GreenOrbit SaaS Terms and Conditions

1. Definitions and interpretation

1.1 Definitions

In this Agreement, unless the contrary intention appears:

(1) **Agreement** means these terms and conditions, the Proposal and any schedule or annexure;

(2) **Availability Service Level** means 99.5% availability per month (excluding scheduled maintenance);

(3) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a national public holiday in the United States of America;

(4) **Cloud Provider** means any service provider that provides the computing infrastructure which the Hosted Service is provided, as determined by GreenOrbit from time to time;

(5) **Commencement Date** means the date set out in the Proposal;

(6) **Contract Year** means the period between the date of this Agreement and the first anniversary of the Commencement Date, and each successive period of 12 months;

(7) **Customer Data** means all data (whether or not it includes personal information) stored by the Customer or its Users on the Hosted Service;

(8) **Documentation** means the user manual, training material, frequently asked questions and similar materials relating to the Hosted Service, as provided by GreenOrbit to the Customer in electronic form from time to time;

(9) **Fees** means all fees and charges payable by the Customer under this Agreement, including as set out in the Proposal;

(10) **GreenOrbit** means Knosys US Inc. of 555 Fayetteville St, Suite 300, Raleigh North Carolina 27601 USA;

(11) **Hosted Service** means the hosted, on demand service identified in the Proposal, including any Updates;

(12) **Insolvency Event** means the happening of any of these events in relation to a party (Insolvent Party):

(a) execution or other process of a court or authority or distress is levied for an amount exceeding $50,000 upon any of the Insolvent Party's property and is not satisfied, set aside or withdrawn within 7 days of its issue;

(b) an order for payment is made or judgment for an amount exceeding $50,000 is entered or signed against the Insolvent Party which is not satisfied within 7 days;

(c) the Insolvent Party suspends payment of its debts;

(d) steps are taken by any person towards making the Insolvent Party an externally-administered body corporate (but not where the steps taken consist of making an application to a court and the application is withdrawn or dismissed within 14 days);

(e) a controller is appointed of any of the property of the Insolvent Party or any steps are taken for the appointment of a controller (but not where the steps taken are reversed or abandoned within 14 days);

(f) the Insolvent Party is taken to have failed to comply with a statutory obligation;

(g) a resolution is passed for the reduction of capital of the Insolvent Party or notice of intention to propose such a resolution is given, without the prior written consent of the other party; or

(h) Insolvent Party (i) is liquidated, dissolved or adjudged to be in a state of bankruptcy or receivership; (ii) is insolvent, or makes an assignment to or for the benefit of its creditors; or (iii) ceases to be in the business of providing the Hosted Service without leaving a successor-in-interest;

(13) **Intellectual Property Rights** means copyright, trade mark, moral rights, confidential information, design, patent, trade, business or company names, or other proprietary rights, or any rights to the registration of those rights and any applications to register those rights (anywhere in the world);

(14) **Malicious Code** means viruses, worms, Trojan horses and other harmful or malicious code, files, scripts, agents or programs;

(15) **New Release** means a new release of the Hosted Service that GreenOrbit makes generally available from time to time to the subscribers of the Hosted Service;

(16) **Permitted Purpose** means the permitted purpose set out in the Proposal;

(17) **Proposal** means the proposal from GreenOrbit to the Customer offering the provision of the services under this Agreement;

(18) **Subscription Limit** means the limit on the Customer's usage of the Hosted Service to not exceed 40GB of storage;

(19) **Subscription Term** means the term of the license set out in the Proposal;

(20) **Support Services** means the support services as set out in the GreenOrbit Standard Support SLA as published on its Website and any other Support Services that the parties may agree for GreenOrbit to provide to the Customer from time to time;

(21) **Updates** means fixes, patches and updates to the Hosted Service which are made generally available from time to time by GreenOrbit to the subscribers of the Hosted Service; and

(22) **Users** means the users described in the Proposal.

1.2 Interpretation

In this Agreement:

(1) reference to the singular includes the plural and the plural includes the singular, a person includes a body corporate and a party includes the party's executors, administrators, successors and permitted assigns;

(2) reference to money is to US dollars, unless otherwise stated;

(3) "including" and similar expressions are not words of limitation;

(4) headings are for convenience only and do not form part of this Agreement or affect its interpretation;

(5) a provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement; and

(6) if an act must be done on a specified day that is not a Business Day, it must be done instead on the next Business Day.

2. Hosted Service

2.1 Provision of Hosted Service

(1) With effect from the Commencement Date, GreenOrbit will provide the Hosted Service to the Customer and its Users in accordance with this Agreement.

(2) GreenOrbit will use reasonable endeavours to provide the Hosted Service in accordance with the Availability Service Level

2.2 Service Desk

(1) GreenOrbit provides a managed service desk as part of the Hosted Service. The Customer can contact the service desk (contact details are set out in the Standard Cloud Support SLA) to:

(i) report incidents;

(ii) make service requests,

(the **Service Desk**)

2.3 Use of the Hosted Service

(1) The Customer must only access and use the Hosted Service in accordance with this Agreement.

(2) The Customer must only use the Hosted Service for the Permitted Purpose.

(3) The Customer must not use the Hosted Service in excess of the Subscription Limit. If the Customer uses the Hosted Service in a manner that exceeds the Subscription Limit, then GreenOrbit may request that the Customer to agree to acquire a higher tier of service for the Hosted Service. If the Customer does not agree to GreenOrbit's request to acquire a higher tier of service for the Hosted Service within 30 days of the date of GreenOrbit's request, then GreenOrbit may suspend or terminate the use of the Hosed Service without further notice.

(4) Except as expressly permitted under this Agreement, the Customer must not, and must not allow any other person to:

(a) permit or allow any other person other than its Users access (directly or indirectly) to the Hosted Service or Documentation;

(b) sub-license, disclose, resell, publish, transmit or otherwise make available to any third party other than its Users any part of the Hosted Service or Documentation;

(c) modify, copy or create derivative works based on the Hosted Service or reverse engineer the Hosted Service (except to the extent permitted by non-excludable laws);

(d) use the Hosted Service for hire or rental, timesharing, service bureau or in any other way where a third party may derive benefit from the use of the Hosted Service;

(e) send or store unlawful material (including Malicious Code) by means of the Hosted Service;

(f) attempt to gain unauthorized access to, or interfere with, the Hosted Service or any data contained in it;

(g) use the Hosted Service in a manner reasonably likely to adversely affect other users of the Hosted Service; or

(h) use the Hosted Service for the purpose of creating a competitive product or service or copying its features or user interface.

2.4 Changes to the Hosted Service

(1) Subject to clause 2.4(2), GreenOrbit may make changes to the Hosted Service from time to time (including any Cloud Provider), provided that the change does not materially decrease the functionality of the Hosted Service. These changes may include Updates, New Releases and other changes that are transparent to the Customer. Once incorporated, these changes will form part of the Hosted Service.

(2) GreenOrbit has a release cycle of 12 months, and will aim to deploy New Releases every 12 months.

(3) The Customer acknowledges that the Hosted Service is deployed on a shared instance and therefore all Updates and New Releases are applied automatically once deployed by GreenOrbit.

(4) The Customer agrees that it entered into this Agreement without relying on any statement or promises about any future functionality or features of the Hosted Service.

2.5 Customer Responsibilities

The Customer must:

(1) provide its own internal facilities (including computers, terminals, software, telecommunications facilities and internet connectivity) necessary for utilising the Hosted Service;

(2) run the Hosted Service on a supported HTML5-compliant web browser (the Hosted Service may work on other browsers, however if the Customer chooses to use another browser, this may affect the scope or quality of the features, or limit the technical support GreenOrbit can provide);

(3) comply with GreenOrbit's reasonable directions relating to the Hosted Service; and

(4) maintain the confidentiality of all login credentials allocated to the Customer and its Users and not disclose them to any third party.

2.6 Users

(1) The Customer is solely responsible for any access to or use of the Hosted Service by its Users and must ensure that its Users are made aware of and comply with this Agreement.

(2) The Customer acknowledges that any access to or use of the Hosted Service by means of a username assigned to a User (whether or not such use is in fact by that person) is deemed to be access or use by that User, except to the extent that such unauthorized use is by GreenOrbit's personnel.

(3) The Customer may request additional User licenses from time to time, which will require payment of additional fees.

3. Support Services

(1) This clause 3 applies where the Proposal details specifies that GreenOrbit will provide Support Services.

(2) GreenOrbit will provide the Support Services in accordance with the Proposal.

(3) At the request of the Customer, GreenOrbit may (but is not obliged to) provide other Support Services. The Fee for such services will be charged on a time and materials basis at the then current professional rate of GreenOrbit.

4. Implementation

Except for the any implementation support covered in the Proposal (if any), the Customer is responsible for all activities relating to the set up and configuration of the Hosted Service and interface with external systems of the Customer.

5. Fee

5.1 Payment of Fee

The Customer must pay GreenOrbit all Fees in accordance with this Agreement as set out in the Proposal.

5.2 Invoice

GreenOrbit will invoice the Customer for the Fee on or before the date on which the Fee is due. All invoices must be paid within 30 days of the date of the invoice.

5.3 Late payment

If the Customer fails to pay any invoice within 10 days after payment is due, then at our discretion such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month (18% per annum), or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid

5.4 Taxes

In addition to paying the Fee and any other amount payable or in connection with this Agreement (which is exclusive of taxes and similar assessments), Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on GreenOrbit's income, and will pay all such taxes, duties, and charges as invoiced by GreenOrbit.

5.5 Fee Changes

With respect to existing Services, GreenOrbit reserves the right to vary and change the Fees annually. Where GreenOrbit does so, it will provide you with at least thirty (30) days' notice in advance. With respect to new Hosted services, the fees for any new services will take immediate effect from the date GreenOrbit notifies you of same.

6. Intellectual Property

6.1 Reservation of rights

GreenOrbit reserves all rights (including Intellectual Property Rights) in relation to the Hosted Service and Documentation. The Customer has no proprietary or other interest in the Hosted Service or Documentation and nothing in this Agreement transfers any right, title or interest in the Hosted Service or Documentation to the Customer. GreenOrbit grants the Customer a non-exclusive, non-transferable and limited license for the Customer and its Users to access and use the Hosted Service during the Subscription Term in accordance with this Agreement.

6.2 Ownership of modifications and improvements

GreenOrbit owns all improvements, adaptations modifications made to the Hosted Service and Documentation and all related Intellectual Property Rights, including any suggestions, recommendations or other feedback provided by the Customer or Users. The Customer assigns any and all the rights that the Customer may have in those improvements and modifications to GreenOrbit.

7. Liability

7.1 Limited warranty

GreenOrbit warrants that, subject to clause 2.4, the Hosted Services will materially conform to any features or functions claimed in the Documentation for the Hosted Services.

7.2 Exclusion of implied warranties

ALL STATUTORY OR IMPLIED CONDITIONS, GUARANTEES AND WARRANTIES ARE EXCLUDED BY GREENORBIT TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. TO THE EXTENT PERMITTED BY LAW, WHERE LIABILITY UNDER ANY CONDITION, GUARANTEE OR WARRANTY WHICH CANNOT LEGALLY BE EXCLUDED BUT CAN BE VALIDLY LIMITED, SUCH LIABILITY IS LIMITED TO:

(1) **IN THE CASE OF GOODS (INCLUDING THE DOCUMENTATION), THE REPLACEMENT OF THE GOODS OR THE SUPPLY OF EQUIVALENT GOODS; THE REPAIR OF THE GOODS; THE PAYMENT OF THE COST OF REPLACING THE GOODS OR OF ACQUIRING EQUIVALENT GOODS; OR THE PAYMENT OF THE COST OF HAVING THE GOODS REPAIRED; AND**

(2) **IN THE CASE OF THE SERVICES (INCLUDING THE HOSTED SERVICE AND ANY SUPPORT SERVICES), SUPPLYING THE SERVICES AGAIN; OR PAYING THE COST OF HAVING THE SERVICES SUPPLIED AGAIN.**

7.3 No other warranties

(1) **TO THE MAXIMUM EXTENT PERMITTED BY LAW AND SUBJECT TO CLAUSE 7.2, GREENORBIT DISCLAIMS AND EXCLUDES ANY OTHER WARRANTY, REPRESENTATION OR UNDERTAKING AS TO THE PURPOSE FOR WHICH THE HOSTED SERVICE, SUPPORT SERVICES, AND DOCUMENTATION MAY BE SUITABLE.**

(2) **WHILE GREENORBIT HAS TAKEN DUE CARE IN DEVELOPING THE HOSTED SERVICE, TO THE EXTENT PERMITTED BY LAW, GREENORBIT DOES NOT WARRANT, AND EXCLUDES ALL REPRESENTATIONS AND WARRANTIES THAT:**

(a) **THE HOSTED SERVICE IS ERROR-FREE OR HAS NO DEFECTS;**

(b) **ACCESS TO THE HOSTED SERVICE WILL BE UNINTERRUPTED OR ERROR FREE;**

(c) **THE HOSTED SERVICE IS FREE FROM MALICIOUS CODE; OR**

(d) **THE HOSTED SERVICE MEETS THE CUSTOMER'S REQUIREMENTS OR IS COMPATIBLE WITH ALL OPERATING SYSTEMS AND BROWSERS**.

7.4 Limitation and exclusion of liability

(1) **DESPITE ANY OTHER PROVISION OF THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY IS LIABLE TO THE OTHER UNDER CONTRACT, TORT OR OTHERWISE IN ANY CIRCUMSTANCES FOR ANY INDIRECT, ECONOMIC, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE, OR IN ANY EVENT FOR ANY LOSS OF REVENUE, LOSS OF PRODUCTION, LOSS OF USE, LOSS OF PROFIT, LOSS OF ANTICIPATED SAVINGS OR LOSS OF DATA.**

(2) **SUBJECT TO CLAUSE 7.2 AND ANY LAWS THE APPLICATION OF WHICH MAY NOT BE LAWFULLY EXCLUDED, GREENORBITS' AGGREGATE LIABILITY TO THE CUSTOMER ON ANY BASIS AND IN ANY CIRCUMSTANCES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, IN RESPECT OF ALL EVENTS THAT GIVE RISE TO LIABILITY IN A CONTRACT YEAR, WILL NOT EXCEED, AND IS EXPRESSLY LIMITED TO, THE TOTAL AMOUNT PAID BY THE CUSTOMER TO GREENORBIT IN RESPECT OF THAT CONTRACT YEAR.**

8. Confidentiality

8.1 Hosted Service and Documentation are confidential

The Customer acknowledges and agrees that the Hosted Service and Documentation are confidential to GreenOrbit, and the Customer must not, without the prior written approval of GreenOrbit, disclose the Hosted Service or

Documentation (or any copy or part of them) or use them for any purpose other than the purposes of this Agreement.

8.2 Exceptions

The Customer is not in breach of clause 8.1 to the extent that:

(1) the Hosted Service or Documentation are or become publicly available without breach of this Agreement; or

(2) the Customer is required by law or any court to disclose the Hosted Service or Documentation (but the Customer must give GreenOrbit reasonable opportunity to seek protective orders).

8.3 Steps to avoid disclosure

The Customer must take all reasonable steps to ensure that its officers, employees, agents and contractors do not make public or disclose the Hosted Service or Documentation in breach of this clause 8.

8.4 Use of Customer Name and Logo

The Customer agrees that GreenOrbit may reproduce or refer to the name and branding of the Customer in GreenOrbit's websites, promotional materials, and public announcements for the purpose of identifying the Customer as a customer of GreenOrbit.

9. Privacy

9.1 In order to implement this Agreement, the parties acknowledge that a party may collect certain personal information about individuals connected with the other party.

9.2 Each party warrants to the other party to this Agreement that it has in place adequate policies and processes for handling personal information in compliance with applicable law.

9.3 THE CUSTOMER INDEMNIFIES GREENORBIT AGAINST ANY REASONABLE LOSS, LIABILITY, COST OR EXPENSE SUFFERED OR INCURRED BY GREENORBIT AS A CONSEQUENCE OF ANY CLAIM MADE AGAINST IT AS A RESULT OF A BREACH OF WARRANTY IN CLAUSE 9.2.

9.4 The Customer acknowledges and agrees that the technical processing and transmission of certain personal information (including the possible transmission of certain personal information outside its country of origin) may be necessary to the Customer's use of the Software and the Services and content offered on or through Software and the Services, and consent to GreenOrbit's interception and storage of such personal information.

9.5 The Customer acknowledges and agrees that the Customer or GreenOrbit may be transmitting certain personal information over the Internet, and over various networks, only part of which may be owned and operated by GreenOrbit. **THE CUSTOMER AGREES THAT GREENORBIT IS NOT RESPONSIBLE FOR ANY PORTIONS OF SUCH PERSONAL INFORMATION THAT ARE LOST, ALTERED, INTERCEPTED, OR STORED WITHOUT AUTHORIZATION DURING THE TRANSMISSION ACROSS NETWORKS NOT OWNED AND OPERATED BY GREENORBIT.**

9.6 Privacy Obligations

Without limiting clause 9.1, GreenOrbit must:

(1) only use the Personal Information for the purposes of performing its obligations under this Agreement;

(2) not disclose any Personal Information to any other person (other than to GreenOrbit's own personnel and subcontractors, for the purpose of performing its obligation under this Agreement) unless required by law; and

(3) protect the Personal Information in accordance with clause 10.3.

10. Customer Data

10.1 Ownership of Customer Data

(1) The Customer will own the Customer Data.

(2) GreenOrbit will not use or disclose the Customer Data except to the extent required to perform its obligations under this Agreement.

10.2 Responsibility for Customer Data

The Customer will be responsible for the content of all Customer Data and for complying with all applicable laws in respect of the Customer Data, and ensure that it can authorize GreenOrbit to receive, store and process the Customer Data as part of providing the Hosted Service.

10.3 Security of Customer Data

GreenOrbit will implement reasonable security measures to protect any Customer Data that is hosted on the Hosted Service from unauthorized access and disclosure, including penetration testing from time to time to test GreenOrbit's security procedures.

10.4 Back up of Customer Data

(1) GreenOrbit will create a back-up copy of the Customer Data stored on the Hosted Service on a daily basis.

(2) **THE CUSTOMER ACKNOWLEDGES AND AGREES THAT GREENORBIT WILL NOT BE RESPONSIBLE FOR (AND WILL NOT BE OBLIGED TO COMPENSATE THE** CUSTOMER **FOR) THE LOSS OF ANY CHANGES, ADDITIONS OR DELETIONS TO THAT CUSTOMER DATA MADE DURING THE PERIOD COMMENCING AFTER THE BACK-UP COPY WAS MADE AND ENDING ON THE TIME THAT THE BACK-UP COPY IS RESTORED**.

10.5 Hosting of Customer Data

(1) GreenOrbit must not host Customer Data at any location outside of United States unless expressly agreed to by the Customer in writing.

(2) Subject to GreenOrbit continuing to comply with clause 10.5(1), the Customer acknowledges that the nature of the Hosting Services means that GreenOrbit may vary the storage location from time to time.

10.6 Deletion of Customer Data

The Customer acknowledges that GreenOrbit may delete or destroy all Customer Data stored on the Hosted Service at any time after expiry of the Data Extraction Period set out in clause 12.3(1)(c).

11. Availability and suspension

11.1 Dependency on Cloud Provider

The Customer acknowledges and agrees that the availability of the Hosted Service depends upon permissions and services from the Cloud Provider, which may be varied or terminated from time to time by the Cloud Provider. **NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT, GREENORBIT MAY, WITH REASONABLE PRIOR NOTICE TO THE CUSTOMER, BUT WITHOUT ANY LIABILITY ON THE PART OF GREENORBIT:**

(1) **VARY, TERMINATE OR LIMITED THE HOSTED SERVICE;**

(2) **SUSPEND THE HOSTED SERVICE; OR**

(3) **VARY THE TERMS (INCLUDING THIS AGREEMENT) UPON WHICH THE HOSTED SERVICE IS PROVIDED,**

if the Cloud Provider varies or terminates the services provided by the Cloud Provider so that GreenOrbit is no longer able to provide the Hosted Service in accordance with this Agreement. If the Customer does not accept material variation to the Hosted Service or to this Agreement made by GreenOrbit under this clause 11.1, then the Customer may terminate this Agreement by notice to GreenOrbit within 30 days of such variation. If this Agreement is terminated under this clause 11.1 (whether by GreenOrbit or the Customer), GreenOrbit will refund to the Customer the amount of the Fees paid in advance in respect of the remaining portion of the Subscription Term.

11.2 Suspension

(1) GreenOrbit may suspend the Hosted Service in the following circumstances:

(a) for any non-payment of Fees by the Customer;

(b) for the duration of any Force Majeure Event (as defined in clause 13.3);

(c) for any material breach of this Agreement by the Customer; or

(d) if GreenOrbit reasonably considers that suspension is necessary to protect the Hosted Service, the Customer Data, or any other computer systems and data (including in response to an external attack).

(2) GreenOrbit will give the Customer as much practicable prior notice of the suspension as possible, and will promptly end the suspension after the relevant circumstances have abated.

12. Term and termination

12.1 Expiry of Subscription Term

Unless the Customer notifies GreenOrbit in writing of its intent not to renew this Agreement at least 60 days prior to the expiry of the Subscription Term, the Subscription Term automatically extends by successive periods of 12 months.

12.2 Termination for cause

(1) Either party may terminate this Agreement immediately by notice in writing if:

(a) the other party is the subject of an Insolvency Event; or

(b) the other party fails to comply with any material provision of this Agreement and fails to remedy that failure within 20 Business Days after notice requiring it to be remedied (except for a breach of clause 2.3(4) by the Customer, where the cure period of 5 Business Days).

(2) If this Agreement is terminated under this clause 12.2 by the Customer, GreenOrbit will refund to the Customer the amount of the Fees paid in advance in respect of the remaining portion of the Subscription Term.

12.3 Effect of termination

(1) Upon termination of this Agreement for any reason:

(a) unless expressly set out otherwise, GreenOrbit is not required to provide the Customer any refund of any paid Fees;

(b) all rights and licenses granted under this Agreement terminate immediately, and the Customer must immediately cease to use the Hosted Service and Documentation, and return to GreenOrbit or destroy all copies of the Documentation; and

(c) the Customer will have a period of 60 days (**Data Extraction Period**) to request GreenOrbit to extract Customer Data from the Hosted Service (which will be subject to additional charges).

(2) Clauses 1, 6, 7, 8, 10, 12.3 and 13 survive termination of this Agreement.

13. General

13.1 No assignment

Neither party may transfer, sub-license or assign any benefit or obligation under this Agreement to any third party without the prior written consent of the other party.

13.2 Subcontract

GreenOrbit may subcontract the performance of any part of its obligations to any person. GreenOrbit will remain responsible to the Customer for the performance of any subcontracted obligations.

13.3 Force majeure

Neither party is liable for any or failure to perform or delay in performing any obligations under this Agreement (other than a payment obligation) to the extent caused by any cause or condition beyond its reasonable control, including fire, flood, act of God, war, insurrection, sabotage, acts of terrorism, industrial disturbance, failure of electrical or telecommunications networks, acts of vandalism and changes in legislation or regulations of any government (**Force Majeure Event**). The obligations of either party is suspended to the extent to which it is affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.

13.4 Severability

If any provision in this Agreement is unenforceable, illegal or void or makes this Agreement or any part of it unenforceable, illegal or void, then that provision is severed and the rest of this Agreement remains in force.

13.5 Further assurance

Each party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Agreement.

13.6 Entire understanding

This Agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement and supersedes any prior agreement or understanding on anything connected with that subject matter.

13.7 Variation

An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

13.8 Waiver

A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

13.9 Costs and outlays

Each party must pay its own costs and outlays connected with the negotiation, preparation and execution of this Agreement.

13.10 Notices

(1) A notice or other communication connected with this Agreement **(Notice)** has no legal effect unless it is in writing.

(2) In addition to any other method of service provided by law, the Notice may be:

(a) sent by prepaid priority post to the address of the addressee;

(b) sent by email to the addressee; or

(c) delivered at the address of the addressee.

(3) The notice details of each party are set out in the Proposal, as varied by each party by notice to the other.

(4) If the Notice is sent or delivered in a manner provided by clause 13.10(2), it must be treated as given to and received by the party to which it is addressed:

(a) if sent by post, on the 5th Business Day (at the address to which it is posted) after posting;

(b) if sent by email before 5.00pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or

(c) if otherwise delivered before 5.00pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.

(5) Despite clause 13.10(4)(b):

(a) an email message is not treated as given or received if within 2 hours after the time sent the sender receives an automated message that the email has not been delivered; and

(b) an email message is not treated as given or received if it is not received in full and in legible form and the addressee notifies the sender of that fact within 2 hours after the transmission ends or by 12 noon on the Business Day on which it would otherwise be treated as given and received, whichever is later.

(c) A Notice sent or delivered in a manner provided by clause 13.10(2) must be treated as validly given to and received by the party to which it is addressed even if:

(d) the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent; or

(e) the Notice is returned unclaimed.

13.11 Governing law and jurisdiction

This Agreement shall be governed by and construed in accordance with the laws for the time being in force in the State of North Carolina, USA, and the parties agree to submit to the jurisdiction of the courts and tribunals of that State. Any legal suit, action, or proceeding arising out of or related to this Agreement or the License will be instituted exclusively in the federal or state courts of the State of North Carolina, in each case located in the city of Raleigh and Wake County, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such party's address set out at the beginning of this Agreement will be effective service of process for any suit, action, or other proceeding brought in any such courts.

13.12 Execution

This Agreement and included terms and conditions is binding on the parties on the acceptance of the Proposal by the Customer.

- End -