

Customer company name		Customer billing address	
Customer contact details		Delivery location(s)	
Service Months ordered	[x] Service Months for Device 1 [y] Service Months for Device 2 [z] Service Months for Device 3	Charges for Service Months (ex VAT)	[x] x £[30] for single Service Months assigned to a Device [y] x £[350] for twelve Service Months assigned to a Device
Devices and quantities ordered		Charges for Devices (ex VAT)	
Charges for delivery (ex VAT)			

Note for KP: as a minimum, all of the details above need to be captured during the online ordering process and sent to the customer in an order confirmation email. A further delivery confirmation email establishing the Order Start Date needs to be sent to the customer when the Devices are despatched or the Services start to be provided.

To reduce the risk of a customer claiming that different terms apply to their orders, we would recommend that: (1) the terms below are published on the KPMS Website (ideally with a link on the footer of every page), (2) the Customer must click to accept the terms below as part of the online ordering process, and (3) the terms below are referred to and a link to them provided in the order confirmation email.

ENVIEW MONITORS SUPPLY AGREEMENT

TERMS AND CONDITIONS

BACKGROUND

KP Monitoring Services Limited (company no. 12007679) whose registered office is at 31 High Street, Haverhill, Suffolk CB9 8AD (“**KPMS**”) sells eNView noise and vibration monitoring devices and peripherals (“**Devices**”), licenses Device firmware and software required for calibration and data visualisation (“**Software**”) and provides data services (“**Services**”).

The terms and conditions (the “**Terms**”) below govern the sale of Devices, Software licences and Services to you by KPMS. Please read the Terms carefully before placing an order. By placing an order via the KPMS website, you signify your agreement to be bound by the Terms.

Please note that KPMS sells Devices and provides its Services exclusively to traders and not to consumers. Do not place an order if you are a consumer.

1 DEFINITIONS AND INTERPRETATION

1.1 In these Terms the following words have the following meanings:

“**Affiliate**” means any business entity which directly or indirectly Controls, is Controlled by, or is under common Control with a party;

“**Agreement**” means the contract comprising of (1) these Terms together with (2) the Customer’s order placed via the KPMS Website once it has been accepted by KPMS in accordance with clause 2.1;

“**Charges**” means the charges payable by the Customer to purchase the Devices and have them delivered and/or for licences for the Software and/or to receive the Services;

“**Confidential Information**” means any and all information and data disclosed to or otherwise obtained by one party by or from the other party (“**Discloser**”) or a third party acting on behalf of the Discloser before, on or after the date of the Agreement in any medium and in whatever form (whether disclosed or obtained orally, in document or electronic form, by demonstration or otherwise) that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Except for any audio recordings that the Customer makes using the Devices, the parties agree that the data recorded and/or transmitted by Devices is not confidential and may be shared with third parties without restriction;

“**Control**” means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and Controls, Controlled and the expression change of Control shall be construed accordingly;

“**Customer**” means the entity identified as such during the online ordering process;

“**Data Protection Legislation**” means the UK Data Protection Legislation and any other legislation relating to personal data and all other legislation and regulatory requirements in force from time to

time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications);

“**Delivery Email**” has the meaning set out in clause 2.1;

“**Documentation**” means user manuals or instructions for the Devices, Software and Services provided by KPMS;

“**Force Majeure**” means any event outside the reasonable control of a party affecting its ability to perform its obligations (other than payment), including act of God, fire, flood, lightning, war, revolutions, act of terrorism and riot or civil commotion but excluding strikes, lock-outs or other industrial action, whether of the affected party’s own employees or others;

“**Intellectual Property Rights**” or “**IPR**” means patents, utility models, trade marks, copyright, semiconductor topography rights, rights in databases, design rights, unregistered Community designs, registered designs and registered Community designs, goodwill and all rights or forms of protection of a similar nature or having equivalent or a similar effect to any of them which may subsist anywhere in the world and including rights of action accruing in respect of any of them;

“**KPMS**” means the entity identified as such during the online ordering process;

“**KPMS Website**” means the website located at <https://www.kpenview.com>;

“**Order Start Date**” means the date that KPMS sends a Delivery Email to the Customer;

“**Portal**” means the website located at [INSERT URL] from which the Customer can access the Services;

“**Service Month**” shall have the meaning set out in clause 4.5;

“**Service Start Date**” means the date when a Device is first connected to the Services;

“**Service Term**” means, with respect to the Services provided for a Device, the time starting with the relevant Service Start Date and ending with the expiry of all Service Months purchased by the Customer that have been assigned to that Device by the Customer;

“**Specification**” means the manual for the Devices and the Services published at <https://www.kpenview.com/manual> as may be revised by KPMS from time to time on reasonable notice;

“**UK Data Protection Legislation**” means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation (Regulation (EU) 2016/679) and the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) as retained in UK law pursuant to the European Union (Withdrawal) Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (2019 No. 419), the Data Protection Act 2018, the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), as amended or replaced from time to time and any regulations or statutory instruments enacted thereunder (and the terms **controller**, **processor**, **data subject**, **personal data**, **personal data breach**, **processing** and **appropriate technical measures** shall be as defined in the UK Data Protection Legislation);

“Warranty Period” shall have the meaning set out in clause 8.2;

“Working Days” means Monday to Friday (except UK public holidays); and

“Year” means each period of 12 months commencing with the Order Start Date.

1.2 Headings are for convenience only and shall not affect the construction of the conditions of the Agreement. References to clauses and schedules are to clauses and schedules of the Agreement.

1.3 References to statutory provisions shall include any legislation intended to amend or supercede those statutory provisions.

2 ORDERING

2.1 The parties agree that an order placed by the Customer through the KPMS Website shall constitute only an offer to purchase Devices, Software licences and Services by Customer on these Terms. When KPMS receives an order, it will send an email confirming the details of the order but this will not constitute acceptance of the Customer’s offer. Acceptance of the offer shall occur, and a binding contract for sale of the relevant Devices, Software licences and Services shall be created, only when KPMS dispatches Devices to the Customer or commences provision of the Services and confirms by email that it has done so (a **“Delivery Email”**). Each executed Delivery Email will create a separate binding contract for sale with respect to the Devices, Software licences and/or Services specified in that email.

2.2 If KPMS is unable to supply all of the ordered Devices and/or Services for any reason then KPMS will inform the Customer of this by e-mail. If the Customer has already paid for the Devices and/or Services, KPMS’s sole obligation and liability shall be to refund the Customer for the full amount of the Charges (including any delivery costs) for the Devices and/or Services that it cannot supply as soon as reasonably practicable.

2.3 The Customer warrants and represents that any orders it places with KPMS for Devices, Software licences and/or Services are as, or on behalf of, a trader and not as a consumer. The parties agree that any contracts for the sale of Devices, Software licences and Services are trader-to-trader and, in particular, that the rights of consumers under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 do not apply to any such contracts. If the Customer breaches this clause 2.3, KPMS shall be entitled to terminate any contract with the Customer immediately.

3 SUPPLY OF DEVICES

3.1 Subject to clause 2.2, KPMS will supply the quantity of Devices specified in a Delivery Email.

3.2 Except for the Specification, any advertising or descriptive matter for Devices, Software or Services produced by KPMS or the manufacturers of the Devices and any descriptions or illustrations contained on the website or in any catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Devices, Software or Services described in

them. They shall not form part of the Agreement and should not be relied upon by the Customer.

- 3.3 KPMS shall deliver the Devices to the delivery address(es) specified by the Customer during the online ordering process. Any dates quoted for delivery are approximate only. Delivery of a Device shall be completed on the Device's arrival at the delivery address.
- 3.4 KPMS may deliver the Devices by separate instalments.
- 3.5 The Customer shall comply with any legislation and taxation governing the importation of the Devices into the country of destination and KPMS shall not be responsible for the payment of any duties on them.
- 3.6 KPMS shall be responsible for any damage or loss in transit, provided that (i) the Customer notifies it to KPMS (or its carrier, if applicable) within one day of delivery of the Devices and (ii) the Devices have been handled in accordance with KPMS's instructions.
- 3.7 The risk in the Devices shall pass to the Customer on delivery. Title to the Devices shall pass to the Customer when KPMS receives payment in full for the Devices.

4 DATA SERVICES

- 4.1 KPMS shall provide Services for each Device for the duration of the Service Term. The Services shall comply with the Specification in all material respects.
- 4.2 The Services selected during the online ordering process are exclusively for the Customer identified during the online ordering process or its Affiliates. The Customer will not resell, license, rent, lease or otherwise make available the Services to any other third parties.
- 4.3 The Customer shall (a) keep Portal login details confidential and (b) ensure that individual users of the Portal: (i) do not share their login details with each other or with anyone else; and (ii) do not seek to obtain access to the accounts of other customers on the Portal.
- 4.4 The Customer acknowledges and accepts that Services and Software may only be used in conjunction with the Devices. The Customer shall not use the Services or Software in conjunction with third party devices.
- 4.5 The Customer accepts that the Services for each Device are ordered and provided in units of one month's duration (each such unit a "**Service Month**"). The Customer accepts that Service Months must be purchased for specific Devices and cannot be transferred between them.
- 4.6 The Customer may order the Service Months for each Device either individually or in batches of twelve (12). Unless either party gives ten days' prior written notice of non-renewal to the other, when the Service Months for a Device have all expired:
 - a) where the Customer ordered the Service Months for the Device individually, KPMS will provide and the Customer will pay for a further single Service Month for that Device; and

- b) where the Customer ordered the Service Months for the Device as a batch of twelve (12), KPMS will provide and the Customer will pay for a further twelve (12) Service Months for that Device.

Provision of and payment for additional Service Months shall continue until sufficient prior written notice of non-renewal is given.

- 4.7 The Customer accepts that the Services may, from time to time, become temporarily unavailable due to network or server maintenance or loss of internet connectivity.
- 4.8 The Customer shall indemnify, defend and hold harmless KPMS against any claims brought or demands made by a third party as a result of any use by the Customer of a Service that causes a breach of the Agreement and against all losses, damages, fines or costs sustained by KPMS as a result.

5 CHARGES AND TERMS OF PAYMENT

- 5.1 Where KPMS automatically provides further Service Months pursuant to clause 4.6, the Charges payable by the Customer for those Service Months are as quoted on the KPMS Website ten days before the date on which the previous Services Months for the Device expired. Save as aforesaid, the Charges payable by the Customer for Devices and Services are as quoted on the KPMS Website at the time the Customer places an online order.
- 5.2 The Customer shall pay the Charges upfront and entirely in advance at the time of ordering Devices and Services and KPMS will raise an invoice for the Customer accordingly. If KPMS automatically provides further Service Months pursuant to clause 4.6 and the Customer does not have a direct debit or standing order in place, then the Customer will pay the Charges as soon as reasonably practicable after receipt of the invoice from KPMS but in any event within three (3) days.
- 5.3 KPMS may, by giving 30 days' notice to the Customer at any time, increase the Charges for the Services to be provided to reflect any increase in the costs for those services payable by KPMS to a third party service provider. Where there is no increase in costs payable by KPMS, KPMS may only increase the Charges for the Services to be provided by giving 90 days' notice to the Customer, such increase to become effective on the next anniversary of the Order Start Date for those Services and such an increase shall not exceed the greater of the percentage change in RPI All Items over 12 months or 8%.
- 5.4 KPMS may, by giving notice to the Customer at any time before delivery, increase the price of the Devices to reflect any increase in the cost of the Devices, their preparation, storage or handling that is due to:
 - a) any factor beyond KPMS's control (including increases applied by the relevant manufacturers or distributors, foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - b) any request by the Customer to change the delivery date(s), quantities or types of Devices ordered; or

- c) any delay caused by any instructions of the Customer or failure of the Customer to give KPMS adequate or accurate information or instructions.

5.5 KPMS, without prejudice to any other remedy it may have, shall be entitled to:

- a) suspend performance and provision of any or all Services; and/or
- b) suspend the supply of Devices;

if any undisputed Charges invoiced to the Customer remain unpaid fifteen (15) days after their due date, until the actual date of payment of such unpaid Charges. Charges will be deemed undisputed for the purpose of this clause 5.5 if the Customer has failed to notify KPMS in writing of its reasons for disputing those Charges and provided reasonable evidence in support within five (5) Working Days of receipt of the relevant invoice. The parties agree that the date on which the Service Months assigned to a Device expire shall be unaffected by any period of suspension of Services for that Device pursuant to this clause 5.5 or clause 18.3. KPMS shall be entitled to delete all of the Customer data stored or processed by the Services if any undisputed Charges invoiced to the Customer remain unpaid thirty (30) days after their due date.

5.6 KPMS may require the Customer to pay the Charges by direct debit or standing order.

5.7 Neither party shall be entitled to set off, withhold or deduct sums owed to it by the other against sums it may owe under the Agreement or any other contract.

5.8 The Charges do not include any VAT, GST or similar sales tax which may be imposed from time to time in accordance with the relevant tax rules and which will be charged to and paid by the Customer at the prevailing rate.

6 INTELLECTUAL PROPERTY RIGHTS AND SOFTWARE LICENCES

6.1 All Intellectual Property Rights:

- a) subsisting in the Devices, Software and Services (including the methods, processes or know-how used by KPMS to provide them) and in any associated materials shall remain vested in KPMS or its licensor(s);
- b) subsisting in any data recorded or transmitted by the Devices shall vest in the Customer.

6.2 KPMS shall license the Customer to use the Software as may be necessary (i) to operate the Devices and (ii) receive the Services, on terms that shall be notified to the Customer during installation.

6.3 The Customer shall provide to KPMS a perpetual, irrevocable, royalty-free, assignable, worldwide, non-exclusive, sublicensable license for KPMS to process, use and publish for any purpose the data recorded or transmitted by the Devices, except for any audio recordings that the Customer makes using the Devices.

6.4 Nothing in the Agreement shall otherwise operate to assign or transfer any of either party's Intellectual Property Rights to the other party.

7 CONFIDENTIALITY

7.1 Each party (the "**Recipient**") undertakes to keep and maintain all Confidential Information received from the other party (the "**Discloser**") in the strictest confidence and not to disclose such information to any third party (other than the third parties identified in clause 7.2) without the prior written consent of the Discloser.

7.2 A Recipient shall ensure that its employees, contractors, Affiliates and professional advisors:

- a) shall only be given access to Confidential Information received from the Discloser on a "need to know" basis for the purposes of the Agreement or to advise on the Agreement;
- b) shall have been made aware of the requirements of confidentiality set out in the Agreement; and
- c) shall not cause or permit the Confidential Information to be disclosed to any third party.

7.3 The provisions of this clause 7 shall not prevent a Recipient from disclosing any information where it can demonstrate and document that such information:

- a) was in its possession (with a right to disclose) prior to receiving it from the Discloser; or
- b) was independently developed by the Recipient; or
- c) was received with no restriction on disclosure from a third party entitled to disclose the information; or
- d) must be disclosed by compulsion of law; or
- e) is or subsequently becomes publicly available other than by breach of the Agreement.

7.4 The provisions of this clause 7 shall apply throughout the full term of the Agreement and for five years thereafter.

8 WARRANTIES

8.1 KPMS warrants that the Services will be provided with reasonable skill and care.

8.2 KPMS warrants that on delivery, and for a period of 12 months (or such longer period as may be mandated under the local law applicable to the Customer) from the date of initial delivery (the "**Warranty Period**"), the Devices shall:

- a) conform in all material respects with their Specification; and
- b) be free from material defects.

8.3 Subject to clause 8.4, if:

- a) the Customer gives notice in writing to KPMS during the Warranty Period within a reasonable time of discovery that some or all of the Devices do not comply with the warranty set out in clause 8.2;
- b) KPMS is given a reasonable opportunity of examining such Devices; and
- c) the Customer (if asked to do so by KPMS) returns such Devices to KPMS's place of business at the Customer's cost;

then KPMS shall, at its option, repair or replace the defective Devices, or refund the price of the defective Devices in full.

8.4 KPMS shall not be liable for Devices' failure to comply with the warranty set out in clause 8.2 in any of the following events:

- a) the Customer makes any further use of such Devices after giving notice in accordance with clause 8.3;
- b) the defect arises because the Customer failed to follow KPMS's instructions as to the storage, commissioning, installation, operating environment, use and maintenance of the Devices or (if there are none) good practices regarding the same;
- c) the defect arises because a Software update made available by KPMS has not been utilised by the Customer or (where relevant) not uploaded to a Device;
- d) the Customer or any other third party alters (including by uploading firmware not published or approved by KPMS) or repairs such Devices without the written consent of KPMS;
- e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- f) the Devices differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

8.5 Any repaired or replacement Devices supplied by KPMS shall benefit from the balance of the Warranty Period.

8.6 Except as provided in this clause 8, KPMS shall have no liability to the Customer in respect of any failure to comply with the warranty set out in clause 8.2.

8.7 KPMS does not warrant that Devices will operate or Services will be performed without interruption or that they will be error-free at all times or be compatible with any third party software or hardware.

8.8 Other than the warranties set out in this clause 8, all conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into the Agreement or any collateral contract, whether by statute, common law or otherwise, are

hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality and fitness for purpose and terms which may otherwise be implied by sections 13 to 15 of the Sale of Goods Act 1979.

9 IPR INDEMNITY

- 9.1 Provided the Customer has not used the Service in a manner that breaches the Agreement and complies in full with the Customer obligations referred to in clause 9.2, KPMS shall indemnify, defend and hold harmless the Customer from all losses sustained by the Customer as a result of any claim being brought by a third party that the use or possession of the Devices or Software or the receipt of any Service (the “**Infringing Item**”) by the Customer in accordance with the terms of the Agreement infringes that third party’s IPR (an “**IPR Claim**”).
- 9.2 If any person makes an IPR Claim, or in either party’s reasonable opinion, is likely to do so, KPMS shall at its option, with minimal disruption to the Customer, promptly and at its own expense either: (i) procure for the Customer the right to continue using, possessing or receiving the Infringing Item; or (ii) modify or replace the Infringing Item with a substitute item that complies with KPMS’s obligations under the Agreement. If neither (i) nor (ii) are commercially achievable then, at KPMS’s request, the Customer will cease using the Infringing Item and KPMS will refund any advance payments made by the Customer for the use of the Infringing Item in the period following cessation of use.
- 9.3 If any third party makes an IPR Claim, or notifies an intention to make an IPR Claim against the Customer, then the Customer shall:
- a) as soon as reasonably practicable, give written notice of the IPR Claim to KPMS, specifying the nature of the IPR Claim in reasonable detail;
 - b) not make any admission of liability, offer of settlement or compromise in relation to the IPR Claim without the prior written consent of KPMS;
 - c) give KPMS and its professional advisors copies of any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable KPMS and its professional advisers to examine them for the purpose of assessing the IPR Claim; and
 - d) take such action as KPMS may reasonably request to compromise or defend the IPR Claim (at KPMS’s expense).

10 DATA PROTECTION

- 10.1 Each party will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party’s obligations or rights under the Data Protection Legislation.
- 10.2 The parties acknowledge that the Devices and Services incorporate an audio based alert system configurable by the Customer but that the default configuration does not enable the recording of conversations. The Customer acknowledges and accepts that KPMS shall have

no responsibility for configuration changes made by or on behalf of the Customer (including any that enable the recording of conversations) or for any consequences of those changes under Data Protection Legislation. The Customer shall: (a) consider whether it is appropriate under a privacy impact assessment; and (b) implement any means available for mitigating the level of intrusion; before configuring the Devices and Services to enable the recording of conversations.

10.3 Each party agrees that for the purpose of the Data Protection Legislation:

- a) the Customer is the controller of any personal data that (i) it supplies to KPMS to enable the Services to be provided or (ii) may be collected by the Devices or Services (the “**Personal Data**”); and
- b) KPMS is the processor of the Personal Data.

The Customer shall obtain any necessary consents and provide appropriate notices (including prominent notices positioned near the Devices where appropriate) so that the processing of Personal Data by KPMS pursuant to the Agreement is lawful based on the Customer’s chosen configuration.

10.4 The parties acknowledge that the Personal Data is predominantly comprised of the names, telephone numbers and email addresses of Customer personnel and other users of the Portal.

10.5 KPMS agrees that it shall:

- a) process the Personal Data only as necessary to comply with its obligations under the Agreement (including the delivery of the Services), and only during the term of the Agreement;
- b) process the Personal Data only on documented instructions from the Customer, including with regard to transfers of the Personal Data to a third country or an international organisation, unless required to do so by law to which KPMS is subject; in such a case, KPMS shall inform the Customer of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
- c) ensure that persons authorised to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- d) taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk presented by processing the Personal Data, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed;

- e) take steps to ensure that any natural person acting under KPMS's authority who has access to the Personal Data does not process them except on instructions from the Customer unless he or she is required to do so by law;
- f) not engage another processor without written authorisation from the Customer, and inform the Customer of any intended changes concerning the addition or replacement of other processors. General authorisation is hereby given for subprocessing by subcontractors providing cloud hosting, support services and payment processing. Specific authorisation is hereby given for KPMS to subcontract the Services to, and for sub-processing to be conducted by Amazon Web Services EMEA SARL, Stripe Payments Europe Limited and Auth0, Inc or the relevant local Affiliates of any of the foregoing;
- g) where it engages another processor to carry out specific processing activities on behalf of the Customer, impose on that processor by way of a contract the same data protection obligations as set out in this clause 10.5;
- h) taking into account the nature of the processing, assist the Customer by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer's obligation to respond to requests for exercising the data subject's rights;
- i) taking into account the nature of processing and the information available to KPMS, assist the Customer in ensuring its compliance with its obligations to implement appropriate technical and organisational measures, notify personal data breaches to the competent supervisory authority and to data subjects, carry out data protection impact assessments and consult the competent supervisory authority where an assessment indicates a high risk;
- j) at the choice of the Customer, delete or return all the Personal Data to the Customer after the end of the provision of Services, and delete existing copies unless required by Data Protection Legislation to store the Personal Data;
- k) make available to the Customer all information necessary to demonstrate compliance with this clause 10 including allowing for and contributing to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer;
- l) with regard to section 10.5k) above, immediately inform the Customer if, in its opinion, an instruction of the Customer infringes Data Protection Legislation.

10.6 KPMS agrees that it will not process the Personal Data outside the EEA without the prior written consent of the Customer.

10.7 Each party (the "**indemnifying party**") shall indemnify the other party (the "**indemnified party**") and hold the indemnified party harmless from all losses arising from a claim brought by a data subject or a competent supervisory authority in connection with any breach by the indemnifying party of its obligations under Data Protection Legislation and/or contained in

this clause 10 (“**Data Protection Claim**”) provided that KPMS’s liability to Customer under this indemnity shall be subject to: (i) Customer mitigating its loss; and (ii) the limitations and/or exclusions of liability in clause 11. Clause 9.3 shall apply to any Data Protection Claim as if each reference to “IPR Claim” in clause 9.3 is instead a reference to “Data Protection Claim”, each reference to “Customer” is instead a reference to “indemnified party” and each reference to “KPMS” is instead a reference to “indemnifying party”.

11 LIABILITY

- 11.1 Subject to clause 11.3, KPMS shall not be liable: (i) for any loss of data (except the reasonable costs of reinstating the data from the latest back-up held by the Customer), profits or revenue, goodwill, share price, production, anticipated savings, use or contracts or for any wasted expenditure, ex gratia payments made to third parties or for bank charges incurred; or (ii) for any form of special, indirect or consequential losses whatsoever.
- 11.2 Subject to clause 11.3, the aggregate liability of KPMS:
- a) under clause 9.1 (IPR Indemnity) shall be limited to £1,000,000; and
 - b) except to the extent clause 11.2a) applies, whether in contract, tort (including negligence) or otherwise and whether in connection with the Agreement or any collateral contract shall in no circumstances exceed, for all liabilities and claims occurring (regardless of when a claim was made) in each Year, an amount equal to 100% of the total Charges paid by the Customer under the Agreement in the relevant Year.
- 11.3 Notwithstanding any other provision of the Agreement, KPMS’s liability under or in connection with the Agreement shall not be excluded or limited to the extent that it arises in respect of the following matters:
- a) for death or personal injury resulting from a party’s negligence;
 - b) for fraud or fraudulent misrepresentation;
 - c) for breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - d) for defective products under the Consumer Protection Act 1987;
 - e) for breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982; or
 - f) to the extent such exclusion or limitation is not otherwise permitted by law.
- 11.4 The Customer shall ensure that any of its Affiliates using the Services comply with any related terms of use and restrictions set out in the Agreement that apply to the Customer as if they have entered into the Agreement in place of the Customer. The Customer shall be fully responsible and liable to KPMS for all acts and omissions of the Customer’s Affiliates and for any Charges that may arise in respect of their use of the Services.

12 WHOLE AGREEMENT

The Agreement represents the entire agreement and supersedes all prior agreements and representations between the Parties. Each party warrants that it has not relied upon, nor has it been induced to enter into the Agreement by, a representation not recorded in the Agreement. Nothing in this clause shall limit or exclude any liability of either party for fraud or fraudulent misrepresentation.

13 ASSIGNMENT AND SUBCONTRACTING

- 13.1 KPMS may subcontract any or all of its obligations, including obligations comprised in the Services, and Customer accepts that the Devices will be manufactured by third parties.
- 13.2 Either party may, on providing written notice, novate the Agreement to (i) an Affiliate, or (ii) any person or entity who acquires all or substantially all of the assets of its business, and the other party will execute any reasonable documentation prepared by the novating party for that purpose.
- 13.3 Subject to clauses 13.1 and 13.2, neither party may assign, transfer or delegate any of its rights, obligations or other interests under the Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld.

14 WAIVER

A waiver by either party of any term or condition of the Agreement or any breach thereof, in any one instance, shall not waive such term or condition beyond that instance nor any subsequent breach thereof nor shall any delay by either party to exercise any right under the Agreement operate as a waiver of any such right.

15 NOTICES

- 15.1 Any notice or other communication required to be given to a party under or in connection with the Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service providing proof of delivery, (i) for the Customer, to the Customer contact identified during the online ordering process; and (ii) for KPMS, to the Managing Director, KP Acoustics Limited, Britannia House, 11 Glenthorne Road, London W6 0LH. Either party may change their contact and address for formal notices by notifying the other party in accordance with this clause 15.1.
- 15.2 Any notice or communication shall be deemed to have been received, if delivered by hand, on signature of a delivery receipt, or at 9.00 am on the second business day after posting, or at the delivery time recorded by any courier.

16 SEVERABILITY

If any provision of the Agreement shall be held void, invalid, illegal or unenforceable by a court of competent jurisdiction, such provision shall be modified to the extent necessary to render it enforceable without losing its intent, or severed from the Agreement if no such modification is possible, and other provisions of the Agreement shall remain in full force and effect.

17 VARIATIONS

- 17.1 Save as set out in clause 17.2, the Agreement may not be amended or supplemented except by an agreement in writing signed by KPMS and the Customer.
- 17.2 KPMS may, from time to time by providing written notice to the Customer, amend the Terms of the Agreement. If KPMS intends to amend these Terms, KPMS will give the Customer reasonable advance notice of the amendments and a reasonable opportunity to terminate the Agreement for convenience before the changes take effect.

18 TERM AND TERMINATION

- 18.1 The Agreement shall commence on the Order Start Date and continue until the later of: (i) the expiry of the Warranty Periods for all of the Devices supplied to the Customer by KPMS under the Agreement; or (ii) three (3) months after all of the Service Months ordered by the Customer for its Devices supplied under the Agreement have expired.
- 18.2 If, at any time a party (i) commits a material default or breach of its obligations under the Agreement (including non-payment of Charges due) which is either incapable of remedy or which is capable of remedy but (upon receiving written notification from the other of such default or breach) fails to remedy the default or breach within 30 days; or (ii) becomes insolvent, makes (other than for the purpose of an amalgamation or reconstruction while solvent) a general assignment for the benefit of, or enters into any arrangement with, its creditors, files a voluntary petition (other than for the purpose of an amalgamation or reconstruction while solvent) under any bankruptcy, insolvency, or similar law, or has proceedings under any such laws or proceedings seeking appointment of a receiver, trustee or liquidator instituted against it that are not discharged or stayed within 21 days, then the other party shall immediately become entitled (without prejudice to its other rights) to terminate the Agreement forthwith by notice in writing.
- 18.3 KPMS shall immediately become entitled to suspend the provision of any or all Services if the Customer commits a material breach of the Agreement. Such suspension may last until the breach is remedied and the Customer has demonstrated to KPMS that it has taken reasonable steps to ensure that the breach does not recur.
- 18.4 Without prejudice to any other rights KPMS may have, if KPMS terminates the Agreement pursuant to clause 18.2 or accepts the Customer's repudiation of the Agreement, then KPMS shall be entitled immediately to invoice the Customer for all of the Charges that would, but for the termination or repudiation, have fallen due during: (i) the six month period following the date of termination or repudiation; or (ii) the remainder of the term of the Agreement; whichever is shorter.
- 18.5 On termination of the Agreement KPMS shall be entitled to delete all of the Customer data stored or processed by the Services.
- 18.6 Termination of the Agreement for whatever reason shall not affect the accrued rights and liabilities of the parties as at the date of termination nor bring to an end any provision hereof which expressly or by implication continues in force after the date of termination.

19 FORCE MAJEURE

- 19.1 If either party is affected by Force Majeure, it shall immediately notify the other party of the matters constituting the Force Majeure and shall keep that party fully informed of the continuance of the Force Majeure and of any relevant change of circumstances whilst such Force Majeure continues.
- 19.2 The party affected by Force Majeure shall take all reasonable steps available to it to minimise the effects of Force Majeure on the performance of its obligations under the Agreement.
- 19.3 Neither party shall be in breach of the Agreement, or otherwise liable to the other party, by reason of any delay in performance, or non-performance of any of its obligations due to Force Majeure.
- 19.4 If the Force Majeure continues for longer than 90 days, either party may terminate the Agreement on 30 days' written notice to the other party.

20 PUBLIC ANNOUNCEMENTS

- 20.1 KPMS shall be entitled to: (i) identify the Customer as a customer; and (ii) display the Customer's logo; on the KPMS Website.
- 20.2 Except as set out in clause 20.1, each party agrees to inform and obtain the written approval of the other party prior to making any public statement, through press releases or otherwise, concerning any activities under the Agreement.

21 THIRD PARTY RIGHTS

The parties do not intend that a person who is not a party to the Agreement shall be entitled to enforce any term of the Agreement.

22 LAW AND JURISDICTION

- 22.1 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to the Agreement promptly through negotiations between them.
- 22.2 The Agreement shall be governed by and construed in accordance with the laws of England and Wales and each party submits to the exclusive jurisdiction of the English courts in respect of all disputes (whether contractual or non-contractual) arising out of or in connection with the Agreement.