

Kallidus Standard SaaS Terms & Conditions (v31.1 – G Cloud 15 version)

PARTIES:

- (1) **Kallidus Limited**, a company registered in England and Wales (registered company number 03984404) whose registered office is situated at 3rd Floor, 1 Ashley Road, Altrincham, Cheshire WA14 2DT (“**Kallidus**”); and
- (2) **[Customer Entity Details (as set out in a Call-Off Contract)]** (“**the Customer**”).

1. INTRODUCTION

- 1.1. These Terms are the only terms and conditions on which Kallidus offers to contract with customers for the provision of any Kallidus services. By agreeing to these Terms by the agreeing and signing by both parties of a G Cloud Call-Off Contract, the Customer indicates acceptance of these Terms. The individual who does so on behalf of the Customer confirms their authority to enter the Customer into legally binding contracts. Unless otherwise agreed in writing, Kallidus will not enter into contracts with customers except on these Terms. Any other terms and conditions proffered, for example in any purchase order or other document, are expressly rejected.
- 1.2. The services that Kallidus is offering to the Customer shall be specified in an Order Form. The Kallidus services include the Service, Content and Professional Services.
- 1.3. The attention of the Customer is drawn in particular to the provisions of Clause 15 (**Limitation of Liability**), which limits Kallidus’ liability and excludes certain types of liability.
- 1.4. Please note that if the Customer is signing up to a free trial of any Kallidus product(s) or service(s) then, notwithstanding any other provision to the contrary, those product(s) or service(s) are provided on an “as-is” basis and without any warranty whatsoever. During the free trial period the product(s) or service(s) are used at the Customer’s own risk.

2. DEFINITIONS

- 2.1. In these Terms:

“API”	means an application programming interface offered by Kallidus to the Customer providing a route for the Customer to establish a connection into the Kallidus Technology via an external internet connection provided by the Customer;
“Agreement Personal Data”	shall have the meaning given to it in Schedule 4;
“Applicable Laws”	shall have the meaning given to it in Clause 14.5.1;
“Business Day”	means any day which is not a Saturday, Sunday or bank or public holiday in England;
“Confidential Information”	shall have the meaning given to it in Clause 12.1;
“Contract”	means this agreement between the Customer and Kallidus in connection with the provision of the Service, any Professional Services and any Content and incorporating the Order Form(s);
“Control”	means a situation where there is beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company;

“Converted Data”	shall have the meaning given to it in Clause 3.9;
“Customer”	means the Kallidus customer under the Contract as identified at the start of this Contract and on the Order Form, or (if applicable) on Kallidus’ website;
“Customer Content”	means (i) any User Data and related user records; (ii) online courses provided by the Customer or by any third party (other than any third party acting as a subcontractor of Kallidus); and (iii) any other content, text, script, image or other tangible or intangible material that is uploaded to or otherwise appears in the Service at the request of the Customer and which has not been created or provided by Kallidus;
“Customer Data Analysis”	shall have the meaning given to it in Clause 3.11;
“Data Analysis”	means Customer Data Analysis and General Data Analysis;
“Data Controller”	shall have the meaning given in the Data Protection Legislation;
“Data Processor”	shall have the meaning given in the Data Protection Legislation;
“Data Protection Legislation”	means all legislation and regulatory requirements in force from time to time applicable to the parties and relating to the use of personal data and the privacy of electronic communications, including, without limitation: (i) the Data Protection Act 2018; and (ii) the UK General Data Protection Regulation (UK GDPR); (iii) the Data Use and Access Act 2025; and (iv) any successor legislation to these and any other applicable laws and regulations relating to the processing of personal data and privacy;
“Data Security Incident”	means the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Agreement Personal Data transmitted, stored or otherwise Processed by Kallidus (or on its behalf);
“Data Subject”	shall have the meaning given in the Data Protection Legislation;
“Effective Date”	means the earlier of: (i) the date on which this Contract is signed by the Customer; and (ii) the Services Term Start Date for Kallidus services set out in the first Order Form signed under this Contract; and (iii) the date when the Customer accesses any Service via the Kallidus website (including, for the avoidance of doubt, for the purposes of a free trial);
“General Data Analysis”	shall have the meaning given to it in Clause 3.12;

"Group"	means, in relation to the Customer, any holding company of the Customer, any subsidiary of the Customer and any other subsidiary of such holding company and "Group Company" shall be construed accordingly;
"Intellectual Property Rights"	means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, database rights, rights in undisclosed or confidential information such as know-how and other trade secret rights, and all other intellectual property rights or similar proprietary rights of whatever nature (whether registered or not and including applications to register or rights to apply for registration), derivatives, and forms of protection of a similar nature which may now or in the future subsist anywhere in the world;
"Kallidus Content" or "Content"	means any digital training content owned by Kallidus (normally described as Kallidus OTS eLearning content courses) being provided to the Customer, as detailed in an Order Form (but excluding, for the avoidance of doubt, any Third Party Content)
"Kallidus Technology"	means all of Kallidus' proprietary technology (including software, hardware, products, processes, algorithms, databases (including database files, database structure, column names, table names, datatypes, field lengths, database views or residual code), user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to the Customer or otherwise used by Kallidus, including in providing the Service, Content and/or any Professional Services;
"Normal Business Hours"	means 8.30am to 5.30pm local UK time on each Business Day;
"Order Form"	means, for the purposes of the G Cloud 15 framework, a Call-Off Contract in the form required by the CCS which has been agreed and signed by both parties relating to the relevant Kallidus service(s) to be provided to the Customer;
"Personal Data"	shall have the meaning given in the Data Protection Legislation;
"Processing"	(together with Process or Processed) shall have the meaning given in the Data Protection Legislation;
"Professional Services"	means any professional services, including configuration, implementation, consultancy, project management, training and data transfer services, that Kallidus agrees in an Order Form (or Professional Services Statement of Work) to provide to the Customer in accordance with the terms of this Contract and in particular the provisions of Schedule 5;
"Relevant Requirements"	shall have the meaning given to it in Clause 20.1;
"Relevant Terms"	shall have the meaning given to it in Clause 22.2;
"Service(s)"	means the SaaS service(s) to be provided to the Customer, as specified in an Order Form, such SaaS service(s) being as set out in Schedule 1, Schedule 2 Part A and Schedule 3;

"Services Term"	means the period for which the Customer shall receive and is obliged to pay for the relevant Kallidus service that it is contracting to receive under an agreement created by an Order Form, which shall in each case be three (3) years (unless an alternative period for that particular Kallidus service is set out in the relevant Order Form (the "Initial Services Term")) and thereafter continuing as set out in Clause 9.1.2;
"Services Tier"	means the tier of services taken by the Customer as specified in the relevant Order Form;
"Special Categories of Personal Data"	shall have the meaning given in the Data Protection Legislation;
"Sub-Processor"	means a Data Processor engaged by Kallidus or by any other Sub-Processor for carrying out processing activities in respect of the Agreement Personal Data on behalf of the Customer;
"Sub-Processor Notification Process"	shall have the meaning given to it in Clause 14.4.2;
"Term"	means the period from the Effective Date until the Contract is ended in accordance with these Terms;
"these Terms"	means these terms and conditions (including the Schedules) and the Order Form terms;
"Third Party Content"	means digital training content which be provided by Kallidus to the Customer where such content is not owned by Kallidus but instead is licensed by it for such purposes from third parties;
"Use"	means in respect of Kallidus Content the non-commercial use by the Customer for internal educational or educational related purposes as part of the learning management system used by the Customer;
"User(s)"	means the individuals who are authorised by the Customer to use the Service and/or the Kallidus Content and have been supplied usernames and passwords or passkeys by the Customer or by Kallidus;
"User Cycling"	means the enabling, disabling, reallocation or other manipulation of user accounts or licence entitlements to disguise true user numbers or artificially reduce the user numbers that it needs or applicable fees payable;
"User Data"	means any data which is held by Kallidus as part of the Service provided by and/or about User(s) which may include data relating to human resources records, performance or training records, courses or course information and any Agreement Personal Data;
"Virus"	means any software code or file which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network or adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices; and
"Vulnerability"	a weakness in the computational logic (for example, code) found in software and hardware components that, when exploited,

results in a negative impact to confidentiality, integrity, or availability (and the term Vulnerabilities shall be construed accordingly).

- 2.2. In the event and to the extent of any conflict or inconsistency between these terms and conditions and the Order Form, these terms and conditions shall take precedence to the extent of any such conflict or inconsistency, save where these terms and conditions expressly provide for the relevant Order Form to take precedence.
- 2.3. Writing or written shall include email and any other digital means of communication used by Kallidus, including the Kallidus website, or its customer support portal (currently at [Kallidus Zendesk](#)).
- 2.4. Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 2.5. Any Third Party Content purchased by a customer from Kallidus shall be is purchased on the Kallidus Third Party Content Terms available from Kallidus and not under this Contract.
- 2.6. Any bespoke digital content (being content designed and produced specifically for a customer) shall be purchased on the Kallidus Bespoke Terms available from Kallidus and not under this Contract.

3. PROVISION OF SERVICES

- 3.1. Kallidus agrees to provide to the Customer in accordance with and subject to all the terms of the Contract the relevant Kallidus service(s) as specified in an Order Form, being any one or more of:
 - 3.1.1 the Service with the Hosting and Back-Up services (in accordance with Schedule 2 Part A);
 - 3.1.2 any Kallidus Content; and/or
 - 3.1.3 any Professional Services (including in respect of these services the provisions of Schedule 5).

Kallidus shall provide the relevant Kallidus service(s) from the Services Term Start Date specified in the relevant Order Form throughout the term for that Kallidus service.

3.2. In respect of the Service:

- 3.2.1 The Service shall only be used by the number of Users (normally referred to in the Order Form as “Licences”) for whom the Customer has for the time being paid to Kallidus service fees in accordance with the Contract.
- 3.2.2 The Customer shall only use the Service as a platform to deliver to Users the learning and development functions relevant to the Services Tier that the Customer contracts to receive under this Contract. The Customer shall not use the Service to provide any other service to any third party, including Users.
- 3.2.3 Kallidus grants to the Customer and the Users a non-exclusive, non-transferable (except as permitted in Clause 18 below) worldwide licence to use the Kallidus Technology but strictly limited to the extent necessary to use the Service in accordance with the Contract.
- 3.2.4 Kallidus shall:

- (a) use commercially reasonable endeavours to make the Service available in accordance with Schedule 2 Part A, and provide to the Customer access to a Kallidus API on the terms set out in Schedule 2 Part B; and
- (b) as part of the Service and at no additional cost to the Customer, provide the Customer with the Kallidus' standard customer support services during Normal Business Hours as set out in Schedule 3.

3.2.5 Kallidus may modify the features and functionality of the Service. Any such modifications shall not materially adversely affect use of the Service by Kallidus' customers generally.

3.3. In respect of Kallidus Content:

3.3.1 Unless otherwise specified in the relevant Order Form, the Kallidus Content shall be delivered to the Customer by the provision of a manifest file (via a SCORM stub file made available to the Customer).

3.3.2 Subject to the remainder of this Clause 3.3.2, the Kallidus Content shall be provided for the number of licences specified in the relevant Order Form and for whom the Customer has for the time being paid Kallidus fees in accordance with the Contract. Further:

(a) **For a Customer taking the Kallidus Learn Service:**

- (i) where the total number of licences for Kallidus Content specified in the relevant Order Form and paid for by the Customer *equals or exceeds* the number of Users authorised for the Kallidus Learn Service, then the Users authorised from time to time to use the Kallidus Learn Service shall be able to use the Kallidus Content; and
- (ii) where the total number of licences for Kallidus Content specified in the relevant Order Form and paid for by the Customer is *less* than the number of Users authorised for the Kallidus Learn Service, then only the number of individuals that equals the number of licences may use the Kallidus Content SAVE THAT the Customer may (subject always to Clause 3.3.3 below) reallocate licences for Kallidus Content for a reasonable number of departing employees to the new individual replacing that employee.

(b) **For a Customer not taking Kallidus Learn:**

- (i) unless expressly specified otherwise in the relevant Order Form, the Kallidus Content shall be used by only one individual for each licence specified for such Kallidus Content in the relevant Order Form and paid for by the Customer. For the avoidance of doubt, if licences can be reallocated to an alternate individual, the Order Form shall expressly specify so.

3.3.3 Where licences for Kallidus Content may be reallocated, Kallidus reserves the right to undertake investigations and/or audits of the Customer to verify that licences are only being reallocated from a departing employee to a replacement employee and the Customer shall co-operate with such investigations and/or audits and promptly provide to Kallidus such information as is reasonably necessary to allow Kallidus to verify that licences are being reallocated correctly. If licences are not being allocated correctly or if Kallidus, in its reasonable discretion, believes that the level or practices of reallocation by the Customer is not reasonable, the Customer shall pay Kallidus promptly on demand for the additional licences used, calculated on a pro rata basis to the then current Kallidus Content licence costs.

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- 3.3.4 The Customer shall not engage in User Cycling.
 - 3.3.5 The Customer shall only use the Kallidus Content for the permitted Use. Other than as specifically permitted by these Terms, the Customer may not make any use of the Kallidus Content, including for any commercial purposes whatsoever. Without limiting the foregoing, the Customer shall not sell, adapt, copy, create a derivative work or otherwise reproduce, modify or distribute the Kallidus Content in any form or manner.
 - 3.3.6 The Customer shall permit authorised Users to view and use the Kallidus Content but only for the permitted Use in accordance with this Contract.
 - 3.3.7 The Kallidus Content shall be provided on an “as is” basis. Save as specified in Clause 3.3.10 below, Kallidus shall use its commercially reasonable endeavours to try to ensure that Kallidus Content is up to date, accurate and not misleading.
 - 3.3.8 Licences for Kallidus Content shall be valid for use during the relevant year of the term. Licences paid for but not used during a particular year shall not be rolled over into the subsequent year.
 - 3.3.9 Kallidus may add to, modify, remove and/or replace any part of the Content during the Term in its discretion, provided that such changes shall not materially adversely affect use of the Content by Kallidus’ customers generally.
 - 3.3.10 Where Kallidus Content has been customised by Kallidus for the Customer (normally specified in a signed order and with customisation services paid for), the Kallidus Content shall not be kept up to date by Kallidus after customisation. Any updates will need to be requested by the Customer and, if such updates are to be made to the customised course(s), the Customer and Kallidus shall agree the relevant charges for such customisation services.
- 3.4. The Customer shall not remove or modify any copyright or other notices included in Kallidus Content, and it shall further include proper attribution or an appropriate copyright or other notice, as may be reasonably required by Kallidus from time to time.
- 3.5. **In respect of Professional Services:**
- 3.5.1 Kallidus agrees to provide any Professional Services to the Customer and the Customer will pay for such Professional Services in addition to the fees for the Service. The Customer agrees:
 - (a) to use the number of Professional Services days specified in the relevant Order Form within the six-month period starting on the date of the relevant Order Form;
 - (b) that it shall forfeit any Professional Services days or time not used within the (6) six-month period and no credit or refund will be given for these unused days or time; and
 - (c) that reasonable travel charges and expenses (incurred in accordance with the Kallidus expenses policy, a copy of which is available on request) will be billed and payable in addition to the charges contracted for Professional Services, subject always to Kallidus notifying and receiving approval from the Customer in advance of incurring any such charges or expenses where the individual charge or expense exceeds £250.
- 3.6. Kallidus reserves the right to suspend access to the Service and/or Kallidus Content:

- 3.6.1 to any or all User(s) if it becomes aware of any unauthorised use or any misuse or abuse of the Service or relevant content by the Customer or the Customer has knowingly allowed any misuse or abuse of the Service or relevant content by a User or Users; and/or
- 3.6.2 to any User(s) that are, or Kallidus reasonably believes are, making any unauthorised use or are misusing or abusing the Service and/or Kallidus Content, whether or not such use, misuse or abuse has been allowed by, or been made with the approval or knowledge of the Customer.

However, unless it reasonably believes that it must do so immediately to avoid or mitigate civil or criminal liability, Kallidus shall first consult with the Customer.

- 3.7. Kallidus agrees that the Customer may brand the Service (using any brands owned by the Customer or by its Group Companies, joint ventures and customers that it is permitting to use the Service). The Customer shall indemnify Kallidus against any claim that the Customer's branding of the Service infringes in any respect the Intellectual Property Rights of any third party.
- 3.8. Kallidus shall use all reasonable measures, including using up to date commercially available anti-malware software, to prevent any Virus from entering or accessing any IT system used by the Customer in relation to the Service and/or the Content.
- 3.9. Kallidus may utilise artificial intelligence (AI) in the Services, including to provide tools and assist with tasks (such as checks or support) or to provide efficiencies, as well as provide insight into the use of our services and for future development and enhancement. Kallidus' use of AI will be compliant with all applicable rules and regulations including Data Protection Laws, including human oversight as appropriate.
- 3.10. Notwithstanding anything to the contrary set forth in this Contract, Kallidus may convert any User Data and/or Agreement Personal Data into pseudonymised, anonymised, aggregated (including with other similar data of Kallidus' other customers) and/or statistical data ("**Converted Data**"). Kallidus may use such data for any lawful business purpose, including to conduct statistical analysis and learnings and development for the purpose of:
 - 3.10.1 monitoring and supporting the Customer's use of the Service(s) delivered;
 - 3.10.2 delivering its services to customers generally;
 - 3.10.3 providing insights to the Customer into how its usage compares to Kallidus' other customers;
 - 3.10.4 identifying potential Service defects or issues; and
 - 3.10.5 identifying and developing enhancements to Kallidus' suite of services.
- 3.11. Kallidus accepts that in Processing Agreement Personal Data to convert it to Converted Data for any of the purposes under clauses 3.10.1 to 3.10.5 (inclusive), such Processing will only form part of the Customer's written instructions for Processing Agreement Personal Data where the analysis is solely in relation to Agreement Personal Data and for purposes which are to support the Customer and its use of the Service(s) ("**Customer Data Analysis**").
- 3.12. In relation to the Processing of Agreement Personal Data to convert it to Converted Data for any of the purposes under clauses 3.10.1 to 3.10.5 (inclusive) for purposes other than Customer Data Analysis ("**General Data Analysis**"), Kallidus accepts and agrees that in such event, Kallidus will be acting in the capacity of a Controller and shall be liable for compliance with the Data Protection Legislation in respect of such Processing. Further Kallidus shall only Process Agreement Personal Data in connection with General Data Analysis to the extent required to convert such

Personal Data to Converted Data and shall ensure that, following such conversion, the Converted Data used for General Data Analysis is no longer Agreement Personal Data.

4. FAIR USAGE OF THE SERVICE

- 4.1. Kallidus may continuously or at any time audit and/or monitor the Customer's usage of a Service, or any element thereof so as to determine whether such usage is in accordance with its selected Services Tier violates these Terms and/or is otherwise outside of normal usage patterns or so excessive that the Customer's service levels or those of Kallidus' other customers are being (or, in Kallidus' reasonable discretion, are likely to be) detrimentally affected. Kallidus may request the Customer to engage in a fair usage review in such circumstances.
- 4.2. Kallidus understands that customers will occasionally have very high volumes of traffic outside of normal usage patterns. In those cases where this traffic can be predicted Kallidus requests to be informed with as much notice as is reasonably possible to ensure that service delivery remains consistently high.
- 4.3. The total storage available to the Customer for its Users is calculated as 20MB per User, per Service, per annum, calculated across a rolling 12 month period or 30 GB, whichever is the larger. For the purposes of calculating the average, the mean number of Users during the relevant 12 month period shall be used (or, during the first 12 months of the Contract, the mean number calculated pro rata across that shorter period).
- 4.4. A combination of metrics are monitored that includes nightly processing, storage usage, data transactions and others, which can be used to gauge impact of a specific customer's usage. These are subject to change as the Customer's use of the Service(s) evolves.
- 4.5. If Kallidus, in its reasonable opinion, deems the Customer's usage of a Service, or any element thereof, as excessive, Kallidus shall discuss with the Customer to seek to ensure optimal usage of the Service. Further, Kallidus may, at its sole discretion:
 - 4.5.1 Limit usage of the Service by the Customer; or
 - 4.5.2 Charge the Customer an additional fee (to be determined by Kallidus) for such excessive usage of the Service.
- 4.6. In relation to use of service components which are outside the Customer's Services Tier, the following provisions shall apply:
 - 4.6.1 Kallidus may tell the Customer if it is making use of service components which do not fall into its Services Tier;
 - 4.6.2 The Customer shall discuss in good faith with Kallidus the upgrading of its chosen tier so as to include those service components of which it is making use. An upgrade shall be agreed in writing (normally by the signing of an Order Form);
 - 4.6.3 If the Customer does not wish to upgrade its Services Tier, it shall immediately cease use of all service components which fall outside of its Services Tier.
 - 4.6.4 If use of service components outside of its tier continues or recommences thereafter, Kallidus may unilaterally change the Customer's Services Tier to the relevant tier that does include the service components being used and charge the Customer the additional fees payable for the tier that the Customer is now receiving.
 - 4.6.5 Such additional fees shall be invoiced immediately and payable by the Customer for the current year of the Services Term (or rolling year of the term). For subsequent years, the annual invoice shall reflect the charges for the upgraded tier.

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- 4.6.6 Prior to making the change allowed by Clause 4.6.4, Kallidus shall give to the Customer not less than 30 days' written notice of its intention to make such a change to the Customer's tier and charge additional fees if any use of the out-of-tier service components continues or re-occurs.

5. THE CUSTOMER'S RESPONSIBILITIES

- 5.1. The Customer shall use the Service only for its own internal business purposes or the internal business purposes of those third party companies permitted by it to use the Services.

5.2. The Customer:

- 5.2.1 is responsible for all User activity in relation to Content and in relation to the Service all User activity occurring under its User accounts where such Users are:

- (a) its (or any member of its Group's) employees, workers, consultants, contractors and/or other duly appointed representatives; or
- (b) the employees, workers, consultants, contractors and/or other duly appointed representatives of a third party permitted by the Customer to use the Service.

The Customer shall be liable for any failure by any such User to comply with the provisions of this Contract; and

- 5.2.2 shall, in respect of all other Users, use reasonable commercial efforts to ensure that all User activity is in compliance with the provisions of this Contract.

- 5.3. The Customer shall prevent any unlawful and/or unauthorised use, including any use by persons who are not Users. The Customer shall comply with (and shall procure that all Users comply with) all relevant laws and regulations that are applicable to the Customer in using the Service and/or the Kallidus Content including those related to data privacy and the transmission of Personal Data and/or to the provision of user to user services.

5.4. In respect of the Service,

- 5.4.1 the Customer shall ensure that each username and password combination or passkey ("**Login**") is only used by one person;

- 5.4.2 the Customer may create separate Logins for as many Users as its account allows and it has paid Kallidus fees for;

- 5.4.3 the Customer will not allow or suffer any User licence to be used by more than one individual User unless it has been reallocated to another individual User, in which case the prior User shall no longer have any right to access or use the Service;

- 5.4.4 the Customer shall not engage in User Cycling; and

- 5.4.5 the Customer is responsible for maintaining the security of Logins to its account.

5.5. The Customer shall:

- 5.5.1 notify Kallidus promptly upon becoming aware of any unauthorised use of any password or passkey or account or any other known or suspected breach of security;

- 5.5.2 report to Kallidus promptly upon becoming aware of any infringement of Kallidus' Intellectual Property Rights and use reasonable efforts to stop immediately any such

infringement and/or any copying or distribution of Content that is known or suspected by the Customer or its Users; and

- 5.5.3 not permit any User to log in as, or impersonate another Kallidus user, or provide false identity information to gain access to or use the Service.
- 5.6. The Customer shall not, and shall procure that Users shall not, in the course of the use of the Service access, store, distribute or transmit any material during the course of its use of the Service that:
 - 5.6.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 5.6.2 facilitates illegal activity;
 - 5.6.3 depicts sexually explicit images;
 - 5.6.4 promotes unlawful violence;
 - 5.6.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or
 - 5.6.6 causes damage or injury to any person or property.
- 5.7. The Customer shall use all reasonable measures, including by the use of up to date commercially available anti-malware software, to prevent any Virus from entering or accessing any IT system used by Kallidus in relation to the Service and/or Kallidus Content.
- 5.8. Kallidus reserves the right, without liability to the Customer, to disable the Customer's access to any material that breaches the provisions of this Clause 5. However, unless it reasonably believes that it must do so immediately to avoid or mitigate civil or criminal liability, it shall first consult with the Customer.
- 5.9. The Customer shall not:
 - 5.9.1 except as may be allowed by applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under the Contract:
 - (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the software in the Kallidus Technology in any form or media or by any means; or
 - (b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the software in the Kallidus Technology;
 - 5.9.2 use or otherwise access all or any part of the Service or Kallidus Content in order to build a product or service which competes with the Kallidus services, or for benchmarking or competitive use or analysis of the Kallidus services; or
 - 5.9.3 use or otherwise access all or any part of the Service and/or Kallidus Content to provide services to third parties (other than to provide the relevant functions to Users); or
 - 5.9.4 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Service and/or Kallidus Content available to any third party except the Users in accordance with the Contract; or

- 5.9.5 attempt to obtain, or assist third parties in obtaining, access to all or any part of the Service and/or Kallidus Content other than as provided by the Contract.
- 5.10. If the Customer becomes aware of:
 - 5.10.1 any use of the Service, and/or Kallidus Content which is or might be in breach of any of the provisions of this Clause 5, or is otherwise an inappropriate use or action in respect of the Service or relevant content by any User (whether such User(s) fall into Clause 5.2.1 or 5.2.2); or
 - 5.10.2 any Virus that it may have introduced into Kallidus' IT systems or the Kallidus Technology, Content or Services or any Vulnerability,

the Customer shall promptly notify Kallidus and assist Kallidus, as Kallidus may reasonably require, to deal with such breach, inappropriate use or action, Virus and/or Vulnerability. The obligations in this Clause 5.10 do not prejudice any other right or remedy that Kallidus may have in respect thereof.

6. INTELLECTUAL PROPERTY OWNERSHIP

- 6.1. Except as expressly provided in this Contract, no right, title or interest of any manner or sort (including in respect of Intellectual Property Rights) is granted to the Customer.
- 6.2. Without prejudice to Clause 6.1, Kallidus (and its licensors, where applicable) shall own and continue to own all right, title and interest, including all related Intellectual Property Rights, in and to:
 - 6.2.1 the Kallidus Technology, the Service and the Kallidus Content,;
 - 6.2.2 in respect of anything used or developed in Kallidus' provision of the Professional Services (as set out in Schedule 5); and
 - 6.2.3 any suggestions, ideas, enhancement requests, feedback or recommendations ("**Feedback**") provided by the Customer or User or any third party acting on behalf of or providing advice to the Customer or otherwise acting in the performance of an agreement with the Customer (in this Clause "**Third Parties**") relating to the Service. The Customer assigns to Kallidus and shall if necessary procure that all Third Parties shall assign to Kallidus, by way of present and future assignment, all Intellectual Property Rights in all Feedback.
- 6.3. The Contract is not a sale and does not convey to the Customer or any User any rights of ownership in or related to the Service, the Kallidus Content, the Kallidus Technology or the Professional Services, or the Intellectual Property Rights owned by Kallidus or (where applicable) its licensors. The Kallidus name, the Kallidus logo, and the product or other names associated with the Service and/or Kallidus Content are trademarks of Kallidus, and no right or licence is granted to use them.
- 6.4. The Customer (and its licensors, where applicable) shall own and continue to own all right, title and interest, including all related Intellectual Property Rights, in and to the Customer Content. The Customer grants Kallidus an irrevocable, worldwide licence to use, store, copy and share that Customer Content as required to allow Kallidus to perform its rights and obligations under this Contract, which includes enabling the Customer to use the Kallidus services, improving and developing the Kallidus services and necessary activities to enable and support such purposes.

7. FEES AND PAYMENT

7.1. The Service and/or Kallidus Content:

7.1.1 Kallidus shall invoice the Customer for the fees in advance annually (or as otherwise specified in the relevant Order Form).

7.1.2 During the Services Term, the fees for the Service and/or Kallidus Content shall be as set out in the relevant Order Form.

7.2. Professional Services:

7.2.1 The fees for any Professional Services shall be specified in and payable in accordance with the relevant Order Form, or in respect of any other services that Kallidus agrees to provide to the Customer as such fees are agreed by the parties. In addition to all such fees, the reasonable travel and other out of pocket expenses incurred by Kallidus (subject to Clause 3.5 above) shall be payable in accordance with the Kallidus expenses policy.

7.2.2 Kallidus may increase the Daily Rate (as defined in Schedule 6) for Professional Services from time to time and the then current rate shall apply for all subsequent orders of Professional Services.

7.3. If the Customer requires a purchase order number to be included on any invoice, it is the Customer's responsibility to ensure that Kallidus is provided with the appropriate reference number so as to allow timely issuing by Kallidus of any invoice. The Customer shall not be entitled to use the lack of a purchase order number as a reason to reject an invoice or avoid prompt payment in accordance with the Customer's obligations under this Contract. Overage charges invoiced by Kallidus shall not require a purchase order.

7.4. Subject to Clause 7.3 above, all invoices provided by Kallidus shall be paid by the Customer within thirty (30) days of the date of the relevant invoice, unless an alternative payment period is set out in the Order Form.

7.5. Subject to the provisions of Clauses 8 and 9 below, all fees paid in advance are non-refundable save in the event of the Customer lawfully terminating the Contract due to Kallidus being in breach of this Contract (and without prejudice to any other remedy which the Customer may have) in which case Kallidus will refund the Customer, on a pro rata basis, any pre-paid fees for the period starting on the date on which the breach occurred and ending on the date on which this Contract would have expired had the Customer not exercised its right to terminate.

7.6. All prices and fees are in the currency specified in the Order Form. All amounts payable under the Contract are exclusive of value-added tax.

7.7. Any other Kallidus charges not specified in the relevant Order Form shall be charged and paid in line with Kallidus' prevailing prices from time to time.

7.8. If the Customer wishes to dispute any invoice, it must notify Kallidus within fourteen (14) days of the date of the relevant invoice. If no notification is received, such invoice shall be deemed undisputed.

8. NON-PAYMENT AND SUSPENSION

8.1. Without prejudice to any other available remedy, Kallidus reserves the right to suspend the Contract, the Customer's access to the Service and/or any other Kallidus service if any sums are overdue to be paid by it and the Customer has not paid any undisputed sums within thirty (30) days of receipt of a notice from Kallidus notifying the Customer that the payment is late and requesting payment.

- 8.2. Late payments shall automatically accrue interest from the due date until payment in full is received by Kallidus at the rate for the time being in force under the Late Payment of Commercial Debts (Interest) Act 1998. No fees or other charges will be refunded or waived in respect of any period of suspension. Where interest accrues on any sum due in accordance with this Clause 8, any payment later received will be applied first in payment of the interest due, and only secondly in reduction of the indebtedness.

9. TERM & TERMINATION

9.1. Term

9.1.1 The Contract starts on the Effective Date and shall continue until terminated by either party in accordance with these Terms.

9.1.2 The term for the provision of Kallidus service(s) shall be the Services Term set out in the Order Form creating the agreement for the particular service(s) and any agreed extension of the term unless earlier terminated by either party in accordance with this Contract.

9.2. Termination of the Contract:

9.2.1 This Contract may be terminated by either party at the times and by giving such notice as is specified in the Order Form (Call-Off Contract).

9.3. One party ("**the notifying party**") shall at any time during the Term be entitled to terminate the relevant agreement in respect of a particular Kallidus service or the Contract immediately by written notice to the other ("**the notice recipient**") if the notice recipient:

9.3.1 fails to pay an undisputed sum to the notifying party within thirty (30) days of having received a notice from the notifying party giving details of the late payment and requesting payment. If the sum is owed to Kallidus, a notice issued by Kallidus pursuant to Clause 8.1 above shall serve as an appropriate notice by it under this Clause 9.3.1;

9.3.2 commits any material breach of the Contract that is not capable of remedy (including, in the case of the Customer and without limitation, any breach of confidentiality or any infringement of Kallidus' Intellectual Property Rights);

9.3.3 commits any material breach of the Contract that is capable of remedy and fails to remedy it within thirty (30) days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied; or

9.3.4 is involved in any legal proceedings concerning its solvency, or ceases trading, or enters into liquidation, whether compulsory or voluntary (other than for the purposes of an amalgamation or reconstruction), or makes an arrangement with its creditors or petitions for an administration order or has a receiver or manager appointed over all or any part of its assets or generally becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or any analogous event occurs in any relevant jurisdiction.

9.4. On termination of the Contract:

9.4.1 all relevant Kallidus services being provided under the Contract shall terminate automatically;

9.4.2 if termination is for any reason other than termination by the Customer under Clause 9.3 above, all fees and other sums that are payable under the relevant agreement or Contract (as relevant) that is terminated shall become due for payment immediately;

9.4.3 if termination is made by the Customer under Clause 9.3, all fees and other sums that are payable under the relevant agreement or Contract (as relevant) up to the date of termination shall be due for payment immediately; and

9.4.4 Offboarding:

- (a) Prior to the date of termination in relation to a Service, the Customer can extract its data from the Service via administrator functions.
- (b) Subject to agreement as to (i) costs and (ii) the scope of services for the Professional Services to be utilised in providing such data return, Kallidus shall assist the Customer with the return of such of the Customer's data (including User Data) as is agreed in that scope from the relevant Service being terminated and which data is in Kallidus' possession or under its control PROVIDED ALWAYS that the formal request for assistance must be made by the Customer to Kallidus before the termination date. For the avoidance of doubt, additional requests for assistance made after the termination date shall not be considered as validly received under this provision.
- (c) Data to be returned pursuant to sub-clause (b) shall normally be returned in a .csv format but, subject to agreement as to additional costs involved, alternative formats may be reasonably requested by the Customer and agreed by Kallidus.
- (d) For the avoidance of doubt, in respect of the return of data, Kallidus shall be entitled to charge its reasonable costs in undertaking activities to effect such return, such costs to be in accordance with its then applicable rate for Professional Services. For the avoidance of doubt, for a customer with small or moderate amounts of data and a .csv format request, the normally anticipated costs would be for up to 3 days of Professional Services time; for a customer with a large amount of data and .csv format request, the costs would normally be up to 5 days of Professional Services time.
- (e) Kallidus shall as far as technically possible delete data which belongs to the Customer, including User Data, which is in Kallidus' possession or under its control in relation to the Kallidus services being terminated. Deletion will occur from such date as is thirty (30) days after the relevant date of termination, unless a validly received request for return pursuant to sub-clause (b) above is in progress.

9.4.5 On receipt of a written request from the Customer Kallidus shall certify to the Customer in writing that it has destroyed or returned the data as referred to in Clause 9.4.4.

9.5. Any termination of the Contract will not affect any accrued claims, rights or liabilities of either party nor will it affect the coming into force or continuation in force of any other provisions of the Contract, which are expressly or by implication intended to come into force or continue in force on or after termination, including Clauses 6 (Intellectual Property Ownership), 11 (Indemnities), 12 (Confidentiality), 14 (Data Protection) and 15 (Limitations of Liability).

10. WARRANTIES

10.1. Each party warrants that it has the legal power and authority to enter into the Contract.

10.2. Subject to the remainder of this Clause 10 and Paragraph 6 of Schedule 2 Part B, Kallidus warrants that:

10.2.1 it has the right to grant to the Customer the rights granted under the Contract and that Kallidus has obtained all required permissions from its licensors (if any); and

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- 10.2.2 subject to Clause 10.3, the Service and the API will perform in all material respects with Schedule 1, Schedule 2 (Part A for the Service and Part B for the API) and Schedule 3.
- 10.3. The warranty given in Clause 10.2.2 shall not apply to any non-conformance or non-compliance with service levels to the extent that it is caused by any unreasonable use of the Service and/or the API or any use of the Service or the API by the Customer or any User contrary to Kallidus' instructions, or modification or alteration of the Service or any API by any party other than Kallidus or Kallidus' duly authorised contractors or agents.
- 10.4. If the Service and/or the API does not conform with Schedule 1, Schedule 2 (Part A for the Service and Part B for the API) and Schedule 3, Kallidus will, at its expense, use reasonable commercial endeavours to correct any such non-conformance promptly. Such correction constitutes the Customer's sole and exclusive remedy for any breach of such warranty. Notwithstanding the foregoing, Kallidus:
- 10.4.1 does not warrant that the Customer's use of the Service and/or the API will be uninterrupted or error-free;
- 10.4.2 Kallidus does not warrant that the Service, the API and/or the information obtained by the Customer through the Service will meet the Customer's requirements (the Customer acknowledges that it is responsible for ensuring that a service having the specification of the Service will meet the requirements of the Customer or be fit for the purposes required of it by the Customer); and
- 10.4.3 is not responsible (unless caused by an act or omission of Kallidus) for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Service and/or the API may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 10.5. The Customer warrants that it intends to use the Service to provide to Users the functions specified in the Service Description in Schedule 1 for the relevant Service that it is contracting to receive under this Contract and not to provide services to any third party not being a User. The Customer further warrants that it has not falsely identified itself nor provided any false information to gain access to the Service and that its billing information is correct.
- 10.6. Except as set out expressly in these Terms, all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Contract.

11. INDEMNITIES

- 11.1. Kallidus will indemnify the Customer against any and all liability incurred by the Customer as a result of any third-party claim that the Service, the Kallidus Content and/or Professional Services, as provided by Kallidus to the Customer under the Contract and as used by the Customer in accordance with the Contract, infringes any third-party Intellectual Property Rights.
- 11.2. Kallidus' obligations under any indemnity under this Contract are subject to the following conditions:
- 11.2.1 the Customer must notify Kallidus in writing promptly after it becomes aware of a claim; and
- 11.2.2 the Customer must, if requested, grant Kallidus the sole control of the settlement, compromise, negotiation, and defence of any such claim and any related legal action; and;

- 11.2.3 the Customer must promptly provide Kallidus with all information related to the claim and any related legal action, and all other reasonable co-operation and assistance that is reasonably requested by Kallidus.
- 11.3. If any claim is made, Kallidus may at its option either:
 - 11.3.1 obtain the right for Customer to continue using the relevant Kallidus service; or
 - 11.3.2 modify the relevant Kallidus service so it is no longer infringing; or
 - 11.3.3 terminate the agreement for the relevant Kallidus service(s) or the Contract.
- If Kallidus terminates the agreement or the Contract, Kallidus shall refund on a pro-rata basis any fees for the relevant Kallidus service(s) so terminated that have been paid in advance.
- 11.4. Kallidus shall not be liable for any settlement made by the Customer without Kallidus' advance written approval or for any award from any legal action in which Kallidus was not, if requested, granted sole control of the defence in accordance with this Clause 11.
- 11.5. The parties agree to co-operate in good faith in the defence of any legal action or suit that causes the Customer to invoke an indemnity under this Contract.
- 11.6. Clause 11.1 states Kallidus' entire liability and the Customer's exclusive remedy for a claim of infringement of Intellectual Property Rights of any kind.
- 11.7. The Customer shall indemnify Kallidus against any and all liability incurred by Kallidus as a result of any claim that any User Data or any other content or material that the Customer or any User uploads to or uses in relation to the Service and/or Kallidus Content (including the Customer Content), or any unauthorised or unlawful use that the Customer or any User makes of the Service, infringes any proprietary right of any third party or is offensive or unlawful in any respect in any jurisdiction in which the Service may be used by the Customer or by any User.

12. CONFIDENTIALITY

- 12.1. During the term of the Contract, each party may have access to confidential information of the other party. **"Confidential Information"**:
 - 12.1.1 of the Customer shall include but not be limited to employee data of the Customer (including the User Data);
 - 12.1.2 of Kallidus shall include but not be limited to confidential aspects of the Service and the Kallidus Technology; and
 - 12.1.3 of each party shall include all other information relating to its business, customers, contracts, financial information, research and development information, formulae, methods, know-how, processes, designs, performance tests, product evaluations, computer software and any other information identified as confidential or information that the receiving party knew or reasonably should have known was confidential.
- 12.2. Confidential Information shall be used by the receiving party solely to exercise its rights and/or perform its obligations and responsibilities under the Contract and shall not be disclosed to any third party, except as permitted by Clauses 12.5 and 12.6. Each party shall take reasonable precautions, at least as great as the precautions it takes to protect its own confidential information but in no event using less than a commercially reasonable standard of care, to maintain the Confidential Information of the other party in strict confidence.

- 12.3. The database files, database structure, column names, table names, datatypes, field lengths, database views or residual code contained within any copy of the Customer Content that Kallidus delivers to the Customer are part of the Kallidus Technology and are expressly designated by Kallidus as confidential aspects of the Service, and therefore constitute Confidential Information of Kallidus under this Contract. Notwithstanding any other provision of this Contract, it is expressly agreed by the Customer that the Customer shall only provide information that would or might include any elements of such information, including Customer Content, to a third party in a raw data form to ensure that no Confidential Information of Kallidus is disclosed.
- 12.4. Confidential Information shall not include any information that the receiving party can establish:
- 12.4.1 is or subsequently becomes publicly available through no act or omission of the receiving party;
 - 12.4.2 was in the receiving party's lawful possession (without restriction of confidentiality) prior to disclosure of such information;
 - 12.4.3 is subsequently disclosed to the receiving party by a third party who is not in breach of an obligation of confidentiality; or
 - 12.4.4 is independently developed by the receiving party without the use or benefit of any part of the Confidential Information.
- 12.5. The receiving party may disclose Confidential Information of the disclosing party to relevant group companies, and its (and its relevant group company's) employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the receiving party's rights or carrying out its obligations under or in connection with this Contract. The receiving party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the disclosing party's Confidential Information comply with the confidentiality obligations contained in this Clause 12.
- 12.6. Confidential Information may be disclosed by the receiving party pursuant to any applicable laws, rules, regulatory authority, request or requirements of any investment exchange, court order, a valid subpoena, or other legal process, provided in each case that, where it is not prohibited from doing so, the receiving party promptly notifies the disclosing party in writing of such intended disclosure and provides the disclosing party an opportunity to seek an appropriate protective order prior to disclosing such Confidential Information.
- 12.7. The disclosing party may be irreparably damaged if the obligations of confidence under this Clause 12 are breached and such party may not have an adequate remedy in damages in the event of a breach by the other party of such obligations. The parties agree, therefore, that such party may be entitled, in addition to other available remedies, to apply for an injunction restraining any actual, threatened or further breaches of the other party's obligations of confidence or any other appropriate equitable order or decree.
- 12.8. The obligations under this Clause 12 shall continue in full force and effect notwithstanding the termination of this Contract.

13. CUSTOMER CONTENT

- 13.1. The Customer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Content.
- 13.2. In the event of any loss or damage to Customer Content, the Customer's sole and exclusive remedy (subject to any liability that Kallidus may have to the Customer pursuant to Clause 14 below) shall be for Kallidus to use reasonable commercial endeavours to restore the lost or damaged Customer Content from the latest back-up of such Customer Content maintained by

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Kallidus in accordance with its standard back-up procedure. Kallidus shall not be responsible for any loss, destruction, alteration or disclosure of Customer Content caused by any third party (except those third parties sub-contracted by Kallidus to perform services related to Customer Content maintenance and back-up).

- 13.3. Kallidus will not bear any responsibility for the quality or integrity of data provided by the Customer. It remains the Customer's responsibility to ensure that data provided to Kallidus by or on behalf of the Customer (including by any Users) has been correctly validated or after provision is appropriately altered or adapted in any way. Kallidus' audit logs shall be used to identify where alterations or adaptations have been made by the Customer's Users.
- 13.4. Kallidus reserves the right to charge the Customer for work undertaken to diagnose data quality issues in any processable data provided by the Customer.
- 13.5. Without prejudice to Clause 5.7, the Customer shall use all reasonable endeavours to ensure that any Customer Content uploaded to or otherwise provided to Kallidus for inclusion in any Service or Content shall be free of any Viruses, Vulnerabilities, malware, defects or similar.

14. DATA PROTECTION

- 14.1. Each party will comply with its obligations under applicable Data Protection Legislation. Where Kallidus is acting as a Data Processor for the Customer, the provisions of Clauses 14.2 to 14.11 shall apply.

14.2. General Processor Provisions:

- 14.2.1 The parties acknowledge that for the purposes of Data Protection Legislation, in delivering the Service to the Customer the Customer is the Data Controller and Kallidus is the Data Processor.
- 14.2.2 In performing the Services, Data Analysis and its other obligations under this Contract Kallidus will comply with the Data Protection Legislation.
- 14.2.3 The Customer will comply with all applicable requirements of the Data Protection Legislation in relation to its obligations under this Contract and the use of the Service and in relation to the Processing of Agreement Personal Data.
- 14.2.4 The Customer warrants and represents that it shall have full authority and all necessary appropriate consents, rights, notices and/or safeguards in place to enable the lawful transfer of the Agreement Personal Data to Kallidus, the Processing of the Agreement Personal Data by Kallidus and any Sub-Processor and the transfer of Agreement Personal Data by Kallidus to the Customer and its Users for the duration and purposes of this Contract.
- 14.2.5 Neither party will cause the other party to breach any obligation under the Data Protection Legislation.
- 14.2.6 Kallidus will notify the Customer without undue delay if, in the performance of the Services, it identifies any areas of actual or potential non-compliance with the Data Protection Legislation or this Clause 14.
- 14.2.7 Each party shall be responsible for bearing the costs of its obligations under the Data Protection Legislation (unless otherwise expressly stated in this Contract).

14.3. **Authority**

The Customer authorises Kallidus to Process the Agreement Personal Data during the term of this Contract as a Data Processor solely for the purpose of providing the Services and undertaking or preparing for Data Analysis. For the purposes of this Clause 14, references to Processing for providing the Services shall include Processing for the purposes of undertaking or preparing for Data Analysis.

14.4. **Sub-Processing**

- 14.4.1 If Kallidus wishes to engage or use any third party for the Processing of Agreement Personal Data, it shall tell the Customer of the appointment of such third party by updating the list of Sub-Processors used from time to time and notifying the Customer via the Sub-Processor Notification Process (as defined in Clause 14.4.2). The list of Sub-Processors as at the Effective Date is available at www.kallidus.com/sub-processors. Any reference in this Contract to the list of Sub-Processors shall mean the latest version of the list as it is updated from time to time.
- 14.4.2 The Customer shall, within ten (10) Business Days of the Effective Date, sign up at www.kallidus.com/sub-processors to receive notifications of changes to Kallidus' Sub-Processors (the "**Sub-Processor Notification Process**").
- 14.4.3 The Customer may notify Kallidus in writing of any objection (on reasonable grounds) to the appointment of any Sub-Processor within five (5) Business Days of the date of Kallidus' notification in accordance with the Sub-Processor Notification Process. In the event the Customer objects to the appointment of a Sub-Processor, Kallidus shall take reasonable steps to address the objections raised by the Customer. If the Customer has been provided with a reasonable written explanation of the steps taken to address its objections or why its objections are unfounded, Kallidus (or the Sub-Processor) shall be entitled to proceed or continue with such appointment.
- 14.4.4 The Customer acknowledges and authorises the appointment of each of the Sub-Processors identified in the list of Sub-Processors as at the Effective Date and gives its approval to any Processing by such Sub-Processor(s).
- 14.4.5 Prior to the relevant Sub-Processor carrying out any processing activities, Kallidus will ensure that each Sub-Processor is appointed under a written contract containing terms that are similar to those imposed on Kallidus under this Clause 14.
- 14.4.6 Kallidus will remain responsible and liable to the Customer for all acts and omissions of Sub-Processors in respect of the data protection obligations under this Clause 14 as if they were its own acts and omissions.

14.5. **Data Protection Obligations**

14.5.1 Kallidus will:

- (a) Process the Agreement Personal Data only on documented instructions from the Customer (including this Contract and Processing activities set out in Paragraph 6 of Schedule 4). Kallidus shall further be authorised to Process the Agreement Personal Data if it is required so to do by the laws of the UK (or of any part of the UK) ("**Applicable Laws**"). Where Kallidus is relying on Applicable Laws as the basis for Processing Personal Data, Kallidus shall promptly notify the Customer of this before performing the Processing required by the Applicable Laws unless those Applicable Laws prohibit Kallidus from so notifying the Customer;

- (b) without prejudice to Clause 14.5.1(a) ensure that Agreement Personal Data will only be used for the purpose of providing and to the extent reasonably required to provide the Services and otherwise as expressly provided for in this Contract;
- (c) ensure that any individual authorised to Process Agreement Personal Data is subject to written confidentiality obligations to keep the Agreement Personal Data confidential;
- (d) throughout the term of this Contract, ensure that it takes account of and abides by the principles of data protection-by-design and data protection-by-default as required under Data Protection Legislation as they may be applicable to the provision of the Services and the Processing of the Agreement Personal Data;
- (e) implement (and assist the Customer to implement) technical and organisational measures to ensure a level of security appropriate to the risk presented by Processing the Agreement Personal Data, in particular from a Data Security Incident;
- (f) notify the Customer immediately if it receives any communication which relates directly to the Processing of the Agreement Personal Data or to either party's compliance with Data Protection Legislation or this Clause 14, and it shall provide the Customer with full co-operation and assistance in relation to any such communication;
- (g) provide reasonable assistance to the Customer in:
 - (i) documenting any Data Security Incidents and reporting any Data Security Incidents to the Information Commissioner and/or Data Subjects;
 - (ii) taking measures to address Data Security Incidents, including, where appropriate, measures to mitigate their possible adverse effects; and
 - (iii) conducting privacy impact assessments of any Processing operations and consulting with the Information Commissioner, Data Subjects and their representatives accordingly; and
 - (iv) relation to any complaints made by a Data Subject or investigations or enquiries made by any regulator or the Information Commissioner relating to the Customer or its obligations under the Data Protection Legislation; and
- (h) comply promptly with any request from the Customer to amend, delete or transfer Agreement Personal Data where it is not possible for the Customer to take such action itself within the Service functionality.

14.5.2 Where Kallidus receives a request from a Data Subject regarding the exercise of any data subject rights in respect of that person's Personal Data, it shall:

- (a) notify the Customer promptly but by no later than three (3) Business Days after receiving such a request;
- (b) provide the Customer with full co-operation and assistance in relation to any request made by a Data Subject to have access to that person's Personal Data; and

- (c) not disclose the Personal Data to any Data Subject or to a third party other than at the request of the Customer or as provided for in this Contract.

14.5.3 If Kallidus receives any other communication not mentioned in Clause 14.5.2, including, but not limited to, a complaint which relates directly to the Processing of the Agreement Personal Data or to either the party's compliance with Data Protection Legislation or this Clause 14, it shall immediately notify the Customer and it shall provide the Customer with full co-operation and assistance in relation to any such communication.

14.6. Information Provision

14.6.1 Where and to the extent required to do so by Data Protection Legislation, Kallidus will prepare and securely maintain a record of all categories of Processing activities carried out on behalf of the Customer in relation to the Agreement Personal Data in accordance with Data Protection Legislation (the "**Data Record**"). Kallidus will promptly upon request securely supply a copy of any such Data Record to the Customer.

14.6.2 Kallidus will during this Contract:

- (a) make available to the Customer all information within its possession and control that is reasonably necessary to demonstrate compliance with the obligations set out in this Clause 14; and
- (b) on request provide the Customer (or auditors mandated by the Customer) with a copy of the third party certifications; and
- (c) In the event that the Customer, acting reasonably, deems the information provided in accordance with Clause 14.6.2(b) insufficient to satisfy its obligations under Data Protection Legislation, Kallidus shall, on request by the Customer make available to the Customer such information as is reasonably necessary to demonstrate Kallidus' compliance with its obligations under this Clause 14 and Article 28 of the UK GDPR, and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose provided:
 - (i) such audit, inspection or information request is reasonable, limited to information in Kallidus' possession or control and is subject to the Customer giving Kallidus reasonable prior notice of such audit, inspection or information request;
 - (ii) the parties (each acting reasonably and consent not to be unreasonably withheld or delayed) shall agree the timing, scope and duration of the audit, inspection or information release together with any specific policies or other steps with which the Customer or third party auditor shall comply (including to protect the security and confidentiality of other customers, to ensure Kallidus is not placed in breach of any other arrangement with any other customer and so as to comply with the remainder of this Clause 14.6.2(c));
 - (iii) the Customer shall ensure that any such audit or inspection is undertaken during normal business hours, with minimal disruption to Kallidus' business;
 - (iv) all costs of such audit or inspection or responding to such information request shall be borne by the Customer, including the reasonable costs of, or incurred by, Kallidus in responding;

- (v) the Customer's rights to audit or inspect may only be exercised once in any consecutive 12 month period, unless otherwise required by the Information Commissioner's Office or if the Customer (acting reasonably) believes Kallidus is in breach of this Clause 14;
 - (vi) the Customer shall promptly (and in any event within one Business Day) report any non-compliance identified by the audit, inspection or release of information to Kallidus;
 - (vii) the Customer agrees that all information obtained or generated by the Customer or its auditor(s) in connection with such information requests, inspections and audits shall be Kallidus' Confidential Information;
 - (viii) the Customer shall ensure that each person acting on its behalf in connection with such audit or inspection (including the personnel of any third party auditor) shall not by any act or omission cause or contribute to any damage, destruction, loss or corruption of or to any systems, equipment or data in Kallidus' control or possession while conducting any such audit or inspection; and
 - (ix) this Clause (c) is subject to Clause (d).
- (d) The Customer acknowledges and accepts that relevant contractual terms agreed with Sub-Processor(s) may mean that Kallidus or the Customer may not be able to undertake or facilitate an information request or audit or inspection of any or all Sub-Processors pursuant to Clause 14.6.2(c) and:
- (i) the Customer's rights under Clause 14.6.2(c) shall not apply to the extent inconsistent with relevant contractual terms agreed with Sub-Processor(s);
 - (ii) to the extent any information request, audit or inspection of any Sub-Processor are permitted in accordance with this Clause (d), equivalent restrictions and obligations on the Customer to those in paragraphs 14.6.2(c)(i) to (c)(ix) (inclusive) shall apply together with any additional or more extensive restrictions and obligations applicable in the circumstances; and
 - (iii) the obligations on Kallidus under Clauses 14.4.5 and 14.6.2(c) shall be construed accordingly.
- (e) Taking into account Clause 14.6.2(d), Kallidus shall ensure that it has appropriate mechanisms in place to ensure its Sub-Processors meet their obligations under Data Protection Legislation. The Customer accepts that the provisions of Clause 14.6.2(d) shall satisfy Kallidus' obligations in that regard.

14.7. Location

14.7.1 Kallidus shall not transfer or Process any Personal Data outside the UK unless either required to do so by Applicable Law or unless the Customer's prior written consent has been obtained and the following conditions are fulfilled:

- (a) appropriate safeguards are, if required by Data Protection Legislation, in place relating to the transfer;
- (b) the data subject has enforceable rights and effective legal remedies;

- (c) Kallidus complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- (d) Kallidus complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data.

Notwithstanding the foregoing, it is expressly agreed and understood that, as set out in Clause 14.2.4 above, Kallidus shall be entitled (and has the Customer's consent) to transfer Agreement Personal Data to the Customer and its Users wherever in the world located as required by the Customer and/or its Users and the Customer shall ensure that all necessary safeguards are in place and provide the data subject with enforceable rights and remedies to permit such transfers.

- 14.7.2 The Customer further authorises (and gives its written consent to) Kallidus (or any Sub-Processor) to transfer any Agreement Personal Data for the purposes set out in this Contract, including Clause 14.5.1, outside of the UK (including from any country to another country) provided all transfers shall (to the extent required under Data Protection Legislation) be effected by way of an appropriate safeguard as permitted by Data Protection Legislation from time to time. Details of the authorised transfers and the appropriate safeguards shall be as set out in the list of Sub-Processors (as referred to in Clause 14.4.1 above).

14.8. **Breach Notification**

- 14.8.1 In respect of any Data Security Incident, Kallidus shall notify the Customer without undue delay (and normally within one (1) Business Day) after becoming aware of the Data Security Incident.
- 14.8.2 Notification of a Data Security Incident shall include details of the nature of the Data Security Incident, the categories and approximate number of Data Subjects and Agreement Personal Data records and any measure proposed to be taken to address the Data Security Incident and to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide all the relevant information at the same time, the information may be provided in phases without undue further delay, but Kallidus may not delay notification under this Clause 14.8 on the basis that an investigation is incomplete or ongoing.
- 14.8.3 Kallidus will not, and will procure that Sub-Processors will not, make or permit any announcement in respect of the Data Security Incident to any person without the Customer's prior written consent.

14.9. **Deletion or return of Agreement Personal Data**

- 14.9.1 Following the end of provision of the Services, or at any time at the option of the Customer, the deletion or return of Agreement Personal Data shall be dealt with under the provisions of Clause 9.4.4 above.
 - 14.9.2 Kallidus shall continue to comply with the provisions of these Terms in respect of any Agreement Personal Data that it is required by law to continue to possess.
- 14.10. Kallidus will tell the Customer promptly if it is asked to do something which might infringe the Data Protection Legislation or other Applicable Laws.
 - 14.11. Each party ("**the indemnifying party**") will indemnify and keep indemnified, defend and hold harmless the other party, its officers, employees and agents ("**the indemnified party**") in full against all claims, demands, actions, losses, liabilities, costs and expenses (including reasonable

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legal costs and disbursements) which the indemnified party suffers or incurs as a result of any act, omission or default of the indemnifying party in respect of the indemnifying party's obligations (or, in the case of Kallidus, the obligations of its authorised Sub-processors) under this Clause 14 and the indemnifying party's compliance with Data Protection Legislation.

- 14.12. The parties will each agree to any reasonable amendment to this Clause 14 required to bring it into line with any amendment to or re-enactment of any Data Protection Legislation or to allow each of the parties to comply with any requirement or recommendation of the Information Commissioner in relation to the Processing of Agreement Personal Data.

15. LIMITATION OF LIABILITY

- 15.1. Nothing in the Contract shall limit either party's liability for death or personal injury caused by a party's negligence or liability for fraud.

- 15.2. To the extent permitted by English law, in no event shall either party be liable for any:

15.2.1 loss of revenue;

15.2.2 loss of actual or anticipated profits;

15.2.3 loss of contracts;

15.2.4 loss of anticipated savings;

15.2.5 loss of business;

15.2.6 loss of opportunity;

15.2.7 loss of goodwill;

15.2.8 loss of reputation; or

15.2.9 any indirect or consequential loss,

in each case howsoever arising, whether such loss or damage was foreseeable or in the contemplation of the parties and whether arising in or caused by breach of contract, tort (including negligence and negligent misstatement), breach of statutory duty or otherwise.

- 15.3. To the extent permitted by English law and notwithstanding the form, whether contract, tort (including negligence and negligent misstatement), statutory duty, misrepresentation or otherwise in which any legal or equitable action may be brought against Kallidus, Kallidus shall not be liable under the Contract (including under an indemnity) for damages or any other monetary remedy which exceeds:

15.3.1 in respect of Kallidus' obligations under Clause 11 and 14.11 above, in total £5 million; and

15.3.2 in respect of all other claims, in total the greater of £50,000 and 100% of the aggregate fees paid or payable by the Customer in respect of the relevant Kallidus' service to which the claim(s) relate during the twelve (12) month payment period of the Contract in which the cause of action arises.

- 15.4. The provisions of the Contract allocate the risks between the Customer and Kallidus. Kallidus' pricing reflects this allocation of risk and the limitations of liability set out in this Clause 15.

- 15.5. Any material downloaded or otherwise obtained by the Customer or any User through the use of the Service is at Customer's own discretion and risk, and Kallidus shall have no responsibility for any damage to Customer's computer system or loss of data or any claim from a User or a third party that results directly or indirectly from the download, use or possession of any such material.
- 15.6. The parties agree that each of them shall be obliged to mitigate any loss which it may suffer or incur as a result of any matter that may give rise to a claim under this Contract, including any indemnity.

16. INTERNET DELAYS AND FORCE MAJEURE

- 16.1. The Service may be subject to limitations and/or delays, inherent in the use of the internet and electronic communications. Except to the extent that Kallidus is in breach of obligations under the Contract, Kallidus is not responsible to the Customer or any User for any delays, delivery failures, resulting from Customer's internet connectivity problems (unless such problems are directly caused by any act or omission of Kallidus).
- 16.2. Neither party shall be liable for any delay or default in performing any of its obligations (not being an obligation to pay money to the other party) if the delay or default results from events or circumstances outside its reasonable control, including, without limitation, interruption or failure of utility services (including but not limited to electricity or telephone services), failure of any transportation service, fuel shortage, any industrial dispute, fire, flood, earthquake, severe weather conditions, epidemics or pandemics and any knock-on consequences such as national restrictions, war or other hostilities, acts of terrorism, actions of governments or governmental agencies, riots or other civil commotions ("**event of force majeure**"). The party affected by the event of force majeure shall use all reasonable endeavours to remove or overcome the event of force majeure as soon as practicable. Such delay or default shall not constitute a breach of the Contract and the time for performance shall be extended by a period equivalent to that during which performance is so prevented by the event of force majeure. If such delay or default continues for a period of more than ninety (90) days, either party may terminate this Contract upon written notice to the other party.

17. PENETRATION TESTING

- 17.1. For the purposes of this Clause, "**Penetration Test**" shall mean:
- 17.1.1 a penetration test of Kallidus' externally hosted environments, conducted in a cloned representative version of its production environment; and
- 17.1.2 a penetration test of the efficacy of Kallidus' information technology security arrangements.
- 17.2. Kallidus shall (by using a CREST accredited organisation) perform a Penetration Test on at least a quarterly basis and at its own cost.
- 17.3. The Customer shall not at any time perform or attempt to perform (or request or involve any third party in any manner in the performance of or attempt to perform) any penetration tests of any Kallidus Technology or infrastructure.
- 17.4. Where any vulnerabilities are identified by the Penetration Test, Kallidus shall work to remedy such vulnerabilities within a reasonable time.

18. ASSIGNMENT

- 18.1. The Contract is personal to the parties, neither of whom may assign any of its rights or obligations under the Contract without the prior written consent of the other, provided that:

18.1.1 either party may assign its rights and obligations under the Contract to a purchaser of all or a substantial part of its business and undertaking without the consent of the other party; and

18.1.2 Kallidus may subcontract or delegate any or all of its obligations under this Contract to any third party.

19. DISPUTE RESOLUTION

If any dispute arises out of the Contract the parties will attempt in good faith to negotiate a settlement. If the matter is not resolved by negotiation, the parties will refer it to mediation in accordance with the Centre for Effective Dispute Resolution ("**CEDR**") Model Mediation Procedure (see [CEDR](#)). Unless the parties agree on the choice of mediator within seven (7) days of one party nominating a proposed mediator in writing to the other, the mediator shall be appointed by CEDR at the request of either party. If the parties fail to agree terms of settlement within forty-two (42) days of the start of the first meeting held under such procedure, the dispute may be referred to litigation by either party. Nothing in this Clause shall prevent or delay either party from seeking injunctive relief in any court in respect of any infringement of intellectual property or from issuing proceedings to recover any undisputed debt or from joining the other party to any proceedings issued against the first party by a third party.

20. ANTI – BRIBERY

20.1. Kallidus shall:

20.1.1 comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**");

20.1.2 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;

20.1.3 have and shall maintain in place throughout the term of this Contract its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;

20.1.4 promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by Kallidus in connection with the performance of this Contract.

21. ANTI-SLAVERY

21.1. In performing its obligations under the Contract, Kallidus shall:

21.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including the Modern Slavery Act 2015;

21.1.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;

21.1.3 include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in this Clause 21;

21.1.4 notify the Customer as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract; and

- 21.1.5 maintain records to trace the supply chain of services provided to the Customer in connection with this Contract and permit the Customer and its third party representatives reasonably to inspect Kallidus' records, and to meet Kallidus' personnel to audit its compliance with its obligations under this Clause 21.
- 21.2. Kallidus represents and warrants that at the date of this Contract it has not been convicted of any offence involving slavery and human trafficking, nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 21.3. Breach of this Clause 21 shall be deemed a material breach under Clause 9.3.3.

22. ANTI FACILITATION OF TAX EVASION

22.1. Kallidus shall:

- 22.1.1 not engage in any activity, practice or conduct which would constitute either:
- (a) a UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017; or
 - (b) a foreign tax evasion facilitation offence under section 46(6) of the Criminal Finances Act 2017;
- 22.1.2 have and shall maintain in place throughout the Contract such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including without limitation Kallidus' employees) and to ensure compliance with Clause 22.1.1;
- 22.1.3 notify the Customer in writing if it becomes aware of any breach of Clause 22.1.1 or has reason to believe that it or any person associated with it has received a request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017 in connection with the performance of this Contract;
- 22.1.4 on request from the Customer, within 6 months of the date of this Contract and annually thereafter, certify to it in writing (signed by an officer of Kallidus) compliance with this Clause 22 by Kallidus and all persons associated with it under Clause 22.2. Kallidus shall provide such supporting evidence of compliance as the Customer may reasonably request.
- 22.2. Kallidus shall ensure that any person associated with it who is performing Services in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person similar terms to those imposed on Kallidus in this Clause 22 ("**Relevant Terms**"). Kallidus shall be responsible for the observance and performance by such persons of the Relevant Terms and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Terms.
- 22.3. Breach of this Clause 22 shall be deemed a material breach under Clause 9.3.3.
- 22.4. For the purposes of Clause 22, the meaning of reasonable prevention procedure shall be determined in accordance with any guidance issued under section 47 of the Criminal Finances Act 2017 and a person associated with Kallidus includes any subcontractor of Kallidus.

23. NOTICES

- 23.1. Any notice given under the Contract shall be in writing and shall be delivered by hand (in which case delivery is effective immediately), by email (in which case delivery shall be deemed to have taken place on the next following Business Day), by Royal Mail special delivery (if posted and sent in the United Kingdom) or by airmail (if posted or sent outside the United Kingdom). If a notice is delivered by hand or posted then it must also be delivered simultaneously by email. In the case of Royal Mail special delivery, delivery shall be deemed to take place at the later of the time recorded by the delivery service as having left the notice at the party's address or two (2) Business Days after posting. In the case of airmail, delivery shall be deemed to take place seven (7) days after posting.
- 23.2. Notices to be either delivered by hand or posted shall be delivered or posted to the registered office address (or if not a company, its principal business address) from time to time of the relevant party.
- 23.3. Notices to be delivered to Kallidus by email shall be sent to the Contract Management team at contracts.ext@kallidus.com.

24. MISCELLANEOUS

- 24.1. The parties are independent contractors and nothing in the Contract shall be deemed to make either party an agent, employee, partner or joint-venturer of the other party. Neither party shall have the authority to bind, commit, or otherwise obligate the other party in any manner whatsoever.
- 24.2. Kallidus may use the Customer's plain text name to list the organisation as a customer of Kallidus and may, subject to obtaining the Customer's prior consent, issue press releases announcing that the Customer is a customer of Kallidus. Further, the Customer shall participate in a customer case study for marketing purposes if requested to do so by Kallidus, unless the Order Form specifies that it shall not do so. The parties will work in good faith to complete the case study. The case study may be used by Kallidus in any manner in relation to the marketing of Kallidus' services, including via the Kallidus website.
- 24.3. During the Term of the Contract and for six months after it ends, both parties agree not without the other party's prior written consent to solicit or to offer employment to any employee of the other party with whom it has had dealings in relation to the Contract. If a party breaches this restriction, it agrees to pay to the other party on demand as liquidated damages a sum equal to 20% of that person's starting annual gross salary or other contractual payment with the party in breach and agrees that this amount shall be recoverable as a debt. Notwithstanding the foregoing, this provision will not apply to an employee of a party who:
- 24.3.1 contacts the other party on his or her own initiative without any direct solicitation by that party;
- 24.3.2 responds to a general job advertisement of the other party; and/or
- 24.3.3 is independently presented to the other party by an employment agency.
- 24.4. This Contract constitutes the entire agreement between the parties regarding the subject matter of the Contract and supersedes all proposals and prior discussions and writings between the parties with respect to such subject matter. Further, with effect from the date of execution of this Contract, these terms and conditions shall wholly replace and extinguish any previous version of the Kallidus Standard SaaS Terms & Conditions ("**Previous SaaS Terms**") or other agreement between the parties that apply to relevant Kallidus services and to any Kallidus order forms that are in existence as at the date of this Contract ("Pre-existing Order Forms") and all such Pre-existing Order Forms shall be deemed as Order Forms under this Contract.

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- 24.5. Each party confirms that it has not relied on any pre-contractual statement made by the other in deciding to enter into the Contract.
- 24.6. A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of the Contract.
- 24.7. If any provision or part provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract.
- 24.8. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 24.9. No failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the 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.
- 24.10. The Contract 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 the laws of England and the parties submit irrevocably to the exclusive jurisdiction of the English courts.
- 24.11. If either party executes this Contract using an electronic signature, that party warrants that any such electronic signature is authentic and the person signing has the authority to enter into this Contract.

This Contract shall be entered into on the date of the second signature to the Call-Off Contract.

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Schedule 1 SERVICE DESCRIPTION

Kallidus' services are offered to its customers with the two function propositions of Learning (Kallidus Learn) and Development (Kallidus Perform).

The Service Tiers available to G Cloud 15 customers are:

- Kallidus Learn - Learning Advanced
- Kallidus Perform - Development Advanced

The functions for each service are as follows:

Kallidus Learn provides the following functionality:

- Support for eLearning
 - Support for AICC learning objects
 - Support for SCORM 1.2 and 2004 learning objects
- User Management
- Interactive Reporting
- Classroom management module
- Refresher Training

Kallidus Perform provides the following functionality:

- Manage Job roles
- Manage Competencies and Competency Frameworks
- Manage Performance Reviews
- Manage Objectives
- Manage Actions
- Interactive Reporting

Full details of the service components comprised in the Advanced tier for each service are available on Kallidus' website; a link to the relevant page will be included in the Order Form.

Schedule 2 - HOSTING AND BACK-UP POLICY & APIs

PART A – Hosting and Back-Up Policy

1. Kallidus will provide the Service as software-as-a-service (SaaS). Subject to the terms of the Contract, Kallidus shall use commercially reasonable endeavours to provide the Service with monthly uptime availability of a minimum of 99.5% of each month for the duration of the Contract.
2. Kallidus shall ensure that it has appropriate technical measures in place to continuously monitor uptime in increments no less than hourly.
3. For the purposes of this Schedule 2 “monthly uptime” shall be calculated as follows:

$$\text{(Excluding Scheduled Downtime)} \quad \frac{\text{Total hours in the relevant month that the Service is available and accessible}}{\text{Total number of hours in the relevant month}}$$

4. For the purposes of this Schedule 2, “scheduled downtime” includes any loss of availability of the Service due to planned upgrades and maintenance. Such upgrades and maintenance shall be conducted outside of Normal Business Hours every week during a two (2) hour maintenance window. The date and times for the maintenance window are published on the Kallidus support site at [Kallidus Status](#).
5. In addition to performing the planned upgrades detailed in paragraph 4 above, Kallidus reserves the right to perform:
 - 5.1 unscheduled maintenance outside Normal Business Hours, provided that Kallidus shall, where reasonably practicable, tell the Customer in advance if such maintenance will affect the availability of the Service; and
 - 5.2 emergency maintenance at any time with no notice to the Customer where, in Kallidus’ reasonable opinion, exceptional circumstances require such action (without limitation, such exceptional circumstances would include risks to the overall platform stability or where a critical security vulnerability is identified).
6. For the avoidance of doubt, if any unscheduled or emergency maintenance detailed in paragraph 5 above leads to a loss of availability of the Service then this shall be factored into the monthly uptime calculation detailed in paragraph 3 above.
7. The Service shall be provided from Kallidus’ contracted data centres and Kallidus shall ensure that such data centres are ISO 27001 certified.
8. Data is backed up each night to separate and geo-redundant (other datacentre) storage which is encrypted at rest. SQL transactions logs are backed up every (3) three hours.
9. Kallidus maintains a business continuity plan and this is regularly reviewed, and non-disruptive elements of the plan are tested annually.
10. If an unplanned event occurs which materially prevents or impairs the ability of Kallidus to provide the Service, Kallidus shall tell the Customer and keep the Customer regularly apprised of the situation regarding the resumption of the Service. The Customer may be told, and further information may be provided, by Kallidus via its website or at [Kallidus Status](#).

PART B – APIs

1. The Customer shall use a Kallidus API only as permitted by the Contract and/or as permitted by any API Policy of Use that Kallidus may in its discretion introduce for its customers from time to time.
2. Kallidus may cancel, suspend or terminate the Customer's right to use a Kallidus API at any time without notice but it shall at all times act reasonably in exercising these rights.
3. To ensure fair usage amongst all customers and protect the APIs, the Service and/or Kallidus Technology from abuse, Kallidus reserves the right to apply dynamic IP address throttling as it sees fit at any time, including to seek to ensure that Kallidus' internal systems continue to perform within the parameters that Kallidus may set from time to time.
4. Access to APIs will be provided on a system to system basis through a SAML token or subscription key, or such other manner as Kallidus may select from time to time.
5. Notwithstanding any other provision of this Contract, the Customer shall not (and shall procure that any third party that it wishes to obtain API access shall not):
 - 5.1 use, or permit the use of the APIs in any way that may knowingly adversely affect or corrupt the Service, the Kallidus Technology and/or any data (including attempting to upload any material containing a virus or other malicious code), or which may cause the API, the Service, the Kallidus Technology or any data to be interrupted, damaged or impaired in any way;
 - 5.2 attempt to use in any manner the APIs to access or retrieve any data other than Customer Content;
 - 5.3 use or permit the use of any automated software program (including a web crawler) through the APIs to access the Service or the Kallidus Technology or to search, monitor or obtain links to any part of the Service or the Kallidus Technology, other than where such use of an automated software program is strictly necessary for the permitted use of the APIs and where such use has been agreed in writing in advance with Kallidus;
 - 5.4 permit the use of the APIs in any way which may be in breach of the terms of the Contract, which may infringe Kallidus' Intellectual Property Rights or for any fraudulent or otherwise unlawful purpose;
 - 5.5 make derivative works of, commercially distribute or otherwise exploit the APIs;
 - 5.6 decompile, observe, study or test the functioning of the APIs except with Kallidus' prior written agreement; or
 - 5.7 permit the APIs to be used by any third party, unless otherwise agreed in writing with Kallidus.
6. Kallidus:
 - 6.1 makes no warranty, representation or other commitment that the APIs will be secure, timely or compatible with any third party software or equipment; and
 - 6.2 reserves the right to modify, update, extend or deprecate APIs in line with its product roadmap.

Schedule 3 CUSTOMER SUPPORT SERVICES

1. SUPPORT

Kallidus customer support is designed to enable a customer to successfully meet their business objectives via use of the Kallidus product suite. Kallidus customer support includes the following support benefits:

- **Application functionality support**
Expert product advice to ensure the effective use of the Kallidus products.
- **Application issue management**
Analysis, tracking, communication and resolution of application issues, including software defects.
- **Change request management**
Managing the scoping, tracking and delivery of change requests, which are requests for additional or changes to existing services.
- **24/7 access to the knowledge base and community in the Kallidus Help Centre**
Customers have around the clock access to self-service resources such as the online knowledge base, the 'Academy' and to our customer community in the Kallidus Help Centre.

Some customer support services may be provided by Kallidus' subcontractor in the US, Kallidus Inc.

1.1 Customer Support Features:

Kallidus customer support offers the following support features:

Support Feature	Description
Support hours	08:30- 17:30 UK time Monday-Friday excluding bank or public holidays
Live chat support	09:00- 17:30 UK time Monday-Friday excluding bank or public holidays
Self-help support	Access to Kallidus self-service resources available 24/7 through self-service portal.
Named Administrators	Up to three named individual administrators, who are Kallidus trained, may contact Kallidus customer support
Ticket management tools	Included, via 24/7 self-service portal.
Kallidus user community	Included, via 24/7 self-service portal.
Service levels	Standard, as set forth in the Kallidus Service Level Agreement

1.2 Included within the Support Services:

- Errors with Service (Service does not operate as per any User documentation and technical requirements provided)
- Performance issues related to Service and not to the Customer's network or internet access.
- Integration of any formally certified or approved AICC or SCORM content
- Supply and support of patches or to fix a known error.

1.3 NOT covered by Support Services:

- Completion of routine administration tasks on behalf of the Customer
- Integration of any eLearning content that is not formally certified or approved AICC or SCORM content supplied by a third party
- Support of issues with content supplied by third parties
- The resolution of issues caused by User error or Customer Content supplied
- The routine loading of content onto a Customer site
- Uploading of User or training data not covered in an Order Form
- Requests to change configuration of software

1.4 Reporting Procedures

- Kallidus will provide support via email, telephone or the self-service support portal which is accessed through the Kallidus web site at [Kallidus Zendesk](#).

- The Customer will be provided with usernames and passwords or passkeys for the self-service support portal.
- Support requests will be responded to in accordance with the service level agreement below.

2. SERVICE LEVEL AGREEMENT

The Kallidus service level agreement covers the following:

- **Application support**
 - Application functionality support
 - Application issue management including software defects

2.1 Application Support

Application support includes guidance and support in the use of the Kallidus products and the resolution of technical defects relating to the Kallidus products, platform or integrations within Kallidus control. Issues fall into four severity categories:

• Urgent	• Normal
• High	• Low

The severity of an issue is determined by the Kallidus customer support team, using the following guidelines:

Severity Examples	Urgent	High	Normal	Low
Application Functionality	▪ Urgent request for support with an application feature to support the delivery of business-critical objectives.	▪ A request for support with an application feature where assistance is required within two (2) Business Days.	▪ A request for support with an application feature where assistance is required within three (3) Business Days.	▪ Non-urgent request for support with an application feature where assistance is required within five (5) Business Days.
Application Issue	▪ The site URL is not responding. ▪ Users are unable to log in to the product. ▪ Performance is degraded to the extent that the site is unusable. ▪ An issue with the application is affecting all users and impacts the delivery of business-critical objectives	▪ Application performance issue that is either intermittent or does not seriously impact the use of the application. ▪ Reporting is unavailable. ▪ Data feed issue. ▪ An issue that is affecting multiple users.	▪ An issue affecting a small number of users.	▪ An issue that affects a single user.
Software Defect	▪ A key feature of the application is unavailable. ▪ There is no work-around.	▪ A prominent feature that is routinely used & where multiple users are prevented from progressing with important tasks. ▪ There is no work-around.	▪ A minor feature, multiple users affected but are not prevented from progressing with important tasks. ▪ A work-around exists.	▪ Cosmetic issue with the product. ▪ Low impact issue that can be worked around easily.

2.2 Application Support Service Level Targets

Kallidus shall work towards the following service level targets with an overall target of 90% of tickets meeting the targets below:

SLA Measure/Target	Urgent	High	Normal	Low
Initial Acknowledgment	On submission			
First Response	1 hour	2 hours	4 hours	1 Business Day
Status Updates – Application Functionality & Issues (except Defects)	Hourly	Twice a day	Every Business Day	Every 2 Business Days
Status Updates – Software Defects	Daily	Weekly	Fortnightly	Monthly
Resolution – Application Functionality & Issues (except Defects)	1 Business Day	2 Business Days	3 Business Days	5 Business Days
Resolution – Software Defects	Hot fix/ 1 week	2 weeks	1 months	2 months

In situations where Kallidus requires additional information or action from the Customer, support tickets are held in a pending status, until a response is received. This time is excluded from the calculation of service level targets.

Schedule 4 DATA PROTECTION

1. DEFINITIONS

- 1.1 For the avoidance of doubt, capitalised terms used but not defined in this Schedule 4 shall have the meanings given in the main body of the Contract.

2. PROCESSING, PERSONAL DATA AND DATA SUBJECTS

- 2.1 This Schedule applies where Kallidus is acting as a Data Processor for the Customer. It sets out the classes of Data Subject, the categories of Personal Data and Special Categories of Personal Data, the Processing operations, as well as any duration of Personal Data Processing applicable to this Contract.
- 2.2 The Agreement Personal Data shall constitute the Personal Data set out in paragraphs 4 and 5 below as they relate to the Data Subjects listed in paragraph 3 below.

3. DATA SUBJECTS

- 3.1 The Agreement Personal Data Processed shall include the following categories of Data Subjects:

Personnel of actual and/or potential clients of the Customer	Customer's Users authorised by Customer to use the Services
Employees or potential employees, workers, agents, advisors, freelancers and staff of the Customer	Personnel of service providers to the Customer

4. CATEGORIES OF DATA

- 4.1 The Personal Data Processed shall include the following categories of Personal Data:

Name	ID Data
Title	Professional life data
Gender	Personal life data
Position	Connection data
Contact details (including postal address, email address and telephone number, physical business address)	Images and avatars
Date of birth	Transaction history
Bank details	

5. SPECIAL CATEGORIES OF PERSONAL DATA

- 5.1 The Personal Data Processed shall include all types of Personal Data that fall within the definition of Special Categories of Personal Data under the UK GDPR, the extent of which shall be determined and controlled by the Customer in its sole discretion.

6. PROCESSING ACTIVITIES AND DURATION

- 6.1 The Personal Data will be Processed throughout the Term of the Contract and as required during the provision of any post-agreement support services.
- 6.2 The Personal Data will be subject to basic Processing activities in the course of conducting Customer Data Analysis and delivering the Services contemplated hereunder (including any post-agreement support services required), which shall include:

Staff data and record keeping	Performance management of staff
Staff management	Talent management of staff
Staff administration	Training of staff
Recruitment of staff	

Schedule 5 PROFESSIONAL SERVICES

1. INTERPRETATION

The following definitions and rules of interpretation shall apply in this Schedule 5. Terms not defined in this Schedule shall have the meaning given in the main body of the Contract.

1.1 Definitions:

“Professional Services Commencement Date”	the estimated date set out in an Order Form for the start of the Professional Services;
“Daily Rate”	the fees payable by the Customer for the Professional Services as set out in an Order Form or the Professional Services Statement of Work and calculated in accordance with paragraph 4 below;
“Professional Services Statement of Work”	if required, the statement of work to be developed and agreed by Kallidus and the Customer to set out the description and specification of the Professional Services to be provided (and if no statement of work is developed and agreed, the description and specification of the Professional Services shall be as set out in an Order Form).

1.2 References to paragraphs are references to the paragraphs of this Schedule 5. References to Clauses are to Clauses of the main body of the Contract.

2. THE PROFESSIONAL SERVICES

2.1 By signing an Order Form the Customer enters into an agreement with Kallidus for Kallidus to provide the Professional Services on the terms set out in the Contract, including this Schedule 5.

2.2 Kallidus shall:

- 2.2.1 provide the Professional Services; and
- 2.2.2 use reasonable endeavours to meet the Professional Services Commencement Date; and
- 2.2.3 retain management and control over the personnel it assigns to provide the Professional Services; and
- 2.2.4 use its standard working methods in the performance of the Professional Services; and
- 2.2.5 comply with any reasonable safety and security procedures applicable to the Customer's site and made known to Kallidus by the Customer.

2.3 Kallidus shall use reasonable care and skill in providing any Professional Services under this Contract, including the use of suitably qualified and experienced personnel, but does not warrant that any software it provides is free from error or operates without interruption.

2.4 Except as expressly set forth in this Schedule 5 all warranties, terms and conditions whether oral or written, express or implied by law, custom or otherwise including but not limited to any implied

warranties, terms and conditions of fitness for purpose and quality are hereby excluded in respect of the Professional Services.

2.5 The Customer shall:

- 2.5.1 supply Kallidus with any information and assistance reasonably necessary for Kallidus to perform its obligations in respect of Professional Services under this Contract; and
- 2.5.2 if a visit to the Customer's site has been agreed, provide Kallidus personnel with full free and safe access to the Customer's site to enable Kallidus to perform its obligations under this Schedule 5; and
- 2.5.3 remain responsible for the use of the Customer's computer system and for the protection, integrity and backup of its data.

3. OWNERSHIP

- 3.1 Legal and beneficial title to all Intellectual Property Rights subsisting in any software, documentation, know-how, methods and concepts used or developed by Kallidus in providing the Professional Services (including without limitation any copyright, patents, designs, trade and service marks) belong to and shall (as between the parties) remain vested in Kallidus. Maintenance or support of such software or use of other Kallidus' or third party owned Intellectual Property Rights shall be subject to, and contingent on, separate agreement between the parties.

4. PRICE

- 4.1 The Daily Rate shall be the charges payable for each of Kallidus' personnel assigned to provide the Professional Services for each day that such Professional Services are performed. Part days shall be charged on a pro-rata basis subject to a minimum charge of half the Daily Rate.
- 4.2 Unless otherwise specified in the Order Form or Professional Services Statement of Work (as applicable), expenses in respect of travel, subsistence and overnight accommodation shall be charged at Kallidus' then prevailing standard rate or, where appropriate, at bought-in cost.
- 4.3 The Daily Rate covers Kallidus' normal working day of hours between 0930 and 1700 Monday to Friday excluding bank and public holidays. Any additional hours worked at the Customer's request shall be charged at Kallidus' standard overtime rate from time to time.
- 4.4 The Daily Rate shall be as set out in the relevant Order Form or Professional Services Statement of Work (as applicable).

5. PAYMENT

- 5.1 Unless alternative payment terms are set out in the Order Form, Kallidus shall invoice the Customer in advance for Professional Services on receipt of the signed Order Form.
- 5.2 The terms for payment of Kallidus' invoices shall be as set out in the Contract.

6. CHANGE CONTROL CANCELLATION

- 6.1 The parties recognise that any planned days set out in the Professional Services Statement of Work is an estimate based on the parties' then current understanding of their requirements and obligations. The parties agree to discuss the scope of the Professional Services and/or additional services further should either party request any amendment or addition thereof (the "**Change Control**"). Any Change Control, including increased charges, shall be subject to written agreement between the parties, not

to be unreasonably withheld or delayed, based on the written request for amendment or addition of one party.

- 6.2 An agreed day for the provision of the Professional Services may only be cancelled or postponed by the Customer if written notification is received before the relevant date. If a cancellation or postponement is received between ten (10) and twenty (20) Business Days before the relevant date, a charge may be levied, at Kallidus' discretion, equal to 50% of the Daily Rate. If a cancellation or postponement is received less than ten (10) Business Days before the relevant date, a charge may be levied, at Kallidus' discretion, equal to 100% of the Daily Rate.