to KHIPU within 3 Business Days of the time when the Customer discovers or ought reasonably to have discovered the defect or breach; and
  - 4.3.2 KHIPU after receiving the notice set out in 4.3.1, is given a reasonable opportunity of examining such Goods and the Customer (if asked to do so by KHIPU) returns (at the Customer's cost) such Goods to KHIPU's place of business for the examination to take place and the Customer gives KHIPU all information and assistance reasonably required in relation to such examination.
- 4.4 KHIPU shall not be required to pass on the benefit of any warranty under clause 4.1 or liable for a breach of the warranty in clause 4.2 to the extent such breach or issue is caused by further use after discovering an initial defect or breach, fair wear and tear or an Excluded Reason.
- 4.5 "Excluded Reason" means (in each case other than as caused by KHIPU):
- 4.5.1 operator error, negligence, incorrect use, misuse or abnormal storage or working conditions, or failure to follow any operating or installation instructions, including but not limited to the guidance or instructions contained within any documentation supplied with the Goods or any other of KHIPU's (or the relevant manufacturer's) instructions (whether oral or in writing) as to storage, installation, commissioning, use or maintenance;
  - 4.5.2 any act, omission or neglect by the Customer (or anyone acting on its behalf) or any third party;
  - 4.5.3 any breach by the Customer of the Contract;
  - 4.5.4 accident, transport, theft, fire or water damage or Force Majeure Events;
  - 4.5.5 failure to maintain the recommended installation environment or other environmental causes, including but not limited to high or low temperature or humidity outside of the operational limits of the equipment, power failures, spikes or fluctuations, and excessive dust or other contaminants;
  - 4.5.6 failure, interruption or surge in electrical power or related infrastructure;
  - 4.5.7 (whether caused directly or indirectly) connection by mechanical or electrical means to another installation, piece of equipment or device;
  - 4.5.8 adjustment, alteration, maintenance, repair or replacement of parts by the Customer or any third party without the written consent of KHIPU or by anyone without suitable training, qualifications, skill or experience; or



4.5.9 use in combination with or otherwise together with any goods or services which are not supplied by KHIPU or which are not otherwise approved in writing by KHIPU as being compatible, or which do not generally meet accepted Internet Engineering Task Force (IETF) / Institute of Electrical and Electronics Engineers (IEEE) Standards.

- 4.6 Subject to clauses 4.1, 4.3 and 4.4, if any of the Goods do not conform with the warranty in clause 4.2 KHIPU shall at its sole discretion (and as the Customer's sole remedy) repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if KHIPU so requests, the Customer shall return the Goods or the part of such Goods which is defective to KHIPU.
- 4.7 If any Goods which the Customer claims to be defective are discovered, in the reasonable opinion of KHIPU not to be defective, KHIPU reserves the right to invoice the Customer for all costs and expenses incurred by KHIPU in relation to the collection (and return) of such Goods and the diagnosis of such Goods to determine whether or not they are defective at KHIPU's standard charges in force from time to time.
- 4.8 KHIPU makes no warranty as to the fitness of the Goods for any particular purpose and it is the sole responsibility of the Customer to determine by reference to the manufacturer's warranty and any information made available by KHIPU in relation to such Goods whether or not the Goods are appropriate for the purpose for which they are required.
- 4.9 The warranties given in this clause 4 are given in lieu of all other warranties, conditions, or other terms expressed or implied whether by statute, common law or otherwise which are, to the fullest extent permitted by law excluded from each Contract.

## **5 TITLE AND RISK**

- 5.1 The risk in the Goods shall pass to the Customer either on completion of delivery or in the circumstances set out in clause 3.5.
- 5.2 Title to the Goods (other than the Hired Goods) shall not pass to the Customer until KHIPU receives payment in full (in cash or cleared funds) for the Goods and any other goods and services that KHIPU has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 5.3 Title to the Hired Goods shall not pass to the Customer.
- 5.4 Unless and until title to the Goods has passed to the Customer, the Customer shall:
- 5.4.1 insure all the Goods to a value not less than their full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident;
  - 5.4.2 hold the Goods on a fiduciary basis as KHIPU's bailee and hold the Goods in such a way that they remain readily identifiable as KHIPU's property and not part with control of, sell, offer for sale, underlet, lend or otherwise dispose of them or allow the creation of any mortgage, charge, lien or other security interest in respect of them;
  - 5.4.3 ensure that the Goods are kept and operated in a suitable environment, not used for any unlawful purpose, and used only for the purposes for which they are designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions;
  - 5.4.4 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 5.4.5 keep the Goods in satisfactory condition (subject to any Support Services to be provided by KHIPU) and keep them insured against all risks for their full price on KHIPU's behalf from the date of delivery;



- 5.4.6 notify KHIPU immediately if it becomes subject to any of the events listed in clause 17.1.2 to clause 17.1.10;
- 5.4.7 not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of KHIPU in the Goods;
- 5.4.8 not alter the Goods or remove any existing component(s) from the Goods (without the written consent of KHIPU) and title and property in all alterations, substitutions, replacements or renewals made in or to the Goods shall vest in KHIPU immediately upon installation; and
- 5.4.9 give KHIPU such information relating to the Goods as KHIPU may require from time to time and permit KHIPU or its duly authorised representative to inspect the Goods at all reasonable times and for such purpose to enter upon its premises, and shall grant reasonable access and facilities for such inspection or for KHIPU to effect any collection or return of the Goods under these Conditions.

5.5 If, at any time when title to the Goods has not passed to the Customer, the Customer becomes subject to any of the events listed in clause 17.1.2 to clause 17.1.10 or the Contract terminates (in whole or in part in relation to the relevant Goods) then, without limiting any other right or remedy KHIPU may at any time:

- 5.5.1 require the Customer to deliver up all Goods in its possession; and
- 5.5.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## 6 **SUPPLY OF SERVICES**

- 6.1 Where Services are to be provided by third parties (for instance in relation to cloud hosting), KHIPU will be a reseller of those Services and the third parties will not be sub-contractors of KHIPU, and KHIPU will (where it is able to) use its reasonable endeavours to pass on the benefit to the Customer of warranties provided by the service provider of any such Services. Subject to clause 16.1 (but otherwise notwithstanding any other provision of the Contract), this shall be KHIPU's sole liability in respect of such Services.
- 6.2 KHIPU warrants (subject to clause 6.1 and the other provisions of these Conditions) that the Services shall be performed by qualified individuals in a professional and workmanlike manner conforming to generally accepted industry standards and practices, and in accordance with any applicable laws.
- 6.3 KHIPU shall (subject to clause 6.1 and the other provisions of these Conditions) use all reasonable endeavours to meet any performance dates for the Services agreed in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 6.4 KHIPU shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and KHIPU shall notify the Customer in any such event.
- 6.5 KHIPU warrants (subject to clause 6.1 and the other provisions of these Conditions) to the Customer that the Services will be provided using reasonable care and skill.
- 6.6 For the avoidance of doubt, KHIPU shall not be required to provide any training or undertake any installation unless agreed in the Order.
- 6.7 KHIPU may amend the scope, specification or nature of the Services or how they are delivered 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.
- 6.8 Where the Services involve any processing of personal data, KHIPU shall comply with applicable data protection laws in its use of any personal data provided by the Customer (provided that the Customer





shall ensure it has obtained any required consents from and provided any necessary notices to individuals and taken any other measures to ensure KHIPU's receipt of such personal data for the purposes of the Contract is compliant with data protection law). If and to the extent KHIPU processes data on behalf of the Customer, KHIPU shall enter into its standard data processing agreement with the Customer which shall form part of the Contract.

## 7 CUSTOMER'S OBLIGATIONS

### 7.1 The Customer shall:

7.1.1 ensure that the terms of the Order are complete and accurate;

7.1.2 co-operate with KHIPU in all matters relating to the Services and not unreasonably or without due cause interrupt or interfere with KHIPU's provision of the Services, notwithstanding the Customer's other rights and remedies;

7.1.3 provide KHIPU, its employees, agents, consultants and subcontractors, as reasonably required by KHIPU to provide the Services, access (both remote and physical) to the Customer's premises, office accommodation, IT infrastructure, network, data and other facilities (including assistance in relation to such access and, where relevant, continuous internet access of appropriate bandwidth not less than as specified by KHIPU from time to time to the Customer's systems and the Customer shall use all reasonable endeavours to ensure that such access is uninterrupted and error-free) and (in relation to work conducted at its premises) adequate and safe working space, and any telecommunications connections, equipment, consumables and other facilities (and the Customer acknowledges that KHIPU is not responsible for any failure to provide Services resulting from any interruption to or insufficient access or assistance);

7.1.4 provide (in a timely manner) KHIPU with such information, instructions and materials as KHIPU may reasonably require to supply the Services, and ensure that such information is complete and accurate in all material respects;

7.1.5 be responsible (at its own cost) for preparing the relevant premises for the supply of the Services including but not limited to networks, systems, IT infrastructure, building works, electrical power, air conditioning ventilation and internet connections (of appropriate bandwidth);

7.1.6 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;

7.1.7 keep and maintain all materials, equipment, documents and other property of KHIPU (**KHIPU Materials**) at the Customer's premises in safe custody at its own risk, maintain KHIPU Materials in good condition until returned to KHIPU, and not dispose of or use KHIPU Materials other than in accordance with KHIPU's written instructions or authorisation; and

7.1.8 the Customer shall advise KHIPU in writing of any reasonable and lawful policies and security rules in force for the conduct of its personnel at the Customer's premises reasonably in advance of any attendance at the Customer's premises; and

7.1.9 be responsible for (and take any steps necessary to ensure the safety of) KHIPU's personnel whilst at the Customer's premises.

### 7.2 If KHIPU's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

7.2.1 KHIPU shall without limiting its other rights or remedies have the right to suspend performance of the relevant 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 to the extent the Customer Default prevents or delays KHIPU's performance of any of its obligations;



7.2.2 KHIPU shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from KHIPU's failure or delay to perform any of its obligations as set out in the Contract; and

7.2.3 the Customer shall reimburse KHIPU on written demand for any costs or losses (including, without limitation, loss of profit and loss of opportunity to deploy resources elsewhere) sustained or incurred by KHIPU arising directly or indirectly from the Customer Default.

## **8 THIRD PARTY SOFTWARE AND SERVICES**

The Customer acknowledges and agrees that any third-party services, software or firmware supplied by KHIPU with the Goods or as part of the Services or otherwise shall be subject to the third party's licence or usage terms and the Customer shall indemnify KHIPU, and hold KHIPU harmless against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with of the Customer's breach of any such licence or usage terms.

## **9 KHIPU'S KARMA SYSTEM**

If KHIPU provides the Customer with access to its Karma system which is accessible through a secure web browser hosted by KHIPU and which provides status and fault monitoring on various equipment (the "Karma System"), the Customer agrees to comply with KHIPU's end user licence terms in force from time to time. The Customer acknowledges and agrees that the Karma System is provided "as is" and KHIPU does not warrant that the system will be uninterrupted or error free.

## **10 SUPPORT SERVICES**

10.1 If KHIPU has agreed in an Order to provide the Customer with any Support Services, the additional terms set out in the Support Schedule shall apply to the Contract.

## **11 CHARGES AND PAYMENT**

11.1 The price for Goods shall be the price set out in the Order (save in the case of manifest error) or, if no price is quoted, the price set out in KHIPU's quote or proposal which the Order refers or relates to. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid in addition by the Customer when it pays for the Goods.

11.2 The charges for the Services shall be as detailed in the Order (save in the case of manifest error).

11.3 Unless otherwise agreed in the Order, KHIPU shall invoice the Customer on or at any time after completion of delivery and in respect of Services, KHIPU shall invoice the Customer annually in advance for Maintenance Support Services and Managed Services, and otherwise monthly in arrears.

11.4 The Customer shall pay each invoice submitted by KHIPU:

11.4.1 within 30 days of the date of the invoice; and

11.4.2 in full and in cleared funds to a bank account nominated in writing by KHIPU, and

time for payment shall be of the essence of the Contract.

11.5 KHIPU reserves the right to:

11.5.1 increase the price of the Goods or Services, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods or Services to KHIPU that is due to:

11.5.1.1 any factor beyond the control of KHIPU (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);





11.5.1.2 any request by the Customer to change the delivery date(s), quantities or types of Goods or Services ordered, or their specifications; or

11.5.1.3 any delay caused by any instructions of the Customer in respect of the Goods or Services or failure of the Customer to give KHIPU adequate or accurate information or instructions in respect of the Goods or Services.

11.5.2 charge the Customer for any reasonable expenses incurred in connection with the Services (including, the cost of hotel, subsistence, travelling and other ancillary expenses) which it will invoice the Customer at cost.

11.6 If any Charges quoted by KHIPU are based on the Customer trading-in any replaced goods with the relevant manufacturer (**Trade-in Allowance**) then the Customer shall return any such goods to the relevant manufacturer by the date and in the condition specified in the Order or, if none is specified, within forty-five (45) days from delivery of the replacement Goods. Otherwise, the Customer shall not be entitled to benefit from the Trade-in Allowance and KHIPU shall be entitled to invoice the Customer for the full price of the Goods (or any amount outstanding).

11.7 All amounts payable by the Customer under the Contract 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 Contract by KHIPU to the Customer, the Customer shall, on receipt of a valid VAT invoice from KHIPU, pay to KHIPU such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

11.8 If the Customer fails to make any payment due to KHIPU under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate set out in the Late Payment of Commercial Debts (Interest) Act 1998 (as amended, updated or replaced from time to time). Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

11.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. KHIPU may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by KHIPU to the Customer.

## 12 INTELLECTUAL PROPERTY RIGHTS

12.1 Save as specifically agreed otherwise in the Order, all Intellectual Property Rights created in the course of providing the Services shall be owned by KHIPU or its licensors and KHIPU grants the Customer a non-exclusive licence for the term of the Contract to use such Intellectual Property Rights as required to use and enjoy the benefit of the Services.

12.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on KHIPU obtaining an appropriate licence from the relevant licensor on such terms as will entitle KHIPU to license such rights to the Customer.

## 13 CHANGE CONTROL

13.1 If either party requests a change to the scope or execution of the Services, KHIPU shall, within a reasonable time, provide a written estimate to the Customer of:

13.1.1 the likely time required to implement the change;

13.1.2 any variations to KHIPU's charges arising from the change;

13.1.3 the likely effect of the change on timeframes; and



13.1.4 any other impact of the change on the terms of the Contract.

13.2 KHIPU shall not be required to change the scope or execution of the Services unless and until the parties have agreed in writing on the necessary variations to its charges, and any other relevant terms of the Contract to take account of the change (and the Customer shall not unreasonably withhold or delay its agreement to any estimate provided under clause 13.1).

## 14 **CONFIDENTIALITY**

14.1 A party (receiving party) shall keep in strict confidence all technical or commercial know-how, information, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed (whether before or after the commencement of the Contract) to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services (and, in the case of KHIPU its pricing and its third party suppliers) which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract.

14.2 The provisions of this clause shall not apply to any confidential information that:

14.2.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its representatives in breach of this clause);

14.2.2 the receiving party can demonstrate to the reasonable satisfaction of the disclosing party it was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;

14.2.3 is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

14.3 This clause 14 shall survive termination of the Contract.

## 15 **LIMITATION OF LIABILITY**

15.1 Nothing in these Conditions shall limit or exclude KHIPU's liability for:

15.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

15.1.2 fraud or fraudulent misrepresentation; or

15.1.3 for any other matter which it would be unlawful for KHIPU to limit or exclude its liability relation to.

15.2 Subject to clause 15.1:

15.2.1 KHIPU shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of reputation, loss or corruption or unavailability of data, or any indirect or consequential loss arising under or in connection with the Contract; and

15.2.2 KHIPU's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Charges paid by the Customer to KHIPU under the Contract during the 12-month period immediately preceding the date on which the cause of action first arose.



15.3 All warranties, conditions and terms, whether express or implied by statute, common law or otherwise (including satisfactory quality, fitness for purpose and suitability) are to the fullest extent permitted by law, excluded from the Contract.

15.4 This clause 15 shall survive termination of the Contract.

## 16 RETURN POLICY

16.1 The Customer's right to return any Goods are subject to the return policies and fees imposed by the applicable manufacturer.

16.2 No credit for items delivered to the Customer will be issued by KHIPU without the prior written approval of KHIPU. Such approval, when provided, must be in the form of a written Return Material Authorization (RMA), which must accompany the returned items. An RMA must be requested by the Customer from KHIPU within twenty (20) days from the original shipping date, unless a shorter period is required by the applicable manufacturer.

16.3 Unless a higher fee is imposed by an applicable manufacturer, a minimum 20% restocking fee shall apply for all RMAs.

16.4 The Customer agrees to indemnify and hold harmless KHIPU from any and all losses sustained by KHIPU (including but not limited to manufacturer restocking fees) as a result of the Customer's return of items delivered to the Customer pursuant to these Conditions.

16.5 Returned items must be in the original shipping cartons, undamaged, unused and unaltered. Goods received without an RMA and or in a condition other than described entitles KHIPU the right to refuse return of the items or impose additional charges which the Customer agrees to pay.

16.6 Opened and/or installed software is not returnable.

## 17 TERM AND TERMINATION

17.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

17.1.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;

17.1.2 the other party 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 (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

17.1.3 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 its creditors other than (where 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;

17.1.4 a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;

17.1.5 the other party (being an individual) is the subject of a bankruptcy petition or order;

- 17.1.6 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 its assets and such attachment or process is not discharged within 14 days;
  - 17.1.7 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);
  - 17.1.8 the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - 17.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - 17.1.10 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business.
- 17.2 Without limiting its other rights or remedies, KHIPU may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 17.3 Without limiting its other rights or remedies, if the Customer becomes subject to any of the events listed in clause 17.1.2 to clause 17.1.10, or KHIPU reasonably believes that the Customer is about to become subject to any of them, or the Customer fails to pay any amount due under this Contract on the due date for payment, KHIPU may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and KHIPU.
- 17.4 On termination of the Contract for any reason:
- 17.4.1 the Customer shall immediately pay to KHIPU all of KHIPU's outstanding unpaid invoices and interest and, in respect of Services and/or Goods supplied but for which no invoice has yet been submitted, KHIPU shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - 17.4.2 the Customer shall return or destroy (at KHIPU's option) any Deliverables which have not been fully paid for, any KHIPU Materials, and any documents and materials (including copies) containing, reflecting, incorporating or based KHIPU's confidential information. If the Customer fails to do so, then KHIPU may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
  - 17.4.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
  - 17.4.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 18 **FORCE MAJEURE**

- 18.1 For the purposes of the Contract, **Force Majeure Event** means an event beyond the reasonable control of a party including but not limited to strikes, lock-outs or other industrial disputes (including, in the case of KHIPU, those involving the workforce of KHIPU or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

- 18.2 A party shall not be liable to the other party as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 18.3 If the Force Majeure Event prevents either party from performing any of its obligations under the Contract for more than 60 days, the unaffected party shall, without limiting its other rights or remedies, have the right to terminate this Contract by giving not less than 30 days' written notice to the other party.
- 19 **GENERAL**
- 19.1 **Notices.**
- 19.1.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, and: (i) addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier; or (ii) by email to [legal@khipu-networks.com](mailto:legal@khipu-networks.com) (for notices to KHIPU) or to the Customer email address set out in the Order (for notices to the Customer).
- 19.1.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address set out in the Order or specified under clause 3.1; 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; and if sent by email, on the first Business Day after sending.
- 19.1.3 The provisions of this clause 19.1 shall not apply to the service of any proceedings or other documents in any legal action
- 19.2 **Non-solicitation.** Neither party shall, without the prior written consent of the other party, at any time during or in the 12 months following completion of the Contract, solicit or entice away from the other party or employ or otherwise engage (or attempt to employ or otherwise engage) any person who is, or has been, engaged as an employee or sub-contractor of the other party.
- 19.3 **Assignment.** Neither party shall assign or transfer all or any of its rights or obligations under the Contract without the consent of the other party.
- 19.4 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal 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 rest of the Contract.
- 19.5 **Waiver.** A waiver of any right under the Contract or law 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 the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 19.6 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 19.7 **Rights.** Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.



- 19.8 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 19.9 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by KHIPU.
- 19.10 **Governing law.** 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 the law of England and Wales.
- 19.11 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims) and that the parties may enforce the judgment in any jurisdiction as appropriate.





## SUPPORT SCHEDULE

### 1 DEFINITIONS

1.1 In this Support Schedule, the following definitions apply:

<b>Corrective Maintenance:</b>	configuration changes or adjustments to the Supported Equipment and replacing any parts or components of the Supported Equipment, required to restore the Supported Equipment to good working order in accordance with the Contract.
<b>Location:</b>	the location which the Supported Equipment is to be stored at and operated from, as set out in the Order or otherwise agreed in writing between the parties.
<b>Support Hours:</b>	means 9.00am to 5.30pm UK time on a Business Day, unless otherwise agreed in the Order.
<b>Virus:</b>	any item or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

### 2 TERM AND CHARGES

2.1 This paragraph 2 applies where the Contract is for the supply of Support Services.

2.2 The Contract shall commence on the date set out in the Order (or, if no such date is specified, on the date on which the Customer's offer is accepted). Unless terminated earlier in accordance with these Conditions, the Contract shall, continue for the initial period stated in the Order (**Initial Period**) and automatically extend for a 12-month period (**Renewal Period**) at the end of the Initial Period and each Renewal Period. Either party may give written notice to the other party, not later than 90 days before the end of the Initial Period or the relevant Renewal Period, to terminate the agreement at the end of the Initial Period or the relevant Renewal Period, as the case may be.

2.3 KHIPU may increase the Charges or any rates set out in the Order with effect from the end of the Initial Period or any Renewal Period by giving to the Customer not less than 30 days' written notice, and:

- 2.3.1 if the Customer wishes to object to such increase, it must notify KHIPU in writing before the end of the applicable Initial Period or Renewal Period, in which case:
  - 2.3.1.1 the parties shall negotiate in good faith to agree a reasonable increase to the Charges and rates, taking into account increases in the cost of manufacturer support; and
  - 2.3.1.2 if the parties cannot agree an increase, KHIPU may at its sole and absolute discretion either continue to apply the existing Charges and rates or terminate the Contract on written notice; and
- 2.3.2 if the Customer does not notify KHIPU under paragraph 2.3.1, it shall be deemed to have accepted such increase.



### **3 SERVICES**

- 3.1 During the Contract, in consideration for the Charges, KHIPU shall provide the Customer with the Support Services detailed in the Order in respect of the Supported Equipment.
- 3.2 The Support Services will be provided remotely (whether via a remote desktop service, a VPN connection to the Customer's equipment or otherwise). Where any issue cannot be resolved remotely KHIPU will arrange for an engineer to attend at the Location and, unless on-site engineer support is expressly set out as being included within the Charges in the Order, KHIPU will charge the Customer at the rates set out in the Order (or, if no such rates are set out, its standard call out charge and rates in force from time to time). KHIPU may, at its discretion amend the rates set out in the Order not more than once in any 12-month period to reflect increases in the previous 12 months in the Retail Prices Index (RPI) published by the Office of National Statistics (or any replacement body fulfilling a similar function).

### **4 MAINTENANCE**

- 4.1 On the Customer informing KHIPU that the Supported Equipment is malfunctioning or has failed or is otherwise not in good working order, KHIPU shall (subject to the other provisions of these Conditions):
- 4.1.1 respond to the Customer during the Support Hours within the relevant response time set out in the Order; and
  - 4.1.2 during the Support Hours use its reasonable endeavours to perform the Corrective Maintenance to restore the Supported Equipment to good working order within the relevant fix time set out in the Order.
- 4.2 In performing the Corrective Maintenance, KHIPU shall use its reasonable endeavours to restore any malfunctioning or failed Supported Equipment to good working order. Where this is not reasonably practicable, or not reasonably practicable within the Support Hours KHIPU may (at its discretion and subject to the other provisions of these Conditions) either arrange further visit(s) to the Location within the Support Hours to complete the repair, or remove the Supported Equipment or part of the Supported Equipment for repair off-site.
- 4.3 KHIPU may make available to the Customer additional equipment/parts to make engineering improvements to the Supported Equipment which are determined by the equipment manufacturer to be a mandatory retrofit, and the Customers shall promptly install or use such equipment/parts in accordance with KHIPU's instructions.

### **5 SOFTWARE MAINTENANCE**

- 5.1 If Support Services for software are specified in the Order, KHIPU shall make available to the Customer (to download and install) new releases, patches, fixes or corrections made available to KHIPU by the software licensor and identified by KHIPU or the licensor as being necessary to correct existing or potential problems affecting the performance of the Supported Equipment.
- 5.2 The Customer shall promptly install and use such new releases, patches, fixes or corrections, and unless specifically agreed in an Order, KHIPU shall not be required to install or configure such new releases, patches, fixes or corrections.

### **6 REPLACEMENTS AND SPARE PARTS**

- 6.1 If (subject to the other provisions of these Conditions) the Customer requires a spare or replacement part to restore the Supported Equipment to good working order, KHIPU will arrange for a replacement part to be delivered to the Customer at the Customer's cost.
- 6.2 All spare parts and/or replacements provided by KHIPU to the Customer shall become part of the Supported Equipment and (if the Supported Equipment is owned by the Customer) will become the



property of the Customer in accordance with clause 5 of the main body of the Conditions. All parts and components intended to be replaced shall no longer constitute part of the Supported Equipment and will be the property of KHIPU. The Customer will assign to KHIPU, with full title guarantee and free from all third-party rights, all parts and components removed from the Supported Equipment by KHIPU in accordance with this paragraph 6.2.

- 6.3 If KHIPU supplies the Customer with replacement parts and/or equipment, the Customer shall return the faulty item(s) to KHIPU (and the Customer will be responsible for any shipping costs) within 14 days of receipt of the replacement equipment being delivered to the Customer unless otherwise notified to the Customer in writing by KHIPU.
- 6.4 If the faulty equipment is not returned to KHIPU by the Customer in accordance with paragraph 6.3 KHIPU (without prejudice to any of its other rights) reserves the right to, on not less than 3 days' notice, arrange collection of such equipment and invoice the Customer the cost of collection plus an administration fee of £25.
- 6.5 If the faulty equipment is damaged during shipment in KHIPU's opinion due to inadequate precautions (including but not limited to its packaging and/or shipping environment) KHIPU reserves the right to charge a restocking fee not to exceed 50% of the initial purchase price paid by the Customer.
- 6.6 In the event that KHIPU is unable to repair or replace the faulty equipment within the timeframes specified in the agreement, KHIPU may temporarily supply the Customer with Hired Goods. Title to the Hired Goods will not pass to the Customer and it shall be held by the Customer at its risk subject to with clause 5 of the main body of the Conditions and KHIPU may require the return of Hired Goods provided under this paragraph 6.6 at any time.

## **7 CUSTOMER SUPPORT OBLIGATIONS**

- 7.1 The Customer shall (notwithstanding its other obligations under the Contract):
  - 7.1.1 comply with its obligations under clause 7.1.3 of the main body of the Conditions in respect of the Location;
  - 7.1.2 appoint a representative / skilled team for the purposes of reporting or escalating a fault ("Customer Representative") and ensure that the nominated representative / skilled team is sufficiently trained, experienced and qualified to be able to manage and configure the Supported Equipment and to provide initial diagnosis of the fault and to take preliminary fault-finding steps. The Customer shall use all reasonable endeavours to ensure continuity of such team throughout the Contract;
  - 7.1.3 ensure that the Supported Equipment is installed and kept in suitable premises and under suitable conditions, and installed, kept and operated in accordance with best industry practice and in accordance with KHIPU's and the manufacturer's instructions and in accordance with any operation instructions or documentation provided by KHIPU and/or the manufacturer, and the Customer shall permit only trained and competent personnel to use it;
  - 7.1.4 promptly report any faults by telephone, e-mail and/or writing to the published technical support contacts detailed at KHIPU's official website <http://www.KHIPU-networks.com/contact-us/support/> from time to time. The Customer will not be deemed to have raised a support call if it does not have a valid support reference supplied by KHIPU;
  - 7.1.5 ensure that each support request is accompanied by adequate supporting information. As a minimum, this information shall comprise: (i) a detailed description of the problem; (ii) the circumstances under which the problem occurred; (iii) sufficient additional information in order to enable KHIPU to reproduce, classify and correct the problem. The Customer shall also provide KHIPU with details of any recent or relevant changes which have occurred to its network or IT infrastructure;



- 7.1.6 not make any modification to the Supported Equipment without providing KHIPU with prior written notice or in the case of an emergency immediately thereafter;
- 7.1.7 not itself attempt to adjust, repair or maintain the Supported Equipment and not request, permit or authorise anyone other than KHIPU to carry out any adjustments, repair or maintenance of the Supported Equipment, other than installation of spare parts in accordance with KHIPU's instructions;
- 7.1.8 maintain a valid accessible backup of any Customer data (including configuration files and databases), and shall make the same available to KHIPU in the event of any data loss; and
- 7.1.9 at all times ensure that it has an appropriate and functioning power supply to the Customer's network.

7.2 The Customer acknowledges that KHIPU's pricing and service levels are based on the location of the Supported Equipment and as such it shall not move the Supported Equipment from the Location without the prior written approval of KHIPU (and such approval may not be unreasonably withheld or delayed, but may be conditional upon adjustments to service levels or pricing).

## 8 **MANAGED SERVICES**

8.1 To the extent KHIPU has agreed to do so in an Order, it shall provide the Managed Services on the Customer's behalf.

8.2 If the Managed Services include the provision of Hired Goods, title to the Hired Goods will not pass to the Customer and it shall be held by the Customer at its risk subject to with clause 5 of the main body of the Conditions. The Customer shall:

8.2.1 at the end of the Contract or relevant hire period, deliver up the Hired Goods at such address as KHIPU requires, or if necessary allow KHIPU or its representatives access to the Location or any premises where the Hired Goods is located for the purpose of removing it; and

8.2.2 indemnify KHIPU on demand against any loss of or damage to the Hired Goods (other than as caused by KHIPU), and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Customer to comply with its obligations relating to the Hired Goods.

8.3 The Customer shall not store, distribute or transmit any Viruses, or any material during the course of its use of the Managed Services that:

8.3.1 is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;

8.3.2 facilitates illegal activity;

8.3.3 depicts sexually explicit images; and/or

8.3.4 promotes unlawful violence, discrimination based on race, gender, age, disability, sexual orientation, religion and belief or any other illegal activities; or

8.3.5 is otherwise illegal or causes damage or injury to any person or property.

8.4 KHIPU reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of paragraph 8.1 or the Contract.

8.5 The Customer shall not:



- 8.5.1 access all or any part of the Managed Services in order to build a product or service which competes with the Managed Services; or
- 8.5.2 use the Managed Services to provide services to third parties; or
- 8.5.3 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Managed Services available to any third party except its authorised internal users, or
- 8.5.4 attempt to obtain, or assist third parties in obtaining, access to the Managed Services; or
- 8.5.5 introduce or permit the introduction of, any Virus (or weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability) into KHIPU's network and information systems.

8.6 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Managed Services and, in the event of any such unauthorised access or use, promptly KHIPU.

## 9 EXCLUDED SERVICES

- 9.1 KHIPU will (subject to the other provisions of these Conditions) use reasonable endeavours to maintain the Supported Equipment in good working order, however, where in KHIPU's opinion any Supported Equipment (or any part) is no longer capable of economic maintenance due to excessive wear and tear or inability of the relevant manufacturer or its agents to provide technical support or spare parts or for any other reason, then KHIPU may issue a written notice advising the Customer that no further maintenance is feasible on such equipment and such equipment shall no longer be included as part of the Supported Equipment (**Excluded Equipment**).
- 9.2 Notwithstanding paragraph 9.1, if KHIPU is unable to provide maintenance on any specific item(s) of equipment due to the permanent unavailability of spare parts or software support, patches, and/or development then KHIPU may give the Customer 90 days' notice in writing removing the equipment from the list of Supported Equipment. If the Customer has paid for the Maintenance and Support Services in advance, KHIPU shall arrange for a pro rata credit to be issued to the Customer in respect of any fees already paid in respect of said equipment relating to the period after it becomes Excluded Equipment.
- 9.3 Any rights granted by KHIPU in relation to the Support Services are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.
- 9.4 KHIPU shall not be responsible for the physical or logical environment of the Supported Equipment or the availability or functioning of any software maintained by KHIPU (as it is not hosted by KHIPU).
- 9.5 KHIPU is not obliged:
  - 9.5.1 to perform any Excluded Activity (as defined below); or
  - 9.5.2 to provide any Support Services where issues have been caused by an Excluded Reason.
- 9.6 For the purposes of the Contract, "Excluded Activity" shall mean:
  - 9.6.1 general configuration, management and/or maintenance of the Supported Equipment to work with the Customer's network;
  - 9.6.2 painting or refinishing any equipment;
  - 9.6.3 the making of specification changes and services in connection with the re-location of any equipment or changes within the overall network infrastructure;

- 9.6.4 the addition or removal of accessories, attachments or other devices;
- 9.6.5 repair or renewal of disk packs print cartridges or other consumable supplies;
- 9.6.6 maintenance or support of the operating system or any other software operating on the Supported Equipment;
- 9.6.7 electrical or other environmental work external to the Supported Equipment (including any work on the Customer's IT infrastructure or cabling);
- 9.6.8 recovery or reconstruction of any data or programs lost or spoiled as a result of any breakdown of or fault in the Supported Equipment;
- 9.6.9 servicing which in the opinion of KHIPU it is not practical to render owing to alterations which have been made to the Supported Equipment by the Customer or his agents or owing to the connection of the equipment by mechanical or electrical means to another installation, piece of equipment or device;
- 9.6.10 maintenance services in respect of any Excluded Equipment or any other equipment not specified in the list of Supported Equipment;
- 9.6.11 maintenance service on equipment where defects arose before the Contract; and
- 9.6.12 any services in relation to an issue caused by:
  - 9.6.12.1 faulty materials or workmanship in the manufacture of the Supported Equipment;
  - 9.6.12.2 the Customer or a third party moving the Supported Equipment from the Location;
  - 9.6.12.3 use of non-current versions or releases of software;
  - 9.6.12.4 any cause which KHIPU can reasonably demonstrate arises from software or equipment incompatibility problems outside of the scope of devices under the maintenance cover;
  - 9.6.12.5 any other cause other than fair wear and tear or KHIPU's neglect or fault; or
  - 9.6.12.6 any head crash or failure of fixed or removable storage media.
- 9.7 Where KHIPU is performing or has performed the Support Services in circumstances where it is established that the Supported Equipment was not in good working order due to any of the Excluded Reasons or has carried out Excluded Activity, KHIPU may charge, and the Customer shall pay the additional charges in respect of that work undertaken.
- 9.8 After more than five years (or such shorter period as it set out in the Order) from the date of sale of equipment, full maintenance and support may be offered at a reduced capacity (including changes to service levels and operating on a best endeavour basis) if at all. This is dependent upon original equipment manufacturers support and ability for the device to be fully supported (hardware / software) for customer requirements.