

## PURECHANNELS LIMITED STANDARD TERMS OF SERVICE

### AGREED TERMS

#### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in these Conditions.

**Applicable Data Protection Laws:** means:

- (a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- (b) To the extent the General Data Protection Regulation ((EU) 2016/679) (EU GDPR) applies, the law of the European Union or any member state of the European Union to which Purechannels is subject, which relates to the protection of personal data.

**Authorised Users:** those individuals who are authorised by the Customer to use Komz and the Documentation, as further described in clause 2.2(d).

**Business Day:** a day other than a Saturday, Sunday, or public holiday in England when banks in London are open for business.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 16;

**Contract:** the contract between Purechannels and the Customer for the supply of Services in accordance with these Conditions, the Contract Term Sheet, and any applicable specification

**Contract Term Sheet:** the document issued by Purechannels to the Customer that sets out the key commercial terms for the supply of Services from Purechannels to the Customer. For the avoidance of doubt, the Contract Term Sheet forms part of the Contract.

**control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

**Customer:** as specified in the Contract Term Sheet.

**Customer Data:** the data inputted by the Customer, Authorised Users, or Purechannels on the Customer's behalf for the purpose of using Komz or facilitating the Customer's use of Komz.

**Customer Personal Data:** any personal data which Purechannels processes in connection with the Contract, in the capacity of a processor on behalf of the Customer.

**Documentation:** the document made available to the Customer by Purechannels which sets out a description of Komz and available Services and the user instructions for Komz.

**Effective Date:** the date set out in the Contract Term Sheet.

**Fees:** the Subscription Fees and the Setup Fee and any other charges due and payable by the Customer under the Contract from time to time.

**Initial Subscription Term:** the initial term of 12 months from the Effective Date.

**Normal Business Hours:** 9.00 am to 5.00 pm local UK time, each Business Day.

**Renewal Period:** the period described in clause 14.1.

**Setup Fee:** the fee payable by the Customer for Purechannels' setup of the Customer on Komz, as set out in the Contract Term Sheet.

**Software:** the online software applications provided by Purechannels as part of Komz.

**Subscription Fees:** the subscription fees payable by the Customer to Purechannels, as set out in the Contract Term Sheet.

**Subscription Term:** has the meaning given in clause 14.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

**Purechannels Personal Data:** any personal data which Purechannels processes in connection with the Contract, in the capacity of a controller.

**Support Services:** the support provided by Purechannels in relation to Komz as may be notified to the Customer from time to time.

**UK GDPR:** has the meaning given to it in the Data Protection Act 2018.

**Upgrade:** a major version upgrade to Komz.

**User Subscriptions:** the user subscriptions purchased by the Customer pursuant to clause 9.1 which entitle Authorised Users to access and use Komz and the Documentation in accordance with these Conditions.

**Komz:** the subscription services to the Software provided by Purechannels to the Customer under the Contract, as more particularly described in the Documentation.

**Virus:** anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2 Clause, schedule, and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 The Contract Term Sheet forms part of the Contract and shall have effect as if set out in full in the body of these Conditions and any reference to the Contract includes the Contract Term Sheet.
- 1.4 In the event of conflict between the Contract Term Sheet and the Conditions, the Contract Term Sheet shall prevail.
- 1.5 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of the Contract.
- 1.6 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of the Contract under that statute or statutory provision.

1.7 A reference to **writing** or **written** excludes fax but not email.

## 2. **USER SUBSCRIPTIONS**

2.1 Subject to the Customer's payment of the Fees in accordance with clause 9, the restrictions set out in this clause 2 and all other Conditions, Purechannels hereby grants to the Customer a non-exclusive, non-transferable right and licence, without the right to grant sublicences, to permit the Authorised Users to use Komz and the Documentation during the Subscription Term solely for the Customer's internal business operations.

2.2 In relation to the Authorised Users, the Customer undertakes that:

2.2.1 each Authorised User shall keep a secure password for their use of Komz and Documentation and that each Authorised User shall keep their password confidential;

2.2.2 it shall permit Purechannels or Purechannels' designated auditor to audit Komz in order to establish the name and password of each Authorised User and the Customer's data processing facilities to audit compliance with these Conditions. Each such audit may be conducted no more than once per quarter, at Purechannels' expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business.

2.3 The Customer shall not access, store, distribute or transmit any viruses, or any material during the course of its use of Komz that:

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

2.3.2 facilitates illegal activity;

2.3.3 depicts sexually explicit images;

2.3.4 promotes unlawful violence;

2.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

2.3.6 is otherwise illegal or causes damage or injury to any person or property;

and Purechannels reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

2.4 The Customer shall not:

2.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these Conditions:

(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 and/or Documentation (as applicable) 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; or
- 2.4.2 access all or any part of Komz and Documentation in order to build a product or service which competes with Komz and/or the Documentation; or
- 2.4.3 use Komz and/or Documentation to provide services to third parties; or
- 2.4.4 subject to clause 22.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make Komz and/or Documentation available to any third party except the Authorised Users, or
- 2.4.5 attempt to obtain, or assist third parties in obtaining, access to Komz and/or Documentation, other than as provided under this clause 2; or
- 2.4.6 introduce or permit the introduction of, any Virus into Purechannels' network and information systems.
- 2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, Komz and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Purechannels.
- 2.6 The rights provided under this clause 2 are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer.
- 3. ADDITIONAL USER SUBSCRIPTIONS**
- 3.1 Subject to clause 3.2, the Customer may, from time to time during any Subscription Term, increase the number of User Subscriptions in excess of the number set out in the Contract Term Sheet and Purechannels shall grant access to Komz and the Documentation to such additional Authorised Users in accordance with these Conditions.
- 3.2 If the Customer wishes to increase the number of User Subscriptions, and where the Customer does not have the facility to increase the number of User Subscriptions via Komz, the Customer shall notify Purechannels in writing. Purechannels shall respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld). Where Purechannels approves the request, Purechannels shall activate the additional User Subscriptions within 2 days of its approval of the Customer's request.
- 4. KOMZ AND SUPPORT SERVICES**
- 4.1 Purechannels shall, during the Subscription Term, provide Komz and make available the Documentation to the Customer on and subject to these Conditions.
- 4.2 Purechannels shall use commercially reasonable endeavours to make Komz available 24 hours a day, seven days a week, except for:

- 4.2.1 When Purechannels is conducting an Upgrade to Komz, provided Purechannels has given 10 Business Days' prior written notice to the Customer.
  - 4.2.2 planned maintenance conducted during the maintenance window of 10.00 pm to 2.00 am UK time; and
  - 4.2.3 unscheduled maintenance performed outside Normal Business Hours, provided that Purechannels has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance; and
  - 4.2.4 emergency maintenance in respect of which Purechannels will use reasonable endeavours to notify the Customer as soon as possible.
- 4.3 Purechannels will, as part of Komz and at no additional cost to the Customer provide the Customer with Purechannels' standard customer Support Services during Normal Business Hours.

## 5. DATA PROTECTION

- 5.1 For the purposes of this clause 5, the terms **controller**, **processor**, **data subject**, **personal data**, **personal data breach** and **processing** shall have the meaning given to them in the UK GDPR.
- 5.2 Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This clause 5.2 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 5.3 Without prejudice to the generality of clause 5.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of Purechannels Personal Data and Customer Personal Data to Purechannels and lawful collection of the same by Purechannels for the duration and purposes of the Contract.
- 5.4 In relation to the Customer Personal Data, the Schedule sets out the scope, nature and purpose of processing by Purechannels, the duration of the processing and the types of personal data and categories of data subject.
- 5.5 Without prejudice to the generality of clause 5.2, if Purechannels processes any Customer Personal Data on the Customer's behalf when performing its obligations under the Contract (the scope, nature, purpose and duration of which and the types of personal data as set out in the Schedule), the parties acknowledge that for the purposes of the Applicable Data Protection Laws, the Customer is the controller and Purechannels is the processor. In any such case and without prejudice to the generality of clause 5.2:
- 5.5.1 the Customer shall:
    - (a) ensure that the Customer is entitled to transfer the Customer Personal Data to Purechannels so that Purechannels may lawfully use, process, and transfer the Customer Personal Data in accordance with these Conditions on the Customer's behalf; and

- (b) ensure that any relevant third parties have been informed or, and have given their consent to, such use, processing, and transfer as required by Applicable Data Protection Laws and all other applicable data protection legislation.

5.5.2 Purechannels shall:

- (a) process that Customer Personal Data only on the documented instructions of the Customer unless Purechannels is required by law to otherwise process that Customer Personal Data. Purechannels shall notify the Customer of this before performing such processing unless legally prohibited from so notifying the Customer. Purechannels shall inform the Customer if, in the opinion of Purechannels, the instructions of the Customer infringe Applicable Data Protection Laws;
- (b) shall implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which the Customer has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- (c) ensure that any personnel engaged and authorised by Purechannels to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
- (d) assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to Purechannels), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
- (f) at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the Contract unless Purechannels is required by law to continue to process that Customer Personal Data. For the purposes of this clause 5.5.2 Customer Personal Data shall be considered deleted where it is put beyond further use by Purechannels; and
- (g) maintain records to demonstrate its compliance with this clause 5 and allow for reasonable audits by the Customer the Customer's designated

auditor, to occur no more than once annually, for this purpose, on reasonable written notice.

- 5.6 The Customer hereby provides its prior, general authorisation for Purechannels to:
- 5.6.1 appoint processors to process the Customer Personal Data, provided that Purechannels:
- (a) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on Purechannels in this clause 5;
  - (b) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of Purechannels; and
  - (c) shall inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to Purechannels' reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Customer shall indemnify Purechannels for any losses, damages, costs (including legal fees) and expenses suffered by Purechannels in accommodating the objection.
- 5.6.2 transfer Customer Personal Data outside of the UK and the European Economic Area as required for the Purpose, provided that Purechannels shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of Purechannels, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the UK Information Commissioner from time to time (where the UK GDPR applies to the transfer).
- 5.7 The Customer acknowledges that Purechannels is reliant on the Customer for instructions as to the extent to which Purechannels is entitled to use and process any Customer Personal Data. Consequently, Purechannels will not be liable for any claim brought by a data subject arising from such act or omission by Purechannels to the extent that such action nor omission resulted directly from the Customer's instructions.

## 6. **THIRD PARTY PROVIDERS**

The Customer acknowledges that Komz may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. Purechannels makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not Purechannels. Purechannels recommends that the Customer refers to

the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. Purechannels does not endorse or approve any third-party website nor the content of any of the third-party website made available via Komz.

**7. PURECHANNELS' OBLIGATIONS**

7.1 Purechannels shall supply the Services from the Services Start Date as set out in the Contract Term Sheet.

7.2 Purechannels undertakes that Komz will be performed substantially in accordance with the Documentation and with reasonable skill and care.

7.3 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of Komz contrary to Purechannels' instructions, or modification or alteration of Komz by any party other than Purechannels or Purechannels' duly authorised contractors or agents. If Komz does not conform with the foregoing undertaking, Purechannels will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1.

7.4 Purechannels:

7.4.1 does not warrant that:

- (a) the Customer's use of Komz will be uninterrupted or error-free; or
- (b) that Komz, Documentation and/or the information obtained by the Customer through Komz will meet the Customer's requirements.

7.4.2 is not responsible 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 Komz and Documentation may be subject to limitations, delays, and other problems inherent in the use of such communications facilities.

7.5 For the avoidance of doubt, where the Customer cannot access Komz due to any of the following, Purechannels shall not be in breach of its obligations under these Conditions:

7.5.1 a fault or failure of the internet or any public telecommunication network;

7.5.2 a fault or failure of the Customer's computer systems or networks;

7.5.3 any breach by the Customer of the Contract; or

7.5.4 any unauthorised useage.

7.6 The Contract shall not prevent Purechannels from entering into similar agreements with third parties, or from independently developing, using, selling, or licensing documentation, products and/or services which are similar to those provided under the Contract.

- 7.7 Purechannels warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Contract.
- 7.8 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against Purechannels shall be for Purechannels to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Purechannels. Purechannels shall not be responsible for any loss, destruction, alteration, or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Purechannels to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable).
- 7.9 All warranties given by Purechannels shall be subject to the Customer using Komz in compliance with these Conditions.

## 8. CUSTOMER'S OBLIGATIONS

- 8.1 The Customer shall:
- 8.1.1 provide Purechannels with:
    - (a) all necessary co-operation in relation to the Contract; and
    - (b) all necessary access to such information as may be required by Purechannels;in order to provide Komz, including but not limited to Customer Data, security access information and configuration services;
  - 8.1.2 without affecting its other obligations under these Conditions, comply with all applicable laws and regulations with respect to its activities under the Contract;
  - 8.1.3 fulfill all other Customer responsibilities set out in these Conditions in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Purechannels may adjust any agreed timetable or delivery schedule as reasonably necessary;
  - 8.1.4 ensure that the Authorised Users use Komz and the Documentation in accordance with these Conditions and shall be responsible for any Authorised User's breach of the Contract;
  - 8.1.5 ensure that all contact and any other data relating to Authorised Users will be accurate and up to date and Customer will promptly inform Purechannels in the event of any change to such data provided under the Contract. Purechannels excludes any and all liability arising out of its use of data provided by the Customer;
  - 8.1.6 obtain and shall maintain all necessary licences, consents, and permissions necessary for Purechannels, its contractors and agents to perform their obligations under the Contract, including without limitation Komz;
  - 8.1.7 ensure that all branding, logos, guidelines, and other materials provided to Purechannels for the purpose of Purechannels' performance of the Services are correct, accurate and complete.
  - 8.1.8 ensure that its network and systems comply with the relevant specifications provided by Purechannels from time to time; and

- 8.1.9 be, to the extent permitted by law and except as otherwise expressly provided in these Conditions, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Purechannels' data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.
- 8.2 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.
9. **CHARGES AND PAYMENT**
- 9.1 The Customer shall pay the Setup Fee and the Subscription Fees to Purechannels in accordance with this clause 9 and the Contract Term Sheet.
- 9.2 The Customer shall on the Effective Date provide to Purechannels valid, up-to-date, and complete credit card details or approved purchase order information acceptable to Purechannels and any other relevant valid, up-to-date, and complete contact and billing details and, if the Customer provides:
- 9.2.1 its credit card details to Purechannels, the Customer hereby authorises Purechannels to bill such credit card:
- (a) on the Effective Date and on the [first] of each month for the Subscription Fees payable in respect of the Initial Subscription Term; and
  - (b) subject to clause 14.1, at least 30 days prior to each anniversary of the Effective Date and each month thereafter for the Subscription Fees in respect of and for the duration of the next Renewal Period;
- 9.2.2 its approved purchase order information to Purechannels, Purechannels shall invoice the Customer:
- (a) on the Effective Date and on the [first] of each month for the Subscription Fees payable monthly in respect of the Initial Subscription Term; and
  - (b) subject to clause 14.1, at least 30 days prior to each anniversary of the Effective Date and each month thereafter for the Subscription Fees in respect of and for the duration of the next Renewal Period,
- and the Customer shall pay each invoice within [30 days] after the date of such invoice or such sum shall be deducted from any Customer monies held on account by Purechannels from time to time.
- 9.3 If Purechannels has not received payment within [30 days] after the due date, and without prejudice to any other rights and remedies of Purechannels:

- 9.3.1 Purechannels may, without liability to the Customer, disable the Customer's password, account and access to all or part of Komz and Purechannels shall be under no obligation to provide any or all of Komz while the invoice(s) concerned remain unpaid; and
  - 9.3.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 9.4 All amounts and fees stated or referred to in the Contract:
- 9.4.1 shall be payable in pounds sterling;
  - 9.4.2 are, subject to clause 13.3(b), non-cancellable and non-refundable;
  - 9.4.3 are exclusive of value added tax, which shall be added to Purechannels' invoice(s) at the appropriate rate.
- 9.5 Purechannels shall be entitled to increase the Subscription Fees, at the start of each Renewal Period upon 90 days' prior notice to the Customer and the Contract Term Sheet shall be deemed to have been amended accordingly.

## 10. PROPRIETARY RIGHTS

- 10.1 The Customer acknowledges and agrees that Purechannels and/or its licensors own all intellectual property rights in Komz and the Documentation. Except as expressly stated herein, the Contract does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of Komz or the Documentation.
- 10.2 Purechannels confirms that it has all the rights in relation to Komz and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, these Conditions.
- 10.3 The Customer grants Purechannels a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to Purechannels for the term of the Contract for the purpose of providing the Services to the Customer.

## 11. CONFIDENTIALITY

- 11.1 Each party undertakes that it shall not at any time during the term of the Contract, and for a period of two years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 11.2.
- 11.2 Each party may disclose the other party's confidential information:

- 11.2.1 to its employees, officers, representatives, contractors, subcontractors, or advisers who need to know such information for the purposes of conducting the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Clause 11; and
  - 11.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

## 12. **INDEMNITY**

- 12.1 The Customer shall defend, indemnify, and hold harmless Purechannels against claims, actions, proceedings, losses, damages, expenses, and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of Komz and/or Documentation, provided that:
- 12.1.1 the Customer is given prompt notice of any such claim;
  - 12.1.2 Purechannels provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
  - 12.1.3 the Customer is given sole authority to defend or settle the claim.
- 12.2 The Customer shall defend, indemnify and hold harmless Purechannels against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, any compensation paid to data subjects, demands and in each case whether or not arising from any investigation by, or imposed by, a supervisory authority) arising out of or in connection with a breach by the Customer of its obligations under clause 5.
- 12.3 Purechannels shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of Komz or Documentation in accordance with these Conditions infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- 12.3.1 Purechannels is given prompt notice of any such claim;
  - 12.3.2 the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to Purechannels in the defence and settlement of such claim, at Purechannels's expense; and
  - 12.3.3 Purechannels is given sole authority to defend or settle the claim.
- 12.4 In the defence or settlement of any claim, Purechannels may procure the right for the Customer to continue using Komz, replace or modify Komz so that they become non-infringing or, if such remedies are not reasonably available, terminate the Contract on

- 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 12.5 In no event shall Purechannels, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- 12.5.1 a modification of Komz or Documentation by anyone other than Purechannels;  
or
  - 12.5.2 the Customer's use of Komz or Documentation in a manner contrary to the instructions given to the Customer by Purechannels; or
  - 12.5.3 the Customer's use of Komz or Documentation after notice of the alleged or actual infringement from Purechannels or any appropriate authority.
- 12.6 The foregoing and clause 13.3(b) state the Customer's sole and exclusive rights and remedies, and Purechannels' (including Purechannels' employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.
- 13. LIMITATION OF LIABILITY**
- 13.1 Except as expressly and specifically provided in these Conditions:
- 13.1.1 the Customer assumes sole responsibility for results obtained from the use of Komz and the Documentation by the Customer, and for conclusions drawn from such use. Purechannels shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Purechannels by the Customer in connection with Komz, or any actions taken by Purechannels at the Customer's direction;
  - 13.1.2 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; and
  - 13.1.3 Komz and the Documentation are provided to the Customer on an "as is" basis.
- 13.2 Nothing in these Conditions excludes the liability of Purechannels:
- 13.2.1 for death or personal injury caused Purechannels' negligence; or
  - 13.2.2 for fraud or fraudulent misrepresentation.
- 13.3 Subject to clause 13.1 and clause 13.2:
- 13.3.1 Purechannels shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract; and

13.3.2 Purechannels' total aggregate liability in contract (including in respect of the indemnity at clause 12.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the total Fees paid during the 12 months immediately preceding the date on which the claim arose.

13.4 Nothing in these Conditions excludes the liability of Purechannels for any breach, infringement, or misappropriation of Purechannels' Intellectual Property Rights.

#### 14. **TERM AND TERMINATION**

14.1 The Contract shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, the Contract shall be automatically renewed for successive periods of 12 months (each a Renewal Period), unless:

14.1.1 either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

14.1.2 otherwise terminated in accordance with these Conditions;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the Subscription Term.

14.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

14.2.1 the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

14.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business [or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction]; or

14.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

14.3 On termination of the Contract for any reason:

- 14.3.1 all licences granted under these Conditions shall immediately terminate and the Customer shall immediately cease all use of Komz and/or the Documentation;
- 14.3.2 each party shall return and make no further use of any equipment, property, Documentation, and other items (and all copies of them) belonging to the other party.
- 14.3.3 Purechannels may destroy or otherwise dispose of any of the Customer Data in its possession unless Purechannels receives, no later than ten days after the effective date of the termination of the Contract, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Purechannels shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Purechannels in returning or disposing of Customer Data; and
- 14.3.4 any rights, remedies, obligations, or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination shall not be affected or prejudiced.

**15. FORCE MAJEURE**

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for four weeks, the party not affected may terminate the Contract by giving 10 days' written notice to the affected party.

**16. VARIATION**

No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**17. WAIVER**

- 17.1 A waiver of any right or remedy is only effective if given in writing [and shall not be deemed a waiver of any subsequent right or remedy.
- 17.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

**18. RIGHTS AND REMEDIES**

Except as expressly provided in the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

**19. SEVERANCE**

19.1 If any provision or part-provision of the 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 the Contract.

19.2 If any provision or part-provision of the Contract is deemed deleted under clause 20.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**20. ENTIRE AGREEMENT**

20.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter.

**21. ASSIGNMENT**

21.1 The Customer shall not, without the prior written consent of Purechannels, assign, novate, transfer, charge, sub-contract, or deal in any other manner with all or any of its rights or obligations under the Contract.

21.2 Purechannels may at any time assign, transfer, charge, sub-contract, or deal in any other manner with all or any of its rights or obligations under the Contract.

**22. NO PARTNERSHIP OR AGENCY**

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

**23. THIRD PARTY RIGHTS**

the Contract does not confer any rights on any person or party (other than the parties to the Contract and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

**24. COUNTERPARTS**

- 24.1 the Contract may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one Contract.
- 24.2 Transmission of the executed signature page of a counterpart of the Contract by email (in PDF, JPEG, or other agreed format) shall take effect as the transmission of an executed "wet ink" counterpart of the Contract.
- 24.3 No counterpart shall be effective until each party has provided to the other at least one executed counterpart.

**25. NOTICES**

- 25.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
- 25.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - 25.1.2 sent by email to the email address set out in the Contract Term Sheet.
- 25.2 Any notice shall be deemed to have been received:
- 25.2.1 if delivered by hand, at the time the notice is left at the proper address;
  - 25.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
  - 25.2.3 if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- 25.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**26. GOVERNING LAW**

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 and interpreted in accordance with the law of England and Wales.

**27. JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

## SCHEDULE 1 DATA PROCESSING DETAILS

### PROCESSING DETAILS

- (i) Subject matter and nature of processing: To enable Purechannels to perform its obligations under this agreement.
- (ii) Duration of processing: For the duration of this agreement.
- (iii) Personal data categories: name, email address, company name, date added to Komz, marketing preferences.
- (iv) Data subject types: Business contacts.