

1. Definitions

1.1 In these conditions unless the context otherwise requires:

- (a) "Agreement" means the agreement between the Customer and the Company for the provision of the Company Services which are subject to these terms and conditions.
- (b) "Customer" means the Customer identified in the Quote.
- (c) "Company" means Knode Limited.
- (d) "Company's Data Platform" means any database, data platform, online portal or third party service that is used by the Company.
- (e) "Company Services" means Services provided by the Company, and purchased by the Customer.
- (f) "Data" means the data obtained by the Company and/or data transmitted to the Company's Data Platform.
- (g) "Equipment" means the Knode hardware and any third party hardware purchased by the Customer from the Company.
- (h) "Initial Subscription Term" means a 12 month subscription starting from the Start Date.
- (i) "Intellectual Property Rights" means any intellectual property rights recognised by law including any protected by legislation or arising from protection of information such as confidential information, and all trade secrets, know-how and other intellectual property developed by the Company.
- (j) "PPSA" means the Personal Property Securities Act 1999.
- (k) "Quote" means the quote provided to the Customer by the Company.
- (l) "Renewal Subscription Term" has the meaning set out in clause 5.2.
- (m) "Service Fees" means the fees, for receipt of the Company Services.
- (n) "Start Date" is 5 Working Days from the dispatch date that the Knode hardware is sent by the Company to the Customer. Service Fees will be payable from this date unless otherwise agreed.
- (o) "Term" means the Initial Subscription Term together with any Renewal Subscription Terms.
- (p) "Working Day" means any day of the week other than, Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day (if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday).

2. Quote & Acceptance

2.1 The Customer may request a Quote from the Company setting out:

- (a) The Company Services to be supplied and the Service Fees; and/or
- (b) Equipment and the cost of the Equipment.

2.2 If the Quote is acceptable to the Customer, the Customer may place an order within 30 Working Days of receipt of the Quote.

2.3 The Customer acknowledges that the Company's Quote may be subject to the Customer procuring personal guarantees for the Customer's obligations in such form as the Company requires.

2.4 The Company may modify the specification of the Company Services without notice provided that modification does not materially affect the services.

2.5 Any Contract may only be cancelled by the Customer with the prior written consent of the Company and on terms that the Customer shall indemnify the Company in full against all losses (including loss of profit), costs, damages, charges and expenses incurred (directly or indirectly) by the Company as a result of such cancellation.

2.6 If any instruction is received by the Company from the Customer accepting the Quote for the supply of the Company Services, it will constitute acceptance of these terms and conditions. Upon acceptance of these terms and conditions by

the Customer, the terms and conditions are definitive and binding.

3. Terms and Conditions

3.1 These terms and conditions and any subsequent terms and conditions issued by the Company shall apply to all orders for the Company Services made by the Customer.

3.2 It will be the Customer's responsibility to ensure that these conditions are promptly brought to the attention of the appropriate staff of the Customer, and accordingly any order made by the Customer will be deemed to be acceptance of the Company's terms and conditions.

4. Company Services

4.1 During the Term, the Company grants to the Customer a non-exclusive and non-transferrable right to use the Company Services.

4.2 The Company may from time to time and at its discretion introduce upgrades and updates to the Company Services. The Company will use its best endeavours to ensure that such upgrades and updates will not detrimentally affect the core functionality of the Company Services.

4.3 The Customer authorises the Company to send to it from time to time information about other products and services offered by the Company at.

5. Term

5.1 The Agreement commences on the Start Date and continues for the duration of the Initial Subscription Term.

5.2 It is automatically renewed by the Customer for additional 12-month terms (a "Renewal Subscription Term") unless the Customer gives the Company 60 days' notice in writing before the expiry of the then current Term.

6. Ownership and use of Data

6.1 The Customer will retain ownership of the Data.

6.2 Subject to payment of the Service Fees, the Company will make the Data readily available to the Customer on a rolling 12 month basis through the Company's Data Platform. Fees may be charged by the Company if the Customer requires Data over 12 months old.

6.3 The Customer irrevocably agrees that the Company may access, use and aggregate the Data for its own business purposes, which may include the following:

- (a) Improving the Company Services;
- (b) Analysing and gaining understanding as to how the Company Services are being used;
- (c) Marketing the Company Services;
- (d) Generating information, research and insights; and
- (e) Such other matters as may be specified on the Company's Data Platform from time to time.

6.4 The Customer acknowledges that the Data will only be as accurate as the equipment allows and:

- (a) Data will generally be less accurate than a reading by a certified meter;
- (b) There may be discrepancies in the Data from time to time and Data will not be suitable for measuring the outflow of any liquids for retailing purposes or certifying or confirming any matter to any third party.

7. Data Security

7.1 The Customer acknowledges that:

- (a) Given the nature of how the Data is transmitted the Company cannot guarantee the security of Data being transmitted; and
- (b) The Customer transmits Data to the Company's Data Platform at its own risk.
- (c) If it becomes aware of any problems with the security of Data or the Company's Data Platform it must immediately notify the Company of the problem by email.

- 7.2 The Company will use all reasonable endeavours and precautions to keep Data secure once the Company has received the Data.
- 8. Payment of the Service Fees**
- 8.1 During the Term, the Customer will pay the Service Fees to the Company either
- (a) Monthly with each month paid in advance by direct debit; or
 - (b) Annually paid in advance by direct debit.
- 8.2 All fees and charges payable by the Customer under the Agreement are exclusive of GST. The Customer must pay GST (if any) to the Company on the day it pays the fees or charges under the Agreement.
- 8.3 In the event that payment in full is not made by the Customer in accordance with clauses 8.1 and 8.2, the Company may at its discretion:
- (a) Charge default interest to the Customer at an annual rate of 15% with interest to be calculated daily from the due date to the date of payment; and/or
 - (b) Suspend or withhold access to the Data and the Company's Data Platform by the Customer until all amounts owing to the Company have been paid in full.
- 9. Review of Service Fees**
- 9.1 The Company may review the Service Fees on 30 Working Days' notice in writing (the end of which is a "Review Date"), provided that:
- (a) The reviewed Service Fees will be emailed to the Customer; and
 - (b) If the Customer objects to the reviewed Service Fees, it may terminate this contract by notice in writing to the Company provided that such notice must be given at least 10 Working Days before the Review Date (time being of the essence); and
 - (c) In such case, the Agreement will be deemed terminated as of the Review Date.
- 10. Technical Requirements & Access**
- 10.1 The Customer acknowledges that in order to use the Company Services, its Equipment must meet the minimum standards determined by the Company.
- 10.2 The Customer acknowledges that the minimum and technical data standards may need to be altered by the Company over time and from time to time and that the Company may in its absolute discretion revise those required technical or data standards in whole or in part. The Customer will be responsible for all costs associated with any change to its systems and/or data required to meet the Company's technical and/or data standards.
- 10.3 The Customer grants the Company the right and authority to enter onto any place where the Equipment is held at all times during the Term, for the purposes of ensuring the provision of the Company Services.
- 11. Intellectual Property Rights**
- 11.1 All rights, title and interest, including all Intellectual Property Rights, relating to the Company Services, software and documentation (including without limitation all upgrades, updates, improvements, enhancements, modifications and derivative works) remain with the Company. Nothing in the Agreement grants to either party any ownership or other Intellectual Property Rights of the other party other than is expressly set out in the Agreement.
- 11.2 The Customer may make sufficient copies of user documentation to support its use of the Company Service, but must use such copies for the sole purpose of its own use of the Company Services and will not provide them to any third party.
- 11.3 The Customer must not attempt to sublicense, modify, tamper with, adapt or reverse engineer any software or hardware used to provide the Company Services.
- 12. Confidential Information**
- 12.1 The Customer will keep confidential all information relating to the technology, technical processes, business affairs of the Company, or of any affiliate of the Company (the "Confidential Information").
- 12.2 The Customer will not disclose or use the Confidential Information unless such disclosure or use is specifically authorised by the Company. The Customer will take all reasonable precautions to prevent such disclosure or use.
- 12.3 The Customer acknowledges and agrees that it has no right or licence to use any of the Confidential Information.
- 12.4 The obligations of the parties under this clause survive the expiry or the termination of the Agreement for whatever reason.
- 13. Warranties and Liabilities**
- 13.1 The Company warrants that:
- (a) It will use commercially reasonable efforts to maintain its systems associated with the Company Services free from viruses and other harmful code; and
 - (b) It will use reasonable efforts to ensure the Company Services are performed in a professional, workmanlike manner commensurate with the industry practices in the industry in which the Company operates.
- 13.2 Except as is expressly set out above, all terms, conditions, representations and warranties are excluded to the maximum extent permitted by law.
- 13.3 The Customer warrants that:
- (a) It is legally incorporated under the laws of New Zealand (if a company); and
 - (b) It has the power and authority to enter into the Agreement.
 - (c) In entering into the Agreement:
 - (i) It is acquiring the Company Services for the purposes of a business; and
 - (ii) The Consumer Guarantees Act 1993 will not apply except as expressly set out in the Agreement.
- 13.4 Except to the extent excluded by law, the Company excludes all liability to the Customer (whether by damages or otherwise) for any consequential, economic or indirect loss or damage arising out of the Agreement or the Company Services or in connection with either of them. This exclusion applies whether the Company's liability arises in contract, tort (including negligence) or otherwise.
- 13.5 Subject to clause 13.6, the Company's liability to the Customer for breach of any term of the Agreement or arising out of the provision of the Company Services and whether in contract, tort or otherwise is limited to the Service Fees received by the Company for provision of the Company Services in the 12 months preceding the date on which the Customer's claim arose.
- 13.6 The Company will have no liability for the performance of Equipment in relation to any use or purpose other than that which has been specifically prescribed by the Company.
- 13.7 The Customer acknowledges that the Company will provide a warranty on hardware for a period of 12 months. For third party hardware purchased by the Customer from the Company, the Company's liability (to the extent permitted by law), will be limited to the manufacturer's warranty associated with the hardware.
- 13.8 The Company is not responsible for any failure to provide the Company Services where such failure is caused, or contributed to, by an event outside the Company's reasonable control.
- 13.9 The Company does not provide any guarantee and has no liability to the Customer in respect of the communications and computer links between the Customer and the Company allowing access to the Company Services.
- 14. Termination**
- 14.1 The Company may terminate the Agreement by giving 10 Working Days' notice in writing to the Customer if the

- Customer materially breaches any clause of the Agreement and such breach is not remedied by the Customer within 10 Working Days' of receipt of the written notice outlining the breach. In such case, the Company will not be required to make any refund of any Service Fees paid in advance.
- 14.2 The Company may terminate the Agreement:
- By giving not less than 30 Working Days' notice to the Customer; or
 - By giving not less than 10 Working Days' notice if any payment due from the Customer to the Company remains unpaid for a period of 20 Working Days.
- 14.3 On termination or expiry of the Agreement:
- The Customer must immediately cease to use the Company Services and must immediately, upon request of the Company return any documentation or other materials associated with the Customer's use of the Company Services;
 - The Company will return one copy of the Data to the Customer in the file format usually provided by the Company (if this is requested in writing by the Customer).
- 14.4 Termination or expiry of the Agreement is without prejudice to any antecedent breach of the provisions of the Agreement, and does not affect any provision of this Agreement which is intended to come into effect on or continue in effect after such termination.
15. **Risk and Title**
- 15.1 All risk of loss, damage, deterioration or destruction to the Equipment will pass to the Customer on Delivery.
- 15.2 Title to any Equipment will not pass to the Customer until the Company has received payment in full for all Equipment supplied to the Customer.
- 15.3 Until title to the Equipment passes to the Customer the Customer will:
- Hold the Equipment as a bailee; and
 - Maintain the Equipment in good order and condition
- 15.4 Without prejudice to the Company's other rights and remedies, the Company will be entitled to retake possession of any Equipment at any time prior to payment in full being received for that Equipment. The Customer grants The Company an irrevocable right and authority to enter onto any place where the Equipment is held.
16. **Personal Property Securities Act 1999**
- 16.1 This Agreement creates a security interest under the Personal Property Securities Act 1999 ("PPSA") to the extent necessary to allow the Company to register a financing statement;
- 16.2 The Customer waives any rights to receive a copy of a Verification Statement under the PPSA and agrees, to the extent permitted by law, that in respect of any arrangement between the Customer and the Company:
- Sections 114(1)(a), 133 and 134 of the PPSA shall not apply;
 - The Customer shall have none of the rights referred to in paragraphs (c) to (e) and (h) to (j), all inclusive, of Section 107(2) of the PPSA; and
 - Where the Company has rights in addition to those in Part 9 of the PPSA, those rights shall continue to apply and, in particular, shall not be limited by Section 109 of the PPSA.
- 16.3 Until paid for in full the Customer acknowledges that it has no right to and that it will not attempt to sell, assign, pledge, mortgage, charge, encumber, hire, licence or part with possession or permit any lien to exist in respect of the Equipment or grant any security interest to any third party.
17. **General**
- 17.1 Neither party will be responsible for any act, omission or failure to fulfil its obligations under this Agreement if such act, omission or failure arises from any cause reasonably beyond its control.
- 17.2 The Customer acknowledges that it has carried out all appropriate investigations and relied on its own knowledge or independent advice or both in assessing the risk, contingencies and circumstances that could affect its decision to enter into the Agreement and use the Company Services.
- 17.3 Any notice, document, request, demand or other communication ("notices") to be given by the parties to each other by email. The email address for the Customer and the Company are those specified on the Quote. Any notice which has been served on a Saturday, Sunday or public holiday is deemed to be served on the first Working Day after that day.
- 17.4 The Customer may not assign or sublet its rights under the Agreement without the prior consent of the Company, to be given in its sole discretion.
- 17.5 Where the Agreement prohibits the Customer from undertaking any action, the Customer will be responsible for ensuring that its officers, employees, contractors and invitees observe the same prohibitions.
- 17.6 The Agreement is governed by the laws of New Zealand and the parties agree to submit to the exclusive jurisdiction of the courts of New Zealand.
- 17.7 Where any term or provision in the Agreement is invalid, illegal or otherwise contrary to statutory or common law rule, such term or provision shall be deemed replaced by a term or provision that is valid and enforceable and which comes closest to expressing the intention of the term replaced.
- 17.8 The Agreement constitutes the entire agreement between the parties relating to its subject matter and replaces all prior agreements or undertakings between them. Each party confirms that on entering into the Agreement it has not relied upon any statement, warranty or other representation made or information supplied by or on behalf of the other party.
- 17.9 No right under the Agreement will be deemed to be waived except by notice in writing signed by each party. A waiver does not prejudice rights in respect of any subsequent breach.
- 17.10 The Customer will indemnify the Company from any and all claims, expenses and costs (including legal fees) losses, liabilities or damages which are incurred by the Company as a result of any breach of the Agreement by the Customer (including any costs incurred by the Company in the enforcement of the Agreement against the Customer).
- 17.11 The obligations set out under clauses 6, 12 and 17.10 will continue in force notwithstanding termination or expiry of the Agreement.
18. **Dispute Resolution**
- 18.1 In the event that any claim or dispute arises under these terms and conditions, the Company shall have the right to refer the matter to arbitration by a single arbitrator nominated by the President of the New Zealand Law Society, such arbitration to be otherwise carried out in accordance with the Arbitration Act 1996.
19. **Interpretation**
- 19.1 References to any statute or statutory provision includes reference to that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated and to all statutory instruments made pursuant to it.
- 19.2 Words denoting the singular will include the plural and vice versa.
- 19.3 The words "include" and "including" will not be construed as terms of limitation. The words "writing" and "written" mean "in documented form", whether electronic or hard copy, unless otherwise stated. The symbol "\$" means New Zealand dollars.
- 19.4 The headings and use of bold type in these terms and conditions are for convenience only and will not affect the interpretation of any provision of the Agreement.
- 19.5 References to the Agreement or any other document will include any permitted and authorised variation, amendment or supplement to such document.