



KOADX

TERMS AND CONDITIONS

1. USE OF KOADX

- 1.1 The Customer's chosen Package entitles the Customer and its Users to:
 - 1.1.1 the non-exclusive right to access and use KOADX for the business purposes of the Customer and its Group;
 - 1.1.2 the perpetual, irrevocable right to use any Generated Code as described in clause 2;
 - 1.1.3 access the Documentation; and
 - 1.1.4 the benefit of the Support described in the service level agreement.
- 1.2 Except where the Package has been expressly agreed to include unlimited complexity and/or usage, the Customer's right to use KOADX is restricted to the maximum complexity and usage conditions applicable to the option selected during the registration process. NionNet (Nionnet Limited) may allow usage in excess of the maximum complexity and/or usage conditions subject to the payment of additional Fees in accordance with clause 7.4.
- 1.3 KOADX is offered on a hosted basis and will be made available for the Customer to connect to via the internet in accordance with these terms. The Customer is not granted any right to a copy of the underlying KOADX software to install on its own systems or servers.
- 1.4 Subject to clause 1.5, NionNet warrants that the functionality of KOADX will substantively conform to the Documentation.
- 1.5 By the nature of KOADX, NionNet cannot guarantee that it will be entirely error-free. However, NionNet will use its reasonable endeavours to remedy any material error reported by the Customer as soon as reasonably and commercially practicable following such report in accordance with the service level agreement.
- 1.6 To get the most out of KOADX, Users will need to access it via a Compatible Browser. KOADX may be accessible via other web browsers, or via earlier versions or differently configured versions of the Compatible Browsers, but in these cases, functionality may be limited. NionNet gives no warranty as to the accessibility or functionality of KOADX when it is being accessed other than via a Compatible Browser.
- 1.7 NionNet may from time to time make changes to KOADX, including to improve its functionality or usability, add new features, remove features it considers to be obsolete, fix errors or address feedback received from customers. NionNet will endeavour to minimise any disruption caused as a result of the implementation of such changes.
- 1.8 It may be necessary from time to time for NionNet to disable part or all of KOADX for maintenance purposes. Where such maintenance is likely to affect the functionality or accessibility of KOADX, NionNet will use reasonable endeavours to provide notice to the Customer of any such maintenance and to perform it outside of Working Hours.
- 1.9 The Package does not include back-up services, but does include the right for the Customer to export its data at any time during the applicable term. NionNet strongly recommends that the Customer performs regular exports of the Customer Content and retains them in a safe place and the Customer agrees to do so. NionNet will not be responsible for any losses caused as a result of the Customer's failure to comply with this clause 1.9.
- 1.10 The Customer must use KOADX and any Generated Code only in accordance with these terms (including the Acceptable Use Policy) and ensure that all Users do the same.
- 1.11 The Customer must immediately notify NionNet if it believes or suspects either that it may have breached these terms, that a User (or other person using a User's access credentials) may have failed to comply with the Acceptable Use Policy or that any User's access credentials may have been compromised.
- 1.12 In the event that NionNet suffers any third party claims arising out of or in connection with (a) the Customer's alleged breach of the Acceptable Use Policy or these terms, (b) the Customer's use of KOADX or any Generated Content or (c) any Customer Content, NionNet will notify the Customer of the claim and give the Customer the right to defend the claim. The Customer will be responsible for any losses, damages, claims, costs and expenses (including legal expenses on a solicitor / own client basis)

suffered or incurred by or awarded against NionNet in connection with the claim, provided that this clause 1.12 will not apply where the claim arose as a result of NionNet's own breach of these terms.

- 1.13 NionNet will be entitled to suspend access to KOADX (or any part of it) for any or all Users without liability to the Customer immediately and without notice or to take such action as it may in its discretion think appropriate if it reasonably believes:
- 1.13.1 not doing so may prejudice the security, integrity or operability of KOADX or part of it, cause harm to another customer or other third party or give rise to a claim against NionNet;
 - 1.13.2 the Customer or any of its Users have transmitted, uploaded or downloaded any content which contravenes the restrictions set out in the Acceptable Use Policy; or
 - 1.13.3 the Customer is otherwise in breach of these terms.

Promptly following such suspension NionNet will notify the Customer of the suspension, the reason for the suspension and what steps the Customer can take so that the suspension can be brought to an end.

2. GENERATED CODE

- 2.1 KOADX will create the Generated Code based on the model that the Customer provides using KOADX's modelling tool and will make the Generated Code available for download by the Customer.
- 2.2 NionNet grants the Customer a perpetual, irrevocable, worldwide licence to use the Generated Code within any Customer Application, including to modify and develop the Generated Code as it sees fit and to integrate the Generated Code with the Customer's own code or code obtained from other sources.
- 2.3 The parties acknowledge that the Customer is entitled to grant licences to use the Customer Application on such terms as the Customer sees fit and that the Customer is not required to notify its own licensees that the Customer Application incorporates Generated Code or to impose any specific licence terms on its own licensees (provided that the Customer should use its reasonable endeavours to ensure that its licensees do not use the Customer Application in any way that would breach the Acceptable Use Policy).
- 2.4 Where the Customer transfers ownership of its rights in the Customer Application to a third party, it may also transfer the benefit of the licence granted by clause 2.2, provided that:
- 2.4.1 the Customer must notify the transferee of (a) the fact that Generated Code has been incorporated into the Customer Application, (b) NionNet's ownership of the Generated Code and (c) the terms of the licence to use the Generated Code; and
 - 2.4.2 for the avoidance of doubt, any transfer of the licence to use the Generated Code does not include a transfer of the Customer's Package.
- 2.5 KOADX is designed to tailor the Generated Code to the Customer's requirements (as communicated to NionNet through the model created by the Customer), and it is therefore essential that the model is created by a specialist human developer with a clear understanding of the Customer's requirements, as the Generated Code will only be as good as the model used to create it.
- 2.6 The Customer acknowledges that KOADX is intended to be used to augment the Customer's development team rather than to replace it and that NionNet provides no warranties or assurances that any Generated Code will be complete, error-free or will exactly meet the particular requirements which the Customer (or its own licensees) may have. Without prejudice to the generality of the preceding sentence, the Customer acknowledges that:
- 2.6.1 the Generated Code is not designed to, and cannot be guaranteed to, meet any particular legal or regulatory requirements, and the Customer is advised to take specialist advice on any compliance matters;
 - 2.6.2 the Generated Code is not designed to be used in any Customer Application intended for use in circumstances where there is a risk of loss of life, damage to health, damage to property, disruption of essential supplies or utilities, harm to the environment or other equivalent types of harm and the Customer should not use the Generated Code in Customer Applications which are intended to be used in this way and should ensure that its licensees are aware that the Customer Applications are not intended to be used in this way; and
 - 2.6.3 whilst the Generated Code is developed with security in mind, security requirements and threats are rapidly developing and will depend on multiple factors, including the intended use of the Customer Application, the way in which the Generated Code is integrated into the Customer Application and the environment in which the Customer Application is installed and operated, and it is ultimately the Customer's responsibility to ensure that the Customer Application is fully secure.
- 2.7 The Customer also acknowledges that KOADX will not alone create a fully functioning software application and further development work will be required by specialist human developers to adapt the Generated Code and produce the additional code required to produce the final Customer Application.

3. BESPOKE TEMPLATE CREATION

- 3.1 The Package includes access to all of the standard templates which NionNet may make available from time to time. However, if the Customer has a requirement for a Bespoke Template the Customer may engage NionNet to develop the Bespoke Template for it, either by ordering the creation of a Bespoke Template at the same time as it orders its Package or subsequently.
- 3.2 Bespoke Template Creation Services will be provided with reasonable skill and care and NionNet will use its reasonable endeavours to create the Bespoke Template within the agreed timescale (or, if no agreed timescale, within a reasonable period).
- 3.3 Any Bespoke Template created will substantially conform to any specification agreed. Once the Bespoke Template is made available for the Customer to use, the Customer will review the template and will notify NionNet within five Working Days if it

considers that the Bespoke Template is non-compliant, in which case NionNet will review any issues identified by the Customer and, if it agrees that the Bespoke Template is non-compliant will promptly resolve the deficiencies.

- 3.4 The Customer will have the right to use the Bespoke Template as part of its Package through the use of KOADX but will not be entitled to receive a copy of the Bespoke Template itself.
- 3.5 Bespoke Template are not exclusive to the Customer and NionNet reserves the right to make any Bespoke Template it creates to the Customer's requirements available for use by its customer base in general (and equally the Customer will have the right to use any bespoke templates which NionNet creates for other customers and chooses to make available to its customer base in general).

4. ADDITIONAL SERVICES

- 4.1 Additional Services are not included within the Package but may be ordered separately, either at the same time as the Customer orders its Package or subsequently.
- 4.2 NionNet will be responsible for the provision of the consultants who provide the Additional Services. In the event that any individuals become unavailable due to (for example) accident, illness, termination of employment or reallocation to another task, NionNet will use reasonable endeavours to provide a suitable replacement.
- 4.3 Additional Services will be provided with reasonable skill and care and NionNet will use its reasonable endeavours to perform the Additional Services within the agreed timescale (or, if no agreed timescale, within a reasonable period).
- 4.4 The Additional Services will be provided to substantially conform to any specification agreed. Where no specification is agreed NionNet will draft a specification that it considers appropriate and will send it to the Customer for comments then make any revisions as it considers appropriate following receipt of any such comments.

5. USERS

- 5.1 Except as otherwise authorised in writing, User accounts may only be issued to employees, consultants and/or agents of the Customer or other companies in its Group. In no circumstances may the Customer permit any party other than an authorised User to access KOADX using its Package. Users will be permitted access only to the extent that they are using KOADX for the business purposes of the Customer or its Group.
- 5.2 The Customer will be fully responsible for any acts or omissions of any User or any other party accessing KOADX using any User's access credentials (whether or not with the Customer's permission), with all such acts or omissions being treated as the acts or omissions of the Customer. The Customer must ensure that all Users are aware of the Acceptable Use Policy and all applicable terms in respect of use of KOADX and any Generated Code.
- 5.3 Without prejudice to its other rights or remedies, NionNet may suspend any User account at any time where it reasonably believes that the acts or omissions of that User has caused or is likely to cause Customer to breach these terms or that the User account is being used by a person who is not eligible to use KOADX as part of the Customer's Package.
- 5.4 The Customer must keep, and must ensure that each User keeps, all access credentials for KOADX confidential and secure.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 All rights, title and interest (including Intellectual Property Rights) in KOADX, any Generated Code (and the underlying lines of code used to generate the Generated Code) and any Bespoke Templates will (as between NionNet and the Customer) belong to the NionNet, and nothing in these terms will operate to transfer any such rights to the Customer.
- 6.2 Subject to clauses 6.3 and 6.4, NionNet will defend the Customer from and against any claim that use of KOADX or the Generated Code in accordance with these terms, infringes the copyright of any third party (an **Infringement Claim**), and will indemnify the Customer against (a) any judgment made against the Customer in relation to that Infringement Claim; (b) any settlement of that Infringement Claim entered into with the relevant third party in accordance with clause 6.3 and (c) any reasonable legal expenses incurred by the Customer in connection with that Infringement Claim.
- 6.3 To obtain the benefit of the indemnity set out in clause 6.2, the Customer must:
 - 6.3.1 give NionNet written notice of any Infringement Claim;
 - 6.3.2 allow NionNet to assume control of the negotiation, defence and settlement of each Infringement Claim and not make any admissions or compromise in relation to the same; and
 - 6.3.3 at NionNet's expense, give NionNet such assistance as NionNet may reasonably require in the negotiation, defence, settlement or compromise of each Infringement Claim.
- 6.4 NionNet will have no liability for Infringement Claims where the infringement arises out of or in connection with:
 - 6.4.1 any modification made to the Generated Code by the Customer (or any third party) or the combination of the Generated Code or any part of it with code, equipment, products or data not supplied by NionNet;
 - 6.4.2 the model provided by the Customer, any Customer Content or any requirements specified by the Customer in respect of a Bespoke Template;
 - 6.4.3 any Generated Code in respect of which NionNet has provided replacement Generated Code in accordance with clause 6.5.2; or
 - 6.4.4 the use of KOADX or the Generated Code in breach of these terms.
- 6.5 Without prejudice to clause 6.2, where NionNet becomes aware of any claim or potential claim that:

- 6.5.1 KOADX infringes any Intellectual Property Rights of any third party, NionNet may at its option (a) suspend access to KOADX (or the affected part), (b) modify KOADX to remedy the infringement and/or (c) terminate the Customer's Package; or
- 6.5.2 any of the Generated Code (or any of the underlying code used to generate the Generated Code) infringes the Intellectual Property Rights of any third party, NionNet will notify the Customer and, where infringement is established by a court or NionNet reasonably believes infringement has occurred NionNet will endeavour to promptly provide replacement Generated Code which does not infringe.
- 6.6 Where access to KOADX is suspended or terminated pursuant to clause 6.5.1, NionNet will make a pro rata refund to the Customer calculated by NionNet (acting reasonably) based on the proportion of the KOADX service not received and the period over which it was not received.
- 6.7 The Customer will retain all rights in the Customer Branding and Customer Content. The Customer grants NionNet a non-exclusive royalty free licence to use such Customer Branding and Customer Content for the purposes of providing KOADX, creating Bespoke Templates and providing the Additional Services and, in the case of the Customer Branding, in publicity material.

7. FEES

- 7.1 The Customer will pay the Fees in accordance with the payment terms set out during the registration process.
- 7.2 Where no specific payment terms have been agreed for Bespoke Template Creation Services or Additional Services, NionNet may invoice the Customer monthly in arrears and on completion of the applicable Services, each invoice to be payable within 30 days.
- 7.3 Where no specific Fee has been agreed for Bespoke Template Creation Services or Additional Services, these Services will be charged at NionNet's standard day rates, as in effect from time to time. Details of these rates are available from NionNet on request.
- 7.4 Where NionNet permits usage in excess of the maximum complexity (additional data objects, relationships or properties) and/or usage (additional projects or generations) conditions applicable to the option selected during the registration process, NionNet will charge additional Fees in line with NionNet's standard charges as may be in effect from time to time, details of which are available on request. Unless otherwise agreed, NionNet may invoice for such additional Fees as and when incurred.
- 7.5 Where and to the extent that Services are provided from any location other than NionNet's own premises, the Customer will be responsible for any and all reasonable expenses incurred by NionNet in providing the Services.
- 7.6 All Fees are exclusive of VAT which is chargeable in addition at the prevailing rate if applicable. VAT will also be payable on expenses where applicable.
- 7.7 If a purchase order or similar reference is required as a pre-condition for NionNet to receive payment, the relevant reference must be provided during the registration process or alternatively provided to NionNet at least seven days before any invoice is due to be issued. If no such reference is provided to NionNet, NionNet will be entitled to assume that no such reference is required and may proceed to issue the invoice without that reference.
- 7.8 If the Customer has chosen a subscription, NionNet will be entitled to review the Fees applicable to the subscription from time to time. Should NionNet make any changes to the Fees these will take effect from the next renewal date following the revised fees coming into effect, provided that NionNet has notified the Customer of the change not less than 30 days prior to such date.
- 7.9 If any amount due to NionNet from the Customer is not paid by the due date NionNet may:
 - 7.9.1 **recover interest and compensation in accordance with the provisions of the UK Late Payment of Commercial Debts (Interest) Act 1998;**
 - 7.9.2 **suspend access to KOADX or the provision of any of the other Services without liability and may maintain such suspension until all outstanding sums due to NionNet from the Customer have been paid (this does not affect the liability of the Customer to pay any Fees due during any period of suspension); and/or**
 - 7.9.3 **immediately terminate this agreement on written notice to the Customer.**
- 7.10 All amounts due to NionNet will be paid by the Customer to NionNet in full without any set-off, counterclaim, deduction or withholding.

8. TERM AND TERMINATION

- 8.1 This agreement takes effect immediately upon the Customer being granted access to KOADX.
- 8.2 Where the Package has been purchased on a pay-per-project basis:
 - 8.2.1 the Package applies to a single project (with the agreed number of generations) and the Package must be used within the period stipulated during the registration process; and
 - 8.2.2 if the Customer wishes to use KOADX for further projects this use will be governed by these terms (and subject to additional Fees in accordance with clause 7.4) unless a separate agreement is entered into in respect of that project.
- 8.3 Where the Package has been purchased on a subscription basis:
 - 8.3.1 the subscription will run for the initial term selected during the registration process, and will then renew for successive periods of one year each unless and until terminated in accordance with these terms; and
 - 8.3.2 Either party may choose not to renew the subscription by giving the other not less than 30 days' written notice prior to renewal, in which case the subscription will expire at the end of the current term.
- 8.4 Either party may immediately terminate this agreement on written notice to the other if the other:

- 8.4.1 commits an irremediable material breach of these terms or commits any remediable material breach and fails to remedy it within 30 days of receipt of notice of the breach requiring remedy of the same; or
 - 8.4.2 makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up, is unable to pay its debts or otherwise becomes insolvent or suffers or is the subject of any distraint, execution, event of insolvency or event of bankruptcy or any other similar process or event, whether in Guernsey or elsewhere.
- 8.5 In the event of termination of this agreement for any reason:
- 8.5.1 the Customer's (and all Users') access to KOADX will be withdrawn by NionNet and the Customer must not (and must ensure that the Users do not) make any further attempt to access KOADX;
 - 8.5.2 NionNet will be entitled to delete any Customer Content and any Generated Code created for the Customer from its servers;
 - 8.5.3 all Bespoke Template Creation Services and Additional Services will immediately terminate;
 - 8.5.4 the Customer's licence to use the Generated Code will be unaffected by the termination;
 - 8.5.5 except where expressly stated to the contrary in these terms, any Fees already paid will be non-refundable;
 - 8.5.6 any amounts invoiced as at the date of termination will become immediately due and payable and, where any Fees or expenses have been incurred but not yet invoiced, NionNet may issue an invoice for those amounts and that invoice will be immediately due and payable; and
 - 8.5.7 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, will not be affected or prejudiced.
- 8.6 The termination of this agreement will not affect the continuation of any terms which are expressly or implicitly intended to survive termination, including clauses 6, 8, 9, 10, 11, 13 and 14.

9. CONFIDENTIALITY

- 9.1 Each party undertakes that it will keep the other party's confidential information confidential and will not at any time:
- 9.1.1 use such information for any purpose other than to exercise its rights and perform its obligations under this agreement (or such other purposes as the other party may expressly authorise in writing from time to time); or
 - 9.1.2 disclose such information to any third party, except as otherwise permitted by this agreement or with the other party's prior written consent.
- 9.2 For the purposes of this agreement, a party's confidential information is any know-how, trade secret, documentation or information (whether commercial, financial, technical, operational or otherwise) relating to its business, affairs, operations, processes, intentions, customers or suppliers and which is either marked as "confidential" or which the other party was or ought reasonably to be aware was of a confidential nature, except that this clause 9 will not apply to any information that the receiving party can demonstrate:
- 9.2.1 is in the public domain in substantially the same combination as that in which it was disclosed to the receiving party other than as a result of a breach of this agreement or any other obligations of confidentiality;
 - 9.2.2 is or was lawfully received from a third party not under an obligation of confidentiality with respect to it; or
 - 9.2.3 was developed independently of and without reference to confidential information disclosed by the other party.
- 9.3 A party may disclose the other party's confidential information where and to the extent it is required to do so under operation of law, by court order or by any regulatory body of competent jurisdiction provided that, except where legally prohibited from doing so, it must:
- 9.3.1 provide the other with at least ten (10) days' written notice of its intention to make the disclosure, such notice specifying the confidential information concerned and the nature of the disclosure obligation;
 - 9.3.2 take into account the reasonable requests of the other party in relation to the content, nature and form of the disclosure.
- 9.4 Each party will be entitled to divulge the other party's confidential information to its employees, agents, directors, officers, sub-contractors, professional advisors and consultants who have a need to know the same in connection with this agreement, provided that the receiving party will ensure that such persons are aware of, and will ensure that such persons comply with, these obligations as to confidentiality.

10. DATA PROTECTION

- 10.1 Each party agrees that, in the performance of its respective obligations under the agreement, it will comply with applicable Data Protection Legislation. Where used in this clause 10, the expressions **data subject**, **personal data**, **personal data breach** and **process** bear their respective meanings given in the Data Protection (Bailiwick of Guernsey) Law 2017.
- 10.2 NionNet is expected to process personal data on the Customer's behalf for the purposes of performing the Services and otherwise fulfilling its obligations under this agreement. The types of personal data that NionNet is expected to process on the Customer's behalf include names and contact details of the Customer's employees.
- 10.3 Where NionNet processes personal data on the Customer's behalf under or in connection with this agreement, it will do so only in accordance with these terms and the Customer's documented instructions (unless otherwise required by law in which case NionNet will, where permitted, inform the Customer of that legal requirement before processing).
- 10.4 Where NionNet processes any personal data on the Customer's behalf under or in connection with this agreement it will:

- 10.4.1 other than as permitted by Part X of the Data Protection (Bailiwick of Guernsey) Law 2017, not transfer or allow the transfer of that personal data outside of Guernsey, the UK or the EEA without the Customer's written consent;
 - 10.4.2 ensure that any persons authorised to process the personal data are subject to a duty of confidence in respect of that processing;
 - 10.4.3 take reasonable steps to ensure a level of security appropriate to the risk, in compliance with the obligations imposed on NionNet by section 41 of the Data Protection (Bailiwick of Guernsey) Law 2017;
 - 10.4.4 notify the Customer without undue delay on becoming aware of a personal data breach and cooperate with the Customer to resolve that issue; and
 - 10.4.5 at the Customer's expense, provide the assistance that the Customer may reasonably require to assist it to comply with its obligations to keep that personal data secure, allow it to inform a supervisory authority or data subject of a personal data breach, conduct a data protection impact assessment, consult with a supervisory authority regarding the relevant processing activities and/or respond to requests made by data subjects pursuant to Data Protection Legislation.
- 10.5 The Customer authorises NionNet to engage sub-processors from time to time provided that NionNet will notify the Customer of any intended changes concerning the addition or replacement of sub-processors and will impose upon any sub-processor (and ensure any sub-processor's compliance with) the terms of this clause 10 as if the processing being carried out by the sub-processor was being carried out by NionNet (and NionNet will be liable for the acts and omissions of its sub-processors as if they were NionNet's own acts and omissions).
- 10.6 From time to time during the term of this agreement NionNet will (upon written request from the Customer):
- 10.6.1 provide details in writing of its data processing activities carried out on the Customer's behalf; and
 - 10.6.2 on reasonable notice allow the Customer (or its appointed auditor) to audit its compliance with these terms, subject to any reasonable requirements or restrictions that NionNet may impose to safeguard the personal data it holds on behalf of other clients and/or avoid unreasonable disruption to NionNet's business.
- 10.7 NionNet will process personal data on the Customer's behalf only during the term of this agreement (and following termination to the extent required to perform any post termination obligations). On the termination or expiry of any part of the Services or this agreement as a whole, NionNet will either delete or return all personal data processed on the Customer's behalf in connection with the applicable Services, and delete any copies (except to the extent retention is required by law or for record-keeping purposes).
- 10.8 For the avoidance of doubt, nothing in this clause 10 or otherwise in these terms relieves either party of its own direct responsibilities and liabilities under Data Protection Legislation.

11. LIABILITY

- 11.1 Nothing in these terms will limit or exclude NionNet's liability for death or personal injury caused by its negligence, for fraud or fraudulent misrepresentation, and/or for any other loss or damage the exclusion or limitation of which is prohibited by English law.
- 11.2 Except as provided by clause 11.1 above:
- 11.2.1 the Customer's sole and exclusive remedy for any defects or deficiencies with KOADX is to utilise the Support and, if NionNet fails to resolve the defect or deficiency within the time periods set out in the service level agreement to either (a) claim any remedies set out in the service level agreement or (b) where applicable, serve a notice under clause 8.4.1;
 - 11.2.2 no claim may be brought against NionNet arising out of or in connection with the use of the Generated Code (either by the Customer, by its licensees as part of the Customer Application or otherwise) except in the circumstances described in clause 6.2;
 - 11.2.3 NionNet's total aggregate liability in respect of all causes of action arising out of or in connection with this agreement (whether for breach of contract, strict liability, tort (including negligence), misrepresentation or otherwise) will not exceed (a) in the case of a pay-per-project Package, the total Fees paid or payable during the first 12 months of this agreement and (b) in the case of a subscription Package, the total Fees paid or payable in respect of the subscription during the first 12 months of the subscription;
 - 11.2.4 NionNet will not be liable for any claim arising out of or in connection with this agreement to the extent that it relates to loss of profits, goodwill, business opportunity or anticipated savings, loss of data, injury to reputation, wasted expenditure, wasted management time or indirect, consequential or special loss or damage regardless of the form of action (whether for breach of contract, strict liability, tort (including negligence), misrepresentation or otherwise) and regardless of whether NionNet knew or had reason to know of the possibility of the loss or damage in question; and
 - 11.2.5 NionNet will not be liable for any delay in or failure to comply with its obligations to the extent that it results from the actions or omissions of the Customer.
- 11.3 The express terms set out in this document are in place of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are excluded to the fullest extent permitted by law.

12. FORCE MAJEURE

- 12.1 NionNet will not be liable or responsible for any failure to perform, or delay in performance of, any of its obligations that is caused by events outside its reasonable control (a **Force Majeure Event**).

- 12.2 A Force Majeure Event includes any act, event, non-happening, omission or accident beyond NionNet's reasonable control and includes in particular (without limitation), terrorist attack or threat of terrorist attack, war, threat or preparation for war, fire, malicious damage, epidemic or pandemic, storm (including lightning strike), flood, or other natural disaster or adverse weather, industrial action or other shortage of available staff, impossibility of the use of telecommunications networks, or interruption or failure of utility service, malicious activity against NionNet's computer systems such as computer virus or denial of service attack, other illegal or unlawful actions of third parties, acts or omissions of other customers and/or their users or non-performance by suppliers, subcontractors or agents and the acts, decrees, legislation, regulations, policy or restrictions of any government or public authority.
- 12.3 Where the Force Majeure Event affects KOADX the Customer accepts that access to KOADX may be unavailable or restricted during the continuance of the Force Majeure Event. Where the Force Majeure Event affects other Services, the Customer's right to receive the affected Services is suspended for the period that the Force Majeure Event continues, and NionNet will have an extension of time for performance for the duration of that period. NionNet will use its reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which its obligations may be performed despite the Force Majeure Event.

13. NOTICES

- 13.1 Each notice given under or in relation to this agreement must be sent by email to the recipient's nominated email address and must clearly state the full corporate name of the Customer. The Customer may also be able to notify certain matters through NionNet's online subscription management service.
- 13.2 NionNet's nominated email address for notices is info@nionnet.com and the Customer's email address for notices will be as provided during the registration process.
- 13.3 Each party may update its nominated contact details by notice to the other from time to time.
- 13.4 A notice will be treated as having been received at the time of sending if sent during Working Hours, at 9am UK time on that day if sent before 9am UK time on a Working Day or otherwise at 9am UK time on the next Working Day (provided in each case that no email delivery failure notification is received). Where a matter notified through the online subscription management service can be actioned automatically, it will be effective immediately regardless of whether it was sent during Working Hours.
- 13.5 This clause 13 does not apply to the service of legal proceedings or other documents in any legal action.

14. GENERAL

- 14.1 In these terms:
- 14.1.1 headings are included for convenience only and will not affect the construction or interpretation of these terms;
 - 14.1.2 any reference to the singular will include the plural and vice versa and any reference to one gender will include all genders including the neuter gender;
 - 14.1.3 any reference to a person will, unless the context otherwise requires, include individuals, partnerships, companies and all other legal persons;
 - 14.1.4 the words **include**, **includes**, **including** and **included** and like words and expressions will be construed without limitation unless inconsistent with the context; and
 - 14.1.5 any reference in these terms to law or to any statute, statutory instrument, directive, regulation, order or other enactment will mean the same as will be amended, enacted, replaced, extended, modified, consolidated or repealed from time to time.
- 14.2 These terms document the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, written or oral, relating to its subject matter. Each party acknowledges and accepts that, in entering into this agreement it has not relied upon any representation, undertaking or promise except as set out in these terms.
- 14.3 Each party agrees that it will have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these terms. Each party agrees that it will have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these terms.
- 14.4 The failure or delay of either party to enforce or to exercise, at any time or for any period of time, any term of or any right, power or privilege arising pursuant to this agreement does not constitute and will not be construed as a waiver of such term or right, remedy, power or privilege and will in no way affect either party's right later to enforce or exercise it, nor will any single or partial exercise of any right, remedy, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.
- 14.5 The invalidity or unenforceability of any provision of or any part of a provision of or any right arising pursuant to this agreement will not in any way affect the remaining provisions or rights, which will be construed as if such invalid or unenforceable part did not exist.
- 14.6 The Customer may not assign, transfer, sub-contract or otherwise part with this agreement or any right or obligation under it without NionNet's prior written consent.
- 14.7 The rights set out in these terms may only be exercised by the parties to this agreement and the Contracts (Rights of Third Parties) Act 1999 does not apply to this agreement. Where KOADX or Generated Code is used for the benefit of another company in the Customer's Group or by a User engaged by another company in the Customer's Group, this use will be treated for the purpose of these terms as use by the Customer and the Customer may exercise any rights or remedies as may be conferred on the Customer by these terms in respect of such use.

14.8 This agreement (including any associated non-contractual disputes or claims) is governed by English law and the parties hereby accept the exclusive jurisdiction of the English courts in relation to any dispute arising under or in connection with this agreement, except a party may take action in any jurisdiction in which the other party is incorporated or operates to obtain interim relief or enforce any judgment obtained.

