

KYRIBA UK – TERMS AND CONDITIONS FOR ONLINE CLOUD SERVICES

Version of January 20th, 2017

These Terms and Conditions for Online Cloud Services (hereinafter the “Terms”) are entered into by and between Kyriba UK Ltd, with offices at 85 Tottenham Court Road, London W1T 4TQ, United Kingdom (“**Kyriba**”) and the entity described in the Order Schedule (“**Customer**”), as of the date of the Customer’s acceptance of the Order Schedules (“**Effective Date**”). Kyriba and Customer shall individually be referred to as a “**party**” and collectively as the “**parties**” hereunder.

Signed facsimile and copies of original signatures (including without limit photocopies and those in PDF format) of the Order Schedule, its addenda, attachments and exhibits shall legally bind the parties to the same extent as originals. If you are accepting on behalf of your employer or another entity, you represent and warrant that: (i) you have full legal authority to bind your employer, or the applicable entity, to these Terms; (ii) you have read and understand the Order Schedule and this Agreement; and (iii) you agree to the terms of the Order Schedule and this Agreement, on behalf of the party that you represent. If you don’t have the legal authority to bind your employer or the applicable entity, please do not sign the Order Schedule. This Agreement governs Customer’s access to and use of the SaaS Services.

I. Definitions

“Agreement”	:	means these Terms, Cloud Hosting and Delivery Policies (“HDP”) available at www.kyriba.com/contracts , and the Order Schedules.
“Change Order”	:	means a written request for a change listing any modifications to the change in scope to the Order Schedule detailing the tasks to be performed to accomplish the proposed changes in the scope and/or services as well as any reasonable changes in the fixed fees or charges that may result there from.
“Customer data”	:	means the Customer’s proprietary data that is processed via the SaaS Services.
“Connectivity Services”	:	means the bank connections to Kyriba’s bank communication hub.
“Documentation”	:	means any documentation provided with the SaaS Services that contains technical information about the SaaS Services functionalities.
“Effective date”	:	means the date of the Customer’s acceptance of the Order Schedule, unless otherwise specified in the Order Schedule.
“Fees”	:	means the pre-tax fees set forth in an Order Schedule payable by Customer under the Agreement for the SaaS Services and for any other services or products requested by Customer.
“Initial Term”	:	means the initial duration of this Agreement, as determined under Section V.1.
“Intellectual Property Rights”	:	means any and all now known or hereafter existing: (i) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (ii) trademark or service mark rights; (iii) trade secret rights; (iv) patents, patent rights, and industrial property rights; (v) layout-design rights and design rights; (vi) other proprietary rights of every kind and nature and similar rights; and (vii) all registrations, applications, renewals, extensions, or reissues of the foregoing, in each case in any jurisdiction throughout the world.
“Module”	:	means the set of the SaaS Services functionalities. The Modules subscribed to by Customer are specified in the Order Schedule SaaS Services.
“Order Schedule”	:	means an order schedule associated with this Agreement that list the products and services provided by Kyriba to Customer hereunder and the related fees. Each Order Schedule will reference this Agreement and must be signed by both parties and be governed by and incorporate by reference this Agreement.

- “Order Schedule Implementation – Statement of Work”** : means the Order Schedule, entered into between the parties, determining the scope, payment terms and conditions of the implementation and training services, ordered by Customer, in accordance with these Terms.
- “Order Schedule SaaS Services”** : means the Order Schedule, entered into between the parties, determining the number, features, payment terms and conditions of the SaaS Services, ordered by Customer, in accordance with these Terms.
- “Order Schedule Spot Consulting”** : means the Order Schedule, entered into between the parties, determining the scope, payment terms and conditions of consulting services, in accordance with these Terms.
- “SaaS Services”** : means the Kyriba application for treasury and risk management, bank communication, supply chain and Internet data center services, developed and provided by Kyriba, its licensors or suppliers as software as a service and available online. This application also includes the support services described in this Agreement and, more specifically in the HDP.
- “Scheduled Downtime”** : means the total amount of time during a calendar month, measured in minutes, during which Customer is not able to access the features and functions of the SaaS Services, due to planned system maintenance performed by Kyriba, as set forth in the HDP.
- “Subsidiaries”** : means, as to a party, any entity controlling, controlled by, or under common control with such party, where the term “control” and its correlative meanings, “controlling”, “controlled by”, and “under common control with”, means the legal, beneficial or equitable ownership, directly or indirectly, of more than fifty percent (50%) of the aggregate of all voting equity interests in an entity.
- “System Availability”** : means, with respect to a calendar month, the ratio obtained by subtracting Unscheduled Downtime during that month from the total amount of time during that month, and thereafter dividing the difference so obtained by the total amount of time during that month.
- “System Uptime”** : means the total amount of time during a calendar month, measured in minutes, during which Customer has the ability to access the features and functions of the SaaS Services.
- “Term”** : means the Initial Term and any renewals in accordance with the provisions of this Agreement.
- “Total Monthly Time”** : means the total amount of time during a calendar month measured in minutes, provided that these minutes are included in the term of the Agreement.
- “Unscheduled Downtime”** : means the total amount of time during a calendar month, measured in minutes, during which Customer is not able to access the features and functions of the SaaS Services, other than downtime shorter or equal to 15 minutes and Scheduled Downtime, as defined above.
- “User”** : means an employee or service provider of Customer who is entitled to access the SaaS Services. Access rights to SaaS Services are granted through service tokens that are associated with accounts.

II. Background

Kyriba has developed a treasury management systems and supply chain finance solution, the SaaS Services. Customer wishes to utilise the SaaS Services, and Kyriba desires to make the SaaS Services available to Customer subject to the Agreement.

III. Use of SaaS Services

III.1. Access Right

Subject to the terms and conditions herein, Kyriba hereby grants to Customer a limited, non-exclusive, non-transferable (except as expressly permitted in this Agreement) right to access and to use the SaaS Services for its internal business purposes, including processing its data and the data of its Subsidiaries and joint ventures that are primarily managed by Customer.

Without limiting the restrictions set forth in Section III.3, Customer understands and agrees that Customer may not use the SaaS Services to process data of a third party for hire, or cause the SaaS Services to be accessed by any third party.

III.2. Usernames and Passwords

Customer acknowledges and agrees that only Users are entitled to access the SaaS Services.

Access rights to SaaS Services are granted through service tokens that are associated with accounts. Each account contains a unique username and password. Customer will ensure that each User account associated with a service token will be used by only that User. Generic user accounts by default are created within Customer's production environment, and are identified as follows:

- SUPPORT01 and SUPPORT02, accounts for Kyriba Support team to analyze and troubleshoot problems or issues encountered in production;
- CONSULTANT01 and CONSULTANT02, accounts for the Professional Services team for the implementation and development of Customer's solution.

These generic user accounts cannot be used by Customer to process Customer Data. Notwithstanding the foregoing, Customer remains responsible for the administration of these generic user accounts and therefore Customer may at any time deactivate any one or more of these generic user accounts. Customer nevertheless agrees and acknowledges that Kyriba support can only commence work on customer request(s) once the relevant generic user account (SUPPORT01 or SUPPORT02) has been reactivated by Customer.

III.3. Restrictions on Use

Customer acknowledges that the software, software application, computer code and programs, systems architecture, structure, organization and source code of the SaaS Services, and the selection, compilation and analysis of all data in the SaaS Services constitute valuable trade secrets of Kyriba. Customer agrees that it will not, and will not permit any User or other third party to: (a) modify, adapt, alter or translate the SaaS Services, except as expressly allowed herein; (b) sublicense, lease, rent, loan, distribute, or otherwise transfer the SaaS Services, including, as applicable, the Documentation, software, associated user interfaces, help resources, and any related technology or services Kyriba makes available via the SaaS Services and the internet, and all updates and upgrades thereto, if any, to any third party; or (c) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organization) of the SaaS Services. The copyright and all other Intellectual Property Rights in the SaaS Services are the sole and exclusive property of Kyriba, its licensors or suppliers. All rights not expressly granted to Customer are reserved to Kyriba, its licensors or suppliers.

III.4. Support and Service Levels

Subject to Customer's payment of Fees (as defined below), Kyriba will provide support services during the Term. Support provided to Customer shall comprise of the following:

- Customer Support. As set forth in HDP (available at www.kyriba.com/contracts), Kyriba shall provide a telephone number for use by Users for problem resolution assistance on Mondays through Fridays, from 8:30 a.m. to 5:00 p.m. CET, UK bank holidays excluded. This hot line is only available to Users.
- Service Levels. During the Term, Kyriba shall use commercially reasonable efforts to provide the service levels set forth in the HDP (available at www.kyriba.com/contracts) with respect to the SaaS Services.

IV. Parties Responsibilities

IV.1. Common Responsibilities

The parties agree to work together to exchange all necessary information for the discharge of each other's obligations under this Agreement through regular and active collaboration, ensuring effective and efficient work among their teams. Each party shall promptly notify the other of technical, organizational, human, financial or other difficulties which may impact the performance under this Agreement.

IV.2. Kyriba Responsibilities

Kyriba shall perform its obligations under the Agreement with professional, workmanlike manner, with the degree of care that is required by sound professional procedures.

IV.3. Customer Responsibilities

It shall be Customer's responsibility to perform all services that may be required in order to establish Customer's use of the SaaS Services. This includes but is not limited to: (a) providing employee lists to set up User accounts; (b) providing IP gateway information for domain name registration; (c) designating Users to participate in training; (d) assigning a project manager to coordinate implementation activities; (e) providing core referential data and initial bank statement data; (f) providing contact information for each bank to be connected for Customer; and (g) providing reasonable access to other Customer personnel in order to facilitate implementation (for example but without limitation, IT personnel). Additionally, Users shall not at any time change the content of any or all proprietary notices, titles, disclaimers or legends generated by the use of the SaaS Services.

V. Term and Termination

V.1. Term

This Agreement shall commence on the Effective Date and shall remain in full force and effect for a period of three (3) years (the "Initial Term") unless terminated earlier in accordance with Section V.2. Thereafter this Agreement may be renewed upon mutual written agreement of the Parties.

The Initial Term and any renewals thereof shall be collectively referred to as the "Term". A merger, re-capitalization, sale of stock, asset sale, corporate bankruptcy, liquidation, or other similar action shall not relieve Customer of its financial obligations under this Agreement. In such an event, the full amount of any money due to Kyriba under this Agreement shall be immediately due and payable by Customer or its successors or creditors.

V.2. Termination for Cause

Either party may terminate this Agreement for material breach by the other party upon written notice of not less than thirty (30) days and failure to cure such breach within the notice period. However, either party may immediately terminate this Agreement for patent, copyright, or trademark infringement or breach of confidentiality by the other party. With or without notice, Kyriba may modify or terminate any or all SaaS Services or restrict Customer's use if, in Kyriba's sole judgment, use of the SaaS Services by Customer: (a) is subject to an order from a court or governmental entity stating that such use must cease; or (b) violates applicable law.

V.3. Effect of Termination

Upon termination, all rights granted to Customer under this Agreement shall cease immediately. Customer remains liable to pay Kyriba for the SaaS Services (a) received through the date of termination of this Agreement, and (b) for the entire contracted Term in the case of termination based upon a material breach by Customer.

The provisions, which by their nature or context are intended to survive any termination or expiration, shall survive any such termination or expiration of this Agreement.

VI. Reversibility

Customer can retrieve from the SaaS Services its standard reporting data under XLS, CSV or TXT formats, without the involvement of Kyriba, at any time. During the Term, Customer can retrieve from the SaaS Services Customer's data that is inputted into and/or stored via the SaaS Services ("Customer Data") as part of the standard reporting data under XLS, CSV or TXT formats. No later than thirty (30) days following termination or expiry of the Agreement, and upon Customer's written request, Kyriba will grant Customer limited access to the SaaS Services for the sole purpose of permitting Customer to retrieve Customer Data, provided that Customer has paid in full all good faith undisputed amounts owed to Kyriba. At the end of such 30-day period, and except as may be required by law, Kyriba may delete or otherwise render inaccessible any of Customer Data that remain in Kyriba's "live" site and Customer acknowledges and agrees that Kyriba has no obligation to retain Customer Data.

In the event Customer requests Kyriba to return Customer Data, such service will be invoiced at the price in effect at the time of the performance of this service.

VII. Payment

Fees shall be paid promptly by the Customer in accordance with conditions set forth in the Order Schedules ("Order Schedule Implementation - Statement of Work", "Order Schedule SaaS Services", "Order Schedule Spot Consulting").

VIII. Warranties and Disclaimers

VIII.1. Limited Services Warranty

Kyriba warrants to Customer that, during the Term, the SaaS Services will operate substantially in accordance with the Documentation to be provided.

This limited warranty shall not apply to problems that result from (i) factors outside of Kyriba's reasonable control; (ii) any failure by Customer to comply with this Agreement; (iii) any failure by Customer to use the SaaS Services in accordance with the Documentation or other instructions provided to Customer by Kyriba; (iv) any unauthorized use of the SaaS Services; (v) Customer's or any of Customer's third party's hardware, software, and equipment; (vi) Customer errors in entering, analyzing, or reporting data; (vii) the fault or negligence of Customer or Users; (viii) operator error, improper use or misuse of the SaaS Services; (ix) any other causes external to the SaaS Services or Kyriba; or (x) downtime as a result of scheduled maintenance performed by or on behalf of Kyriba.

Any updates or upgrades provided to Customer hereunder shall be warranted to the same extent as the SaaS Services as set out in this Section.

VIII.2. Disclaimer

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, the license and SaaS Services are provided "as is" and as available and to the maximum extent permitted under applicable law, Kyriba makes no (and hereby disclaims all) other warranties, representations, or conditions, whether written, oral, express, implied or statutory, including any implied warranties of merchantability, title, non-infringement, or fitness for a particular purpose, with respect to the use, misuse, or inability to use the SaaS Services (in whole or in part) or any other products or services licensed or provided to Customer by Kyriba, or otherwise under this Agreement. Without limiting the foregoing, Kyriba does not warrant that operation of the SaaS Services shall be available at any time or location, uninterrupted, secure or error-free and that all errors can be corrected. Operation of the SaaS Services may be interfered with by numerous factors outside of Kyriba's control and Kyriba does not warrant that the content of the SaaS Services will be free of harmful components.

IX. Damages

IX.1. Exclusion of Indirect Damages

In no event shall Kyriba or Customer, or any parent, subsidiary, affiliate, or licensor or supplier of Kyriba or Customer, be liable to the other party for any special, indirect, incidental, punitive, or consequential damages, including damages or costs due to loss of profits, data, use or goodwill, personal or property damage regarding this Agreement or resulting from or in connection with Kyriba's performance hereunder or the use, misuse, or inability to use the SaaS Services or other products or services hereunder, regardless of the cause of action or the theory of liability, whether in tort, contract, or otherwise, even if the liable party has been notified of the likelihood of such damages occurring. In no event shall Kyriba be liable for procurement costs of substitute products or services.

EXCEPT FOR KYRIBA'S INDEMNIFICATION OBLIGATIONS UNDER SECTION XV.2, KYRIBA FURTHER SHALL NOT BE LIABLE TO CUSTOMER FOR ANY CLAIMS, CAUSES OF ACTION, COSTS, EXPENSES, DAMAGES OR OTHER LIABILITIES OF ANY NATURE WHICH MAY ARISE FROM OR BE ASSERTED AGAINST KYRIBA AS A RESULT OF ANY DISPUTE BETWEEN A THIRD PARTY (INCLUDING BUT NOT LIMITED TO A SUPPLIER, VENDOR, OR CUSTOMER OF CUSTOMER) AND CUSTOMER ARISING FROM ANY DEALINGS BETWEEN A THIRD PARTY AND CUSTOMER, WHETHER IN CONNECTION WITH THE SAAS SERVICES OR OTHERWISE.

IX.2. Limitation of Liability

Except for Fees owed hereunder, the total aggregate liability of either party arising out of or in connection with this Agreement shall not exceed the amount of Fees paid or payable by Customer to Kyriba as consideration for the SaaS Services, products and/or services giving rise to such claim during the twelve (12) months preceding the date on which the cause of action arose. The existence of one or more claims under this Agreement will not increase Kyriba's liability in excess of the foregoing. For purposes of Sections VIII and IX, reference to Kyriba shall also include its suppliers and licensors.

X. Confidentiality

By virtue of this Agreement, either party may have access to Confidential Information of the other party.

For the purposes of this Agreement, "Confidential Information" means all non-public or proprietary information and material of a technical, economic, financial or business nature, whether or not reduced to writing or other tangible form and whether or not marked as "confidential" or "proprietary", including without limitation trade secrets and other information concerning the business affairs of the disclosing party, compositions, data, designs, drawings, formulae, graphs, inventions, ideas, know-how, models, photographs, processes, product prototypes and specifications; current and anticipated customer requirements; customer lists, price lists, and supplier lists; past, current and planned research and development; past, current and planned manufacturing, development, marketing or distribution strategies, methods and processes; market studies; business plans; computer software and programs (including object code and source code); and database technologies, systems, structures and architectures; and any other information, howsoever documented, that may be disclosed by the parties during the Term of this Agreement.

Confidential Information shall be (i) used by the receiving party solely in connection with the purpose of this Agreement and for no other purpose, (ii) kept confidential and protected from disclosure using the same standard of care as the receiving party uses to protect its own similar confidential and proprietary information, but not less than reasonable care, and (iii) disclosed only to the receiving party's officers, employees, agents and consultants on a need-to-know basis for the purpose of this Agreement and who have agreed in writing to maintain the confidential nature of Confidential Information (including that of third parties) received by them in the course of their employment or contractual relationship.

Each party agrees to take all reasonable steps to ensure that the other party's Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement. Neither party may disclose to the public or to any third party the terms and conditions of this Agreement other than with the express prior written consent of the other party; except that such information may be disclosed to a party's representatives, accountants, auditors, investors, or legal advisors provided that the foregoing are bound to maintain the confidentiality of such information.

Confidential Information shall not, at any time prior to written consent from the disclosing party or intentional public disclosure by the disclosing party, be (i) disclosed, produced, published, permitted access to or revealed, (ii) copied, photographed or photocopied (except for internal use by the receiving party in connection with the purpose of this Agreement), (iii) altered, modified, disassembled, reverse assembled, reverse engineered, decompiled, reverse compiled, or in any manner reproduced, or (iv) published in any review, notice or other report. The receiving party shall promptly notify the disclosing party of any items of Confidential Information prematurely or otherwise impermissibly disclosed.

The receiving party agrees not to make the disclosing party's Confidential Information available in any form to any third party unless, and only to the minimum extent, required by law or to satisfy governmental regulatory requirements (in which case the party seeking to make such disclosure shall notify the other party of its intent to make such disclosure, and, to the maximum extent available, such party shall seek protective treatment for such disclosed Confidential Information), or to use the disclosing party's Confidential Information for any purpose beyond the scope of this Agreement.

A party's obligations pertaining to Confidential Information shall not apply to and/or shall terminate regarding information that the receiving party can justify and provide evidence of the same: (a) is or becomes publically available through no act, omission or breach by the receiving party, (b) was in the receiving party's lawful possession prior to the disclosure, (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure, or (d) is independently developed by the receiving party without access to or use of the disclosing party's Confidential Information.

XI. Statistical Data

The Customer owns all Intellectual Property Rights in the Customer Data. Without limiting Customer's ownership rights in Customer Data, Customer acknowledges and agrees that Kyriba shall have the right (i) to utilise data capture, syndication, and analysis tools, and other similar tools, to extract, compile, synthesize, and analyze any non-personally and non-Customer identifiable data or information resulting from Customer's use of the SaaS Services ("Statistical Data") and (ii) to use Customer Data for the internal needs, including the improvement of the SaaS Services and the development of new products. Statistical Data may be collected by Kyriba for any lawful business purpose without a duty of accounting to Customer, provided that the Statistical Data is used only in an aggregated form, without specifically identifying the source of the Statistical Data.

XII. Personal Data

If Personal Data (any information relating to an identified or identifiable user) are sent by Customer to Kyriba, it is expressly agreed between the Parties that Customer remains responsible for this treatment, Kyriba's position being limited to a subcontractor's one. As such, Kyriba acts on behalf and in accordance with the Customer's instructions. Customer undertakes to collect and process all Personal Data in compliance with any current regulation applicable to the processing of these data. Customer represents and warrants to Kyriba that under the 1978 Data Protection Act, Personal Data (i) have been collected and processed fairly and lawfully, and (ii) were collected and processed for specified and legitimate purposes and (iii) are adequate, relevant and not excessive in relation to the purposes for which they were collected for. In addition, Customer represents and warrants that treatment proceedings on Personal Data fulfill all legal requirements applicable and that these proceedings are consistent with this Agreement.

XIII. Security

Within the scope of the Agreement, Kyriba shall take the necessary technical and organizational measures to ensure (i) confidentiality of data and (ii) protection of data against unauthorized access, fraudulent use and accidental loss. Customer shall provide and institute all appropriate tools and procedures required to ensure security of its information system and, more specifically, to prevent, detect and destroy the appearance of any viruses. During the Term of the Agreement, Kyriba shall maintain in force the SOC 2 Type 1 (Service Organization Control) Certification as such certification may be amended. Upon the written request of Customer, and within a reasonable period of time, Kyriba shall supply Customer with a copy of its latest SOC 2 Type 1 annual report.

XIV. Source Code

Kyriba will deposit source code of the software with the Agence pour la Protection des Programmes (hereinafter "APP"), located in France. Kyriba will update new software versions as they are made available.

Source Code will be made available to Customer as required in Article 6 of the APP General Regulations, as follows: *"The user of a programme or of any element deposited to the APP may request to access it provided that a written agreement is made between the parties. This agreement may take the form of a contract dedicated to access to the deposited elements or of a specific clause incorporated in the contract binding the user and the depositor (as for example a user's licence). It is imperative that the APP is appointed as receiver. Access to the elements deposited takes place according to the application process of the present article named "access procedure to the elements deposited" and after authorisation of the APP Commission of Access."*

This access is permitted only after review by the APP Access Committee and does not transfer any ownership to the source code. This requirement must be referred to in the license or be subject to a written agreement between the parties.

It is expressly agreed that for the purposes of this section 6 of the APP General Regulations, source code may be released to Customer if (i) Kyriba files a voluntary petition of bankruptcy, (ii) Kyriba suffers or permits the appointment of a receiver for its business or assets, (iii) Kyriba becomes subject to any proceeding under, or case in, any bankruptcy or insolvency law, or (iv) End-of-life of the software without a third party assuming the same terms and conditions as is in force between the parties.

Customer shall ensure total privacy and confidentiality of the source code and, under no circumstances, will disclose it to third parties.

XV. Ownership

XV.1. Property

The SaaS Services provided to Customer by Kyriba are the exclusive property of Kyriba and its licensors and suppliers. Customer acknowledges that Kyriba owns or has the right to license use of the SaaS Services in accordance with the terms hereof, and all right, title, and interest in and to are and shall remain vested in Kyriba or its licensors or suppliers. Except for the limited license granted herein, Customer does not claim and shall not assert any right, title, or interest, or other ownership or proprietary rights, in or to the SaaS Services or other intellectual property provided by Kyriba. Customer's violation of the Intellectual Property Rights of Kyriba or any third party supplier or licensor shall constitute a material breach of this Agreement.

With Customer's prior written approval, Customer agrees that Kyriba may issue press releases identifying Customer as a Kyriba subscriber, such approval not to be unreasonably withheld. Notwithstanding the foregoing, Customer agrees that Kyriba may identify Customer as a subscriber in lists of customers used in presentations or marketing literature, or in response to questions and on Kyriba's website.

XV.2. Indemnification

Kyriba warrants that the SaaS Services will not infringe any copyright, valid and issued patent, or misappropriate any trade secret, of any third party. Kyriba will defend and indemnify Customer against any and all costs, damages, and expenses (including reasonable attorneys' fees) finally awarded against Customer by a court of competent jurisdiction or agreed to in a written settlement agreement signed by Kyriba arising out of any breach by Kyriba of the foregoing warranty, provided that Customer (i) promptly notifies Kyriba in writing of the claim; (ii) allows Kyriba to assume the sole control of the defense of such claim and all related settlement negotiations, except that Kyriba may not, without Customer's prior written consent, enter into any settlement that does not unconditionally release Customer from liability; and (iii) provides Kyriba, at Kyriba's request and expense, with the assistance, information and authority necessary to perform Kyriba's obligations under this Section. In the event that the SaaS Services are held or are believed by Kyriba to infringe a third party's intellectual property rights, Kyriba may, at its option and expense (a) replace or modify the SaaS Services to be non-infringing; (b) obtain for Customer a license to continue using the SaaS Services; or (c) terminate this Agreement and return to Customer any Fees unearned by Kyriba, to the extent any such Fees have already been paid by Customer.

The foregoing Section states Kyriba's sole and exclusive liability, and Customer's sole and exclusive remedy, for any claim of infringement. Kyriba shall not be obligated to defend, and indemnify Customer for any claims to the extent based on: (i) any Customer or third party intellectual property or software incorporated in or combined with the SaaS Services where in the absence of such incorporated or combined item, there would not have been infringement, but excluding any third party software or intellectual property incorporated into the SaaS Services at Kyriba's discretion; (ii) the SaaS Services that has been altered or modified by Customer, by any third party or by Kyriba at the request of Customer (where Kyriba had no discretion as to the implementation of modifications to the SaaS Services or Documentation directed by Customer), where in the absence of such alteration or modification the SaaS Services would not be infringing; or (iii) use of any version of the SaaS Services with respect to which Kyriba has made available a non-infringing updated, revised or repaired subsequent version or other applicable update, patch or fix.

XVI. Audit

Subject to Customer providing Kyriba with at least thirty (30) days prior written notice, Customer may, at its own expense and no more than once a year, perform an audit in order to verify Kyriba's compliance with the Kyriba Hosting and Delivery Policies available at www.kyriba.com/contracts and, more generally, with its contractual obligations. Any such audit performed pursuant to this clause shall be conducted by an independent third party auditor appointed by Customer provided that (i) such auditor shall not be a competitor of Kyriba (as Kyriba may determine, acting reasonably and in its sole judgment); and (ii) Customer ensures that such auditor shall have entered into a non-disclosure agreement with Kyriba. Any such audit pursuant to and in accordance with this clause shall be restricted to those activities relevant to the scope of this Agreement.

Kyriba shall assist in the audit process and collaborate in good faith with the appointed auditor, providing all necessary information and responding to all of the auditor's relevant requests relating to the audit. The audit shall be conducted during regular Kyriba business hours and Customer hereby expressly warrants that, under no circumstances, shall the audit interfere with Kyriba systems and software.

A copy of the auditor's report shall be provided to each party within thirty (30) business days following the end of the audit and jointly reviewed and complied with by the Parties, each acting in good faith.

XVII. General Provisions

XVII.1. Assignment - Binding Nature

Customer may not assign or transfer, by operation of law or otherwise, any of its rights under this Agreement to any third party, or transfer any of the license rights granted hereunder, without the prior written consent of Kyriba, which consent shall not be unreasonably withheld or delayed. Any attempted assignment or transfer in violation of the foregoing will be void. Subject to the foregoing, this Agreement shall inure to the benefit of each party's successors and permitted assigns.

However, each party may freely assign this Agreement, or subcontract or otherwise delegate its obligations hereunder, in whole or in part, to any company in which a party owns, control directly or indirectly (in law or de facto) in application of Article L.233-3 of the Commercial Code, provided that such company agrees in writing to be bound by the terms hereof; and further provided, with respect to any such delegation or subcontracting of any party's duties hereunder, the Parties shall remain obligated to perform such duties as set forth herein. Any assignment shall be notified to the other Party by a prior written notice.

XVII.2. Remedies

Except as otherwise expressly provided in this Agreement, all remedies shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity or otherwise.

XVII.3. Non-Solicitation

During the Term and for a period of twenty-four (24) months thereafter, neither party will hire or solicit for employment any of the other party's employees, except by written consent of the other party. Should either party hire or solicit for employment any of the other party's employees, without written consent, the breaching party shall pay an amount equal to the payment received by the employee from its employer during the twelve (12) month period immediately preceding the breach of this provision. This prohibition shall not apply to any offers of employment which result from a general solicitation for employment.

XVII.4. Insurance

Each party hereby warrants that it has adequate insurance coverage to the levels required in order to cover the key risks arising from its obligations to be performed under and in accordance with the terms of this Agreement.

XVII.5. Force Majeure

Except for obligations of payment, neither party shall be liable for any delay or failure in performing hereunder if such failure arises, directly or indirectly, out of causes beyond the reasonable control of such party, including acts of strike, shortages, failure of suppliers, riots, insurrection, fires, floods, storms, earthquakes, acts of God, war, Government action, labour conditions, lightning, power surges or failures, terrorism, or acts or omissions of communications carriers, or unavailability of telecommunication services. Performance shall be deferred until the cause of such delay is removed, provided that the delayed party shall notify the other party of such occurrence. In the event that said force majeure would last longer than one (1) month, any Party may immediately terminate the Agreement by a registered letter, no compensation being liable to the other Party.

XVII.6. Notices

Notices must be in writing and may be delivered personally, mailed, or delivered by facsimile or registered (confirmed) email. Notices delivered by email or facsimile shall be deemed received upon electronic acknowledgement that such email or facsimile was successfully transmitted to the intended recipient. Mailed and personally delivered notices shall be sent to the address of the party as set forth in the Order Schedule, or to such other address as otherwise directed in writing by a party.

XVII.7. Governing Law

This Agreement will be governed by the laws of England and Wales without regard to conflict of laws principles, or any other principles that would result in the application of a different body of law. The parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods from this Agreement. The forum for any action arising pursuant to this Agreement shall be in a court located in England. The parties hereby waive any defense of lack of personal jurisdiction, lack of subject matter jurisdiction, improper venue, and/or forum non-conveniens which might otherwise apply but for this section.

XVII.8. Independent Contractors

Kyriba and Customer are independent contractors under this Agreement, which shall not be construed to create any employment relationship, partnership, joint venture, franchisor-franchisee or agency relationship, or to authorise any party to enter into any commitment or agreement binding on the other party except as expressly stated herein. The parties have no authority to make statements, warranties, or representations or to create any liabilities on behalf of the other.

XVII.9. Headings Not Controlling

The headings used in this Agreement are for reference purposes only and shall not affect the construction or interpretation of this Agreement.

XVII.10. Severability – Waiver

If any provision of this Agreement is unenforceable or illegal, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. No provision of this Agreement, unless such provision otherwise provides, will be waived by any act, omission or knowledge of a party or its agents or employees except by an instrument in writing expressly waiving such provision and signed by a duly authorised officer of the waiving party. The waiver of a breach of this Agreement or the failure of a Party to exercise any right under this Agreement shall in no event constitute a waiver as to any other breach, whether similar or dissimilar in nature, or prevent the exercise of any right under this Agreement.

XVII.11. Entire Agreement

This Agreement constitutes the entire agreement and understanding of the parties concerning the SaaS Services and supersedes all prior or contemporaneous proposals or agreements, oral or written, and all other prior or contemporaneous communications between the parties, regarding the subject matter of this Agreement.

These Terms are applicable from the date mentioned on page 1 until the next version is released by Kyriba. Kyriba may modify these Terms from time to time as required, and such modifications shall be effective immediately upon posting of the modified version on Kyriba Website (link www.kyriba.com/contracts). Customer hereby expressly agrees to monitor the Kyriba Website and to review the Agreement periodically in order to be aware of any such modifications.