

Kalo SaaS Terms of Use

These Kalo software as a service (SaaS) terms of use, together with its appendices (the "**Terms**") are effective as of the Effective Date and in conjunction with any other terms and conditions of use which are incorporated herein by reference which may be posted on our site and/or Services govern your access to and use of Kalo Industries Inc. ("**Kalo**", "**we**", "**us**" or "**our**") and its Associated Companies online vendor management and onboarding software services and the related applications and services offered by Kalo. By accepting these Terms, either by clicking a box indicating your acceptance, registering to use the free of charge Standard Services and/or Premium Services (where you have selected to purchase such Premium Services), accessing or using the Standard Services and/or Premium Services, or by executing an order form that references these Terms (an "**Order Form**"), you agree to all of the terms set forth herein and in any such Order Form.

If you are using the Standard Services and/or Premium Services as an individual you represent that you are at least 18 years of age and can form legally binding contracts and if you are using such services on behalf of an organisation, you are agreeing to these Terms for that organisation and representing that you have the authority to bind that organisation to these Terms. In that case, "you" and "your" will refer to that organisation. You may not access the Standard Services and/or Premium Services if you are our direct competitor, except with our prior written consent. In addition, you may not access the Standard Services and/or Premium Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

These Terms, including any appendices and the Order Form(s), govern your use of the free of charge Standard Services and the Premium Services, where you have purchased a subscription to use such Premium Services. If you are only using the free of charge Standard Services then section 7 of these Terms will not apply to you. For the avoidance of any doubt, if you are purchasing the enhanced and customised enterprise version of our vendor management and on-boarding Services ("**Enterprise Services**") the separate Enterprise Services terms and conditions entered into between you and us will apply to and govern your use of such Enterprise Services.

1. The defined terms set out in these Terms shall have the meanings given in section 11 of these Terms. In the event of any conflict between these Terms and any terms set out in an Order Form, these Terms shall prevail.

1. Standard Services

1.1 You may access the Standard Services without charge in accordance with and subject to these Terms and the applicable Order Form. In consideration of your grant of the licence to use Your Data set out in section 4.2, we shall grant you a non-exclusive, non-transferable, non-sublicensable licence to permit your Users to access and use the Standard Services in accordance with these Terms as of the Effective Date and continuing until: (i) we terminate your use of the Standard Services in accordance with these Terms; or (ii) you cease to use the Standard Services.

1.2 Additional terms and conditions of use of the Standard Services may appear on the registration page or elsewhere on our website or during your use of the Standard Services and such terms and conditions are incorporated into these Terms by reference and are legally binding.

1.3 Notwithstanding anything to the contrary in these Terms, the Standard Services are provided "As-is", "As-available" and without any warranty or support whatsoever, except for any support in respect of certain issues with your use of the Standard Service as may be offered by Kalo from time to time. You use the Standard Services entirely at your own risk and we (and our Associated Companies and suppliers) do not make any representations and disclaim all warranties, express, implied, statutory, or otherwise, including without limitation warranties, terms and conditions of merchantability, accuracy, correspondence with description, fitness for a particular purpose or use, satisfactory quality and non-infringement.

1.4 You may purchase Premium Services at any time during your use of the Standard Services in accordance with these Terms. Any such purchases shall be made in accordance with section 7 below. Such Premium Services may be used for the Subscription Term only, subject to earlier termination in accordance with these Terms.

2. Your Obligations

2.1 In respect of your use of the Standard Services and/or Premium Services, you represent and warrant that you shall:

2.1.1 only access and use the Standard Services and where applicable the Premium Services solely for the intended use of the Standard Services and Premium Services, for lawful purposes only and in accordance with these Terms, the Documentation and all applicable laws and regulations. You shall be liable for any User's breach of these Terms and shall ensure all Users keep a secure password for his/her use of the Standard Services and/or Premium Services;

2.1.2 provide adequate, complete and accurate information in respect of the provision and your use of the Standard Services and/or Premium Services and provide all co-operation as may be reasonably required by us in order to provide the Standard Services and where applicable the Premium Services, including without limitation the information and co-operation required to provide the Vendor Payment Services and as set out in sections 2.1.3, 7.1.2, 7.1.6 and 7.5.5;

- 2.1.3 be responsible for accurate and timely reporting in accordance with timeframes set out in the Order Form and these Terms to Kalo of (i) any Vendor Services Agreement it enters into with a Vendor; and (ii) all amounts payable under any such Vendor Services Agreement to a Vendor;
 - 2.1.4 be solely responsible for procuring and maintaining your network connections and telecommunications links and all problems, conditions, delays and delivery failures arising from or relating to your network connections or telecommunications links;
 - 2.1.5 use all reasonable efforts to prevent any unauthorized access to, or use of, the Standard Services. Premium Services and/or the Documentation and, in the event of any such unauthorized access or use, promptly notify us;
 - 2.1.6 shall be solely responsible for the accuracy, completeness, design, appropriateness, creation, maintenance, and updating thereof of all Your Data and for the accuracy and completeness of all information provided by You in respect of the Freelancer Classification Services. We shall not be liable for any errors or inaccuracies (i) in any information provided by You and/or Freelancers in respect of the Freelancer Classification Services, (ii) in any of Your Data or (iii) in any changes or modifications to any of Your Data by us upon your written instruction beyond our responsibility to accurately reproduce Your Data on your instruction; and
 - 2.1.7 treat and communicate with Vendors in a respectful and professional manner at all times.
- 2.2 You shall not and shall ensure Users shall not:
- 2.2.1 transmit any Viruses or transmit, access, store or distribute any material, including without limitation Your Data, during the course of your use of the Standard Services and/or Premium Services that: (i) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; (ii) facilitates illegal activity; or (iii) is otherwise illegal or causes damage or injury to any person or property;
 - 2.2.2 access all or any part of the Standard Services, Premium Services and/or Documentation in order to build a product or service which competes in whole or part with the Standard Services, Premium Services and/or the Documentation;
 - 2.2.3 include any Inappropriate Content, Viruses, malicious programs or any other information or material, any part of which, or the accessing of which or use of which would be a criminal offence or otherwise unlawful including the infringement of any Intellectual Property Rights of any other party;
 - 2.2.4 reverse engineer, decompile, disassemble, or otherwise reduce to human-perceivable form all or any part of the Software;
 - 2.2.5 modify, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit the Software, Standard Services, Premium Services and/or Documentation, or otherwise make the Software, Standard Services, Premium Services and/or Documentation available to any third party except the Users;
 - 2.2.6 falsify User identification information; or
 - 2.2.7 at any time disclose any information concerning Vendors or any other users that is not already contained in the public domain, except to the extent expressly permitted by Vendors or other users.
- 2.3 We reserve the right, without liability or prejudice to our other rights, to (i) disable your access and your Users' access to the Standard Services and/or Premium Services for any material breach of the provisions of section 2.2; and/or (ii) upon notice to you to remove content (including without limitation Your Data) where, in our sole and reasonable discretion, we suspect such content breaches any laws or regulations, third party rights or these Terms and/or is deemed to be Inappropriate Content or is otherwise unlawful.

3. Independent Contractor

- 3.1 You acknowledge and agree that we are not a service company providing services through Vendors and do not employ any Vendors and all Vendors are providing such Vendor Services as independent contractors under separate agreement with you. The parties to these Terms are independent contractors. You bear all risk and cost of operating your own business, including risk of loss. Nothing in these Terms are intended to, or shall be deemed to, constitute a partnership or joint venture of any kind or employment relationship between the parties, nor constitute any party an employee or agent of another party for any purpose. No party shall have authority to act as employee or agent for, or to bind, the other party in any way. You acknowledge and agree that you are free to determine (i) if you want to engage with a Vendor (ii) the Vendor Services you select or reject; and (iii) how you engage with any Vendors (including the terms upon which you engage with such Vendors under a Vendor Services Agreement). All negotiations are between you and the relevant Vendor for Vendor Services and you and such Vendors are free to negotiate the fees, timings and details of any Vendor Services to be provided under a Vendor Services Agreement. Nothing in these Terms is intended to prohibit or otherwise limit your ability to engage, and negotiate with, Vendors.

4. Your Data and Privacy

2.

- 4.1 You shall own and retain full ownership of Your Data and shall have sole responsibility for: (i) the legality, appropriateness, completeness, reliability, integrity, accuracy and quality of Your Data; and (ii) for obtaining all necessary licences and consents required to use Your Data (if any, and including but not limited to those from the owners or licensees of any third party information) as part of the Standard Services and/or Premium Services and you warrant and represent that such licences and consents have been obtained.

3.

4.2 Solely to provide you with the Standard Services and/or Premium Services, you grant us and our Associated Companies who require access to Your Data in order to provide the Standard Services and/or Premium Services, a non-exclusive, worldwide, perpetual licence to (i) host, copy, transmit and display Your Data and to incorporate Your Data with the Kalo Data; and (ii) where necessary, to transfer Your Data to Third Party Suppliers, Payment Provider or any other third party service providers used by Kalo, Third Party Suppliers, and/or Payment Provider only as necessary for us, Third Party Suppliers and/or Payment Provider to provide the Standard Services and/or Premium Services in accordance with these Terms. You further grant us and our Associated Companies a non-exclusive, worldwide, perpetual licence to use, host, transmit and display, post termination of these Terms, any Vendor contact details provided by or on behalf of you, to the extent such information and/or data is deemed Your Data.

4.

4.3 You acknowledge that we are neither obliged nor able to edit and modify Your Data and have no obligation to monitor any information on the Standard Services and/or Premium Services and we are not responsible for the accuracy, completeness, appropriateness, safety or legality of Your Data or any other information or content you may be able to access using the Standard Services and/or Premium Services, including without limitation data and information of Vendors. You further acknowledge that (i) you are responsible for all Your Data, and (ii) any communication with others while using the Standard Services and/or Premium Services is your sole and exclusive responsibility, and (ii) we will not be held responsible in any way for any intellectual property infringement or violation, or the violation of any other person's rights or any laws arising or relating to Your Data. We are further not responsible for any disclosure, modification or deletion of Your Data resulting from access by a third-party application. We expressly disclaim all liability for any fraud committed in connection with the Standard Services and/or Premium Services. You agree to indemnify and save us and our Associated Companies harmless from and against all losses, damages, actions or causes of action, suits, claims, demands, penalties and interest arising in connection with or out of Your Data, to the extent not caused by Kalo's wilful misconduct.

5.

4.4 You shall not and shall ensure that your Users shall not in the use of the Standard Services and/or Premium Services, (i) request from any Vendor, (ii) input (or request us to input on your behalf), or (iii) provide to us, any personal data, including without limitation personal data of any Vendors, which is deemed sensitive data, including without limitation, information regarding union membership of a Vendor. Except where prohibited by Applicable Data Protection Laws, in the event you provide to us or input (or requests us to input on your behalf) any such sensitive data in breach of this section, we shall not be liable in any way to you or your affiliates for any data breach which may occur in respect of any such sensitive data.

4.5 We shall follow our archiving procedures for Your Data as set out in our Back-Up Policy as such document may be amended by us in our sole discretion from time to time, with any such amended version to be made available to you. In the event of any loss or damage to Your Data, your sole and exclusive remedy shall be for us to use commercially reasonable efforts to restore such lost or damaged data from the latest back-up of Your Data maintained by us in accordance with the archiving procedure described in our Back-Up Policy. We shall not be responsible for any loss, destruction, alteration or disclosure of Your Data caused by any third party (except those third parties sub-contracted by us to perform services related to Your Data maintenance and back-up), unless solely caused by our negligence.

4.6 You acknowledge that it is your responsibility to use a secure encrypted connection if you wish to protect Your Data when you are transmitting it to us and to keep your own backup copies of Your Data. You are solely responsible for protecting your passwords, limiting access to your computers and devices, and signing out of the Standard Services and/or Premium Services when you are not using them. We will not be liable to you for any loss, misuse, unauthorised access, disclosure, alteration or destruction as result of your breach of this clause.

6.

4.7 Each party shall comply with Applicable Data Protection Laws. The parties acknowledge that under these Terms either party may be a processor or controller (as defined in Applicable Data Protection Laws) in different scenarios and where a party is to process Personal Data belonging to the controller under these Terms and/or an Order Form, the parties shall set out in the applicable Order Form: (i) the subject matter and duration of the processing; (ii) the nature and purpose of the processing; and (iii) the type of Personal Data and categories of data subject. The parties agree that the processing obligations set out at the Appendix to these Terms, shall apply to each party as processor (if applicable).

7.

8.

Confidentiality

9.

5.1 Each party may be given access to Confidential Information by the other party in order to perform its obligations under these Terms. A party's Confidential Information shall not be deemed to include information that:

10.

5.1.1 is or becomes publicly known other than through any act or omission of the receiving party;

5.1.2 was in the receiving party's lawful possession before the disclosure;

5.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

5.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or

5.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

5.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of these Terms. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of these Terms.

Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

11.

- 5.3 The obligations of confidentiality under this section 5 shall survive the expiration or termination of these Terms for a period of five (5) years, except for any information which is deemed a trade secret in respect of which the obligations of confidentiality hereunder shall survive for as long as such information remains a trade secret.

6. Kalo IP Ownership

- 6.1 You acknowledge and agree that we and/or our licensors and/or Third Party Suppliers, as applicable, own all Intellectual Property Rights in and to the Standard Services, Premium Services, any Talent Pooling Pages and all related Software, applications, trademarks and tradenames, the Kalo Data, the Documentation and the Third Party Services. There are no implied terms under these Terms and except as expressly stated herein, these Terms do not grant you any rights to, or in, any such Intellectual Property Rights or any other rights or licences in respect of the Standard Services, Premium Services, any Talent Pooling Pages and all related Software, applications, trademarks and tradenames, the Kalo Data, the Documentation or the Third Party Services.
- 6.2 These Terms shall not prevent us from entering into similar agreements with third parties, or from independently developing, using, selling or licensing software, documentation, products or services which are the same or similar to those provided under these Terms.

7. PREMIUM SERVICES – THE TERMS AND CONDITIONS SET OUT IN THIS SECTION 7 ONLY APPLY WHERE YOU HAVE PURCHASED THE PREMIUM SERVICES.

- 7.1 **The Premium Services.** The Premium Services, as further described in the Documentation and in this section 7, provide additional tools and functionality to the Standard Services and you may purchase User Subscriptions for such Premium Services by entering into an Order Form with us for such Premium Services to which these Terms will apply. Where you have purchased the Premium Services as set out in the applicable Order Form, we shall provide you access to use the applicable Premium Services during the Subscription Term (or such other subscription period as may be agreed by the parties in the applicable Order Form for a particular Premium Service) in accordance with these Terms and in particular this section 7:

7.1.1 **Licence.** Subject to you purchasing the User Subscription(s) for the Premium Services as selected for purchase in the applicable Order Form, we hereby grant to you a non-exclusive, non-transferable and non-sublicensable licence to permit the Authorised Users to use the applicable Premium Services and the related Documentation during the Subscription Term (or such other subscription period as may be agreed by the parties in the applicable Order Form for a particular Premium Service) solely for your internal business operations and in accordance with these Terms.

7.1.2 **Vendor Payment Services. (This subsection 7.1.2 will only apply if you have purchased a subscription to the Vendor Payment Services)**

7.1.2.1 The Vendor Payment Services are provided as set out in this section 7.1. Payments of the applicable fees owed by you to Vendors for their Vendor Services pursuant to a Vendor Services Agreement are facilitated by the applicable Payment Provider. Depending on the Payment Provider used to facilitate payments to your Vendors (as notified by us to you), one or more of the Payment Providers may require their respective terms and conditions to be agreed directly with you and as such you hereby: (i) accept and agree to the Payment Provider Terms as between you and applicable Payment Provider in respect of such payments; and (ii) acknowledge and accept that such Payment Provider shall have the right to directly enforce the terms of such Payment Provider Terms against you. In respect of the services provided by the Payment Provider only, in the event of any conflict between the terms of this Agreement and the Payment Provider Terms, the Payment Provider Terms shall prevail.

7.1.2.2 The Payment Provider or Kalo on behalf of the Payment Provider will need to carry out certain checks to comply with Payment Providers internal and legal obligations in order to approve you for an account with such Payment Provider and as may be required to approve a transaction. Such checks will include without limitation ensuring your business activities are not on Payment Providers list of prohibited business activities and accessing various government and private databases to verify information you provide. You agree that we may share these checks with the Payment Provider, and as required by any legal or regulatory authority. Payment Provider may in its sole reasonable discretion refuse to accept any requests to set up an account for you or to process any payment transaction. Where approved by the Payment Provider, we will arrange (where applicable) to set up an account on your behalf with such Payment Provider.

7.1.2.3 In order for us and our Payment Provider to provide you with the Vendor Payment Services:

- (a) you shall promptly (i) notify us of any and all Vendors you select to use the Vendor Payment Services to facilitate your payments of the applicable fees due to such Vendors under a Vendor Services Agreement; (ii) provide us with all applicable information, as notified by us, which is required by us and/or our Payment Provider to complete the necessary checks to approve you for an account with Payment Provider and/or for Payment Provider to process a payment transaction; (iii) your chosen Invoice Approval Period; (iv) where you are using the Wallet Option, provide us with your best estimate of the Wallet Funds required to cover the payment of all Vendor invoices approved in each of the applicable Payment Period; and (v) provide your bank account details for the bank account which you will be using to transfer funds to the Payment Provider (or via our client account if applicable); and (vi) such other information as may be reasonably required by us and/or Payment Provider in order to provide the Vendor Payment

Services. You agree that we may share all such provided information under this section with the Payment Provider for the provision of the Vendor Payment Services, and as required by any legal or regulatory authority; and

(b) you hereby expressly (i) grant us permission and the right to set up, access and manage your account, as applicable, with the Payment Provider on your behalf; (ii) authorise us to use our client bank account to receive funds from you solely for the purposes of transmitting such funds to the applicable Payment Provider, where the applicable Payment Provider so requires; and (iii) grant us permission to authorise payment transactions to your Vendors on your behalf and for the Payment Provider to make such payments to your Vendors. We shall be acting under your instruction for these purposes and where required by the Payment Provider you shall, upon our request, promptly provide us with a written authorisation letter signed by a director of your company confirming your authority for us to act your behalf for such purposes. You acknowledge and agree that in such cases we will require such written authorisation letter before we can set up and provide the Vendor Payment Services and will not be liable for any delay in the provision of the Vendor Payment Services as a result of your delay in providing such authorisation letter.

7.1.2.4 During each invoice Approval Period you will approve the Vendor invoices issued by Vendors through our Vendor Payment Services within such Invoice Approval Period for payment for their Vendor Services. We shall not be liable for your incorrect and/or duplicated approvals of such invoices.

7.1.2.5 Ondemand Option.

Where you have selected the Ondemand Option for facilitating payments to Vendors through the Payment Provider the following will apply.

(a) At the end of each Invoice Approval Period we will calculate the required Vendor Funds to cover such approved invoices due for payment. Following such notification by us of the required Vendor Funds, you will promptly pay such Vendor Funds to our Payment Provider to the bank account details as notified to you by us. You may change the Invoice Approval Period to a different permitted approval periods at any time upon one month's prior written notice to us (which may be by email). Following receipt of the applicable Vendor Funds, Payment Provider will process payment to the applicable Vendor for the applicable Invoice Approval Period and (i) where applicable, in accordance with such Payment Provider Terms; or (ii) where no Payment Provider Terms apply, Payment Provider shall use reasonable endeavour to process within 10 Business Days of the date of receipt of such Vendor Funds, unless otherwise notified by us where processing of payment in certain countries and currencies may take longer.

7.1.2.6 Wallet Option

Where you have selected the Wallet Option for facilitating payments to Vendors through the Payment Provider the following will apply.

(a) You will pay the Wallet Funds to our Payment Provider (or via our client account for onwards payment to such Payment Provider), to the bank account details as notified to you by us, on the Payment Date. Payment Provider will hold the Wallet Funds on account and will use such Wallet Funds to facilitate the payments to the Vendors for each of the invoices approved during the applicable Invoice Approval Periods of the applicable Payment Period. Provided that there are sufficient Wallet Funds and subject to subsection (b) below, Payment Provider will process such payments to the Vendors for the applicable Invoice Approval Periods and (i) where applicable, in accordance with such Payment Provider Terms; or (ii) where no Payment Provider Terms apply, Payment Provider shall use reasonable endeavour to process within 10 Business Days of the date of expiry of the applicable Invoice Period, unless otherwise notified by us where processing of payment in certain countries and currencies may take longer.

(b) Payment Provider will not process the payments to Vendors for the applicable Invoice Approval Period unless and until it has received sufficient Wallet Funds to cover such Invoice Approval Period. Where the Wallet Funds will not cover the amounts due for any of the Invoice Approval Periods during the applicable Payment Period, we will notify you of the shortfall and you shall promptly pay the difference ("**Gap Funds**") required to pay the Vendors for the applicable Invoice Approval Period(s) and/or Payment Period, as applicable.

(c) Where there has been a shortfall in the Wallet Funds for three (3) or more consecutive Invoice Approval Periods, we reserve the right to require the regular Wallet Funds payments to be increased accordingly with immediate effect upon notice to you. The parties agree to regularly review the Wallet Funds payments and adjust them accordingly if such funds are regularly higher or lower than the amount required to cover the applicable Invoice Approval Periods. Such reviews will be held by the parties at least every three Invoice Approval Periods (or such other review period as may be agreed by the parties from time to time). You may amend the applicable Payment Period at any time upon one month's prior written notice to us (which may be by email).

7.1.2.7 The current per transaction limit for payments to Vendors is set out in the applicable Payment Provider Terms, where such terms apply, as notified by us to you.

7.1.2.8 We will notify you as soon as reasonably practicable in the event you require payment of the applicable fees to Vendors in a currency which is not currently supported by our Payment Provider.

7.1.2.9 Once you have approved a Vendor invoice for payment, and in respect of the Ondemand Option paid the Vendor Funds to Payment Provider, the payment of those approved invoices cannot be reversed except where otherwise expressly permitted by our Payment Provider.

7.1.2.10 In the event you incur any charges or additional fees due to our Payment Provider through no fault of us in connection with the payment of Vendors by our Payment Provider, such as fees payable for chargebacks or transaction reversal, we shall notify you of such additional charges and you shall pay such charges in accordance with section 7.5.5.

7.1.3 Third Party Tax Services. (This subsection 7.1.3 will only apply if you have purchased a subscription to the Third Party Tax Services)

You may also purchase Third Party Tax Services as agreed by the parties in the applicable Order Form. The Third Party Tax Services are provided by Third Party Suppliers and the Third Party Terms of the relevant Third Party Supplier shall govern your access to and use of the Third Party Tax Services. By executing the applicable Order Form for the purchase of such services, you hereby agree and accept such Third Party Terms as between you and the applicable Third Party Supplier and acknowledge and agree that the applicable Third Party Supplier shall have the right to directly enforce the terms of such Third Party Terms against you. In respect of the services provided by the Third Party Supplier only, in the event of any conflict between the terms of this Agreement and the Third Party Terms, the Third Party Terms shall prevail. In order for us and the relevant third party provider to provide the Third Party Tax Services, you:

- (a) shall provide us with all applicable information, as notified by us, which is required to provide the Third Party Tax Services and ensure such information is complete and accurate;
- (b) hereby expressly grant us permission to authorise the relevant Third Party Supplier to carry out the Third Party Tax Services on your behalf, as applicable. We shall be acting under your instruction for these purposes and where required by the Third Party Supplier you shall, upon our request, promptly provide us with a written authorisation letter signed by a director of your company confirming your authority for us to act on your behalf for such purposes. Neither we or the Third Party Supplier will be liable for any delay in the provision of the Third Party Tax Services as a result of your delay in providing such authorisation letter; and
- (c) agree that we will share your information provided to us with the applicable Third Party Supplier providing the Third Party Tax Services for the purposes of providing the Third Party Services and/or as required by any legal or regulatory authority.

References to 1099s in this subsection refer to the US federal income tax information forms which are filed with the US Internal Revenue Service, and where applicable state tax departments, with copies to the relevant individuals.

7.1.4 Freelancer Classification Services. (This subsection 7.1.4 will only apply if you have purchased a subscription to the Freelancer Classification Services)

The Freelancer Classification Services and any results of such services are provided solely to support your own determination of the employment classification of those Freelancers whom you have selected to engage with for Vendor Services and is in no way a conclusive determination of such classification. Such tools are based on: (i) the Freelancer's and your submission of accurate and complete information in respect of any Freelancers; and (ii) correct use by you and Freelancers of the Standard Services and Premium Services. You shall provide all required and accurate information in response to any questions or requests from us for the provision of such Freelancer Classification Services. You further acknowledge and agree that any results obtained from such Freelancer Classification Services may change at any time after the date of the provision of such Freelancer Classification Services for a Freelancer and/or during the provision of such Freelancer's Vendor Services to you.

7.1.5 Third Party Services. (This subsection 7.1.5 will only apply if you have purchased a subscription to the Third Party Services)

As part of the Premium Services you may also subscribe to have access to the Third Party Services, which may be used by you at your sole option to assist you with your selection of any Freelancers and subject to payment by you of the applicable Third Party Services Fees for your use of such Third Party Services. Your access to and use of such Third Party Services shall be solely at your own risk and subject to Your acceptance and compliance with the separate terms and conditions of such Third Party Supplier which shall be provided for review and acceptance at the time of your purchase of such Third Party Services. You shall not solely rely on such Third Party Services to determine whether to engage with a Vendor and neither we nor the Third Party Supplier are liable for any action taken by you or your reliance on the results of such Third Party Services in respect of such Vendors or their Vendor Services.

7.1.6 Talent Pooling Services. (This subsection 7.1.6 will only apply if you have purchased a subscription to the Talent Pooling Services)

7.1.6.1 As part of the Talent Pooling Services, we will build, host and maintain a microsite page as further described in the Documentation ("**Talent Pooling Page**") which will enable you to advertise certain services you require and for prospective freelancers and vendors ("**Prospects**") to register their interest in providing the services to you and upload their application details through the use of a template application on the registration page ("**Registration Page**") accessed through the Talent Pooling Page. The license granted in section 7.1 to use such Talent Pooling Services includes: (i) access to such Talent Pooling Page solely for the purposes of viewing Prospect profiles and applications; (ii) access to customise certain customisable parts of the Talent Pooling Page; and (iii) use and embed a link ("**Talent Pooling Link**") on your own website pages (such as your careers page) or other media for the purposes of directing a Prospect's interest on the Prospect Registration Page. You shall provide all information required by us in order to create such Talent Pooling Page for you and to enable you to customise certain parts of the Talent Pooling Page.

7.1.6.2 The Talent Pooling Services enable you to view and select from those Prospects who have registered their interest through the Talent Pooling Page or via the Talent Pooling Link. Once a Prospect has been selected by you at your sole option for the provision of the advertised service(s) and you have entered into a Vendor Services Agreement with such Prospects, each such Prospect will be added to our Talent Pooling Database and the Onboarding Database. Any details of any Prospects uploaded to the Registration Page and/or added to our Talent Pooling Database and the Onboarding Database shall be owned by us and subject to separate terms between Vendor and us.

7.1.6.3 The Talent Pooling Services and any result of such services are provided solely to support your own Vendor sourcing efforts and the responsibility of determining the Vendor suitability and quality lies solely with You. We shall not be liable for any actions taken or reliance on such Talent Pooling Services.

7.1.6.4 We will use reasonable endeavours to make the Talent Pooling Page available 24 hours a day, 7 days a week subject to any required maintenance. We will use reasonable commercial endeavours to generate interest in the Talent Pooling Page among potential Prospects through online marketing tools and as further described in the Documentation.

7.1.7 We expressly exclude liability for any failure or delay in payment of the applicable Vendor Fees by the Payment Provider or for the failure or delay or any errors with the Third Party Tax Services, or for the acts or omissions of a Vendor, the applicable Payment Providers or Third Party Suppliers of the Third Party Tax Services. We shall further not be liable for: (i) your breach of the applicable Payment Provider Terms and/or Third Party Terms; (ii) our acts or omissions in breach of the applicable Payment Provider Terms and/or Third Party Terms as a result of or in connection with your instructions to us; (iii) any failure to pay or delay in payment to a Vendor as a result of your delay or failure to make payments of the applicable Vendor Funds, Wallet Funds and/or Gap Funds by the due dates; (iv) your failure to comply with your obligations in accordance with this section 7.1 and/or your failure to provide the correct and required information for the Payment Provider to effect such payment(s) and/or for the Third Party Supplier to carry out the Third Party Tax Services, as applicable; and/or (v) any miscommunication by the relevant Vendor or any failure of the Vendor to provide correct information required to effect such payments or carry out the Third Party Tax Services. You will indemnify and hold us, our Associated Companies, Payment Provider and the Third Party Supplier of the Third Party Tax Services harmless from and against all claims, proceedings, liabilities, costs, damages and expenses (including reasonable legal and other professional fees and expenses) awarded against any of us or incurred or paid by any such party as result of or in connection with: (i) your breach of the Payment Provider Terms and/or Third Party Terms and/or our breach of such Payment Provider Terms and/or Third Party Terms as a result of or in connection with your instructions to us; (ii) your failure or delay in payment of the Vendor Funds, Wallet Funds and/or Gap Funds pursuant to this section 7.1.2; (iii) your failure to comply with any of your obligations under section 7.1 or to provide the correct and required information for the Payment Provider to effect such payment(s) and/or for the Third Party Supplier to carry the Third Party Tax Services; (iv) any illegal activities committed by you in connection with your use of the Vendor Payment Services and/or Third Party Tax Services; and/or (v) with any disputes between you and your Vendors pursuant to the Vendor Services Agreement.

7.2 **Authorised Users.** In respect of the Authorised Users of the Premium Services, you agree that the maximum number of Authorised Users that you authorise to access and use the Premium Services and Documentation shall not exceed the number of User Subscriptions you have purchased. You will not allow any User Subscription to be used by more than one per individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Standard Services and/or Documentation.

7.3 **Audit Rights.** To enable us to ensure your use of the Premium Services is in accordance with the Order Form and these Terms, you shall (i) upon our reasonable request, provide evidence of your use of the Premium Services in compliance with the Order Form and these Terms within 20 days of such request, save that Kalo may only make such request twice per year, except where Kalo reasonably believes that you are not using the Premium Services in compliance with the Order Form and these Terms; and (ii) permit us to audit your use of the Premium Services in order to determine your use of the Premium Services is in accordance with these Terms and the Order Form and such audit may be conducted no more than once per year, at our expense, upon reasonable prior notice, and in such a manner as not to substantially interfere with your normal conduct of business. Without prejudice to any other rights we may have, where it is determined that your use of the Premium Services is in excess of the User Subscription purchased or otherwise in breach of your usage rights under these Terms and the applicable Order Form, we shall invoice and you shall pay for the additional fees as per our then current price list which will be payable for such excess use.

7.4 **Premium Services Availability and Support**

7.4.1 We shall use commercially reasonable endeavours to make the Premium Services (excluding any Third Party Services) available 24 hours a day, seven days a week, except for required scheduled or emergency maintenance periods as notified to you from time to time.

7.4.2 We will, as part of the Premium Services and at no additional cost to you, provide you with the Support Services during Business Hours. We may offer enhanced support service packages for purchase, such as our 24/7 support services, as detailed in the applicable Order Form, at our then current rates for any such additional Support Services (as notified to you by us from time to time).

7.5 **Premium Services and Third Party Services Payment Terms**

7.5.1 Unless otherwise agreed in the applicable Order Form you shall pay all the Subscription Fees annually in advance for the duration of the Subscription Term in accordance with the Order Form (or the billing section for our Premium

Services as applicable) and we may invoice you for the Subscription Fees on or after the Effective Date and thereafter on each 12 month anniversary of the Effective Date for the duration of the Subscription Term.

- 7.5.2 You may, from time to time during the Subscription Term, purchase additional User Subscriptions in excess of the number originally purchased for the additional fees set out in the applicable Order Form and we shall grant access to the Premium Services and the Documentation to such additional Authorised Users in accordance with these Terms.
- 7.5.3 We will invoice you for the Talent Pooling Services Fee as set out in the applicable Order Form and you shall pay all such invoices in accordance with section 7.5.7 below.
- 7.5.4 Unless otherwise agreed in the applicable Order Form, the Third Party Service Fees shall be payable by you in advance on a pay-as-you-go basis at the time you select and purchase such Third Party Services and subject to the terms and conditions of the Third Party Supplier of such Third Party Services.
- 7.5.5 Unless otherwise agreed in the Order Form, we will invoice you for the Vendor Payment Services Fees monthly in arrears at the end of each month in which they were incurred and you shall pay such fees in accordance with section 7.5.7 below. You shall pay the applicable Vendor Funds, Wallet Fund and Gap Funds (where applicable) to the Payment Provider in accordance with section 7.1.2 above. Where you incur any charges or additional fees owed to the Payment Provider as a result of your acts or omissions, we shall invoice you for such fees at the end of the month in which they were incurred by you and you shall pay such fees in accordance with section 7.5.7 below.
- 7.5.6 We will invoice you for the applicable fees for the Third Party Tax Services as set forth in the Order Form.
- 7.5.7 Unless otherwise stated in the applicable Order Form or our billing section for our Premium Services and subject to section 7.1.2 where such payments are payable as stated therein, all Fees or any other fees payable under these Terms (such as additional charges incurred in respect of the Vendor Payment Services) are payable in full within thirty (30) days of the date of invoice. All amounts and Fees stated or referred to in these Terms and/or the applicable Order Form are non-refundable and exclusive of all Taxes. You shall be solely responsible for, and for paying, all applicable Taxes relating to these Terms, and the use of or access to the Premium Services.
- 7.5.8 If we have not received payment from you by the due dates and without prejudice to our other rights and remedies, we may: (a) by giving ten (10) Business Days prior written notice to you, without liability to you, disable your password, account and access to all or part of the Premium Services until such outstanding payments are received in full by us; and (b) charge interest which shall accrue on such due amounts at the higher of (i) an annual rate equal to 4% or (ii) the standard statutory delay interest rate under applicable law.
- 7.5.9 We shall be entitled to increase the fees for User Subscriptions, Vendor Payment Services and/or Talent Pooling Services with effect from the start of each Renewal Period upon prior notice to you and these Terms shall be deemed to have been amended accordingly.

7.6 Premium Services Warranty

- 7.6.1 We warrant that the Premium Services will be performed substantially in accordance with the Documentation and with reasonable skill and care for the Subscription Term.
- 7.6.2 The warranty provided in section 7.6.1 shall not apply to the extent of any non-conformance which is caused by use of the Premium Services contrary to our instructions or the Documentation, or modification or alteration of the Premium Services by any party other than us or our duly authorised contractors or agents, or any Third Party Services accessed by you through the Premium Services. If the Premium Services do not conform with the warranty provided in section 7.6.1, we will, at our expense, use commercially reasonable efforts to correct any such non-conformance promptly, or provide you with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes your sole and exclusive remedy, and our sole and exclusive liability for any breach of the warranty. Notwithstanding the foregoing, we:
 - 12. (a) do not warrant that your use of the Premium Services will be uninterrupted or error-free; or that the Premium Services, Documentation and/or the information obtained by you through the Premium Services (including without limitation any information provided by Vendors) will meet your requirements; and
 - (b) are not responsible for any delays, delivery failures, or any other loss or damage resulting from your access to and use of the Premium Services or Third Party Services and/or third party applications (such as Google) or the transfer of data over communications networks and facilities, including the internet, and you acknowledge that the Premium Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities; and
 - 13. (c) are not responsible for any Virus which was not detected by our use of reasonable current commercial methods of detection or transmitted through Third Party Services; and
 - 14. (d) shall not, nor our suppliers or third-party service providers or software vendors, have any liability whatsoever for the accuracy, completeness, or timeliness of Your Data, or for any decision made or action taken by you, any Authorised User, or any third party in reliance upon any of Your Data.
- 7.6.3 Except as expressly provided for in this section 7.6, we (and our Associated Companies and suppliers) disclaim all other warranties, express, implied or statutory, including warranties, terms and conditions of merchantability, accuracy, correspondence with description, fitness for a particular purpose or use, satisfactory quality and non-infringement.

8. Limitation of liability

- 8.1 Subject to sections 8.2 and 8.3, our total liability for or in respect of any loss or damage suffered by you (whether due to breach of contract, tort (including negligence) or otherwise) under or in connection with these Terms in respect of: (i) your use of the Premium Services shall be limited to the total amount of Fees paid by you during a Claim Year; and (ii) your use of the Standard Services shall be limited to £100.
- 8.2 The exclusions in this section 8 shall apply to the fullest extent permissible at law but neither party excludes liability for death or personal injury caused by its negligence, or of its officers, employees, contractors or agents; fraud or fraudulent misrepresentation; or any other liability which cannot be excluded by law.
- 8.3 To the maximum extent permitted by applicable law and except for your indemnity obligations under sections 4.3 and 7.1.7, in no event will either party be liable to the other for special, consequential, incidental or other indirect damages, or for loss of profits, anticipated savings, business opportunity, goodwill or revenue, loss of use or loss of data (including corruption of data), or costs of procurement of substitute goods or Standard Services, howsoever caused and under any theory of liability (including contract, tort, negligence or otherwise) even if the other party has been advised of the possibility of such damages. The parties acknowledge that the amounts payable hereunder are based in part on these limitations and further agree that these limitations shall apply notwithstanding any failure of essential purpose of any limited remedy. We accept no liability for failure to maintain any level of availability of the Standard Services and/or Premium Services other than where we are in breach of our obligations under these Terms.
- 8.4 In addition to the other limitations and exclusions of liability set out in sections 1.3 and 7.1 and this section 8, we shall have no liability:
- 8.4.1 for Your Data (except for the exclusive remedy provided in section 4.6), the Third Party Services or any other materials, third party products or services used and/or accessed using the Standard Services and/or Premium Services or for any fraud committed in connection with the Standard Services and/or Premium Services;
 - 8.4.2 for or under any Vendor Services Agreement or other agreement entered into between you and any Vendors;
 - 8.4.3 for any Vendor's acts or omissions (including for any information it provides in its user profile or through the Onboarding Services) or for any Vendor Services or the quality of such Vendor Services; or
 - 8.4.4 for your determination of a Freelancer's employment classification based upon the Freelancer Classification Services; or
 - 8.4.5 where any failure to provide the Standard Services and/or Premium Services is caused by:
 - (a) a network, hardware or software fault in equipment which is not under our control;
 - (b) any act or omission by you or Vendors;
 - (c) use of the Standard Services and/or Premium Services contrary to these Terms; or
 - (d) any unauthorised access to the Standard Services and/or Premium Services, including without limitation a malicious security breach.
- 8.5 In the event of any loss or damage to Your Data, your sole and exclusive remedy shall be as set out in section 4.6.
- 8.6 We cannot and do not guarantee: (i) verification of each Vendor's identity and/or the information contained in their user profiles or any information they provide to you in response to a request by you for services and/or as part of the Onboarding Services and/or Talent Pooling Services; (ii) any Freelancer's employment classification; or (iii) the ability or willingness of any Vendor to respond or accept a request for services or to fulfil its obligations with respect to a Vendor Services Agreement. Consequently it is your responsibility to verify the identity of any Vendors you engage with and that Vendor's suitability with respect to a Vendor Services Agreement, including such Vendor's ability to provide the Vendor Services.
- 8.7 We do not and cannot control the flow of data to or from the network where our platform resides and other portions of the internet, including denial of service attacks (an attack which sends a flood of incoming messages to the target system forcing the system to shut down, thereby denying service to legitimate users). We cannot guarantee that such events will not occur. Accordingly, we, our Associated Companies, suppliers and subcontractors, if any, disclaim any and all liability resulting from or related to such events and you shall have no claim in respect thereof. Our website and Standard Services and/or Premium Services may contain links to websites operated by third parties and these links are for convenience only. We are not responsible and we and our Associated Companies, suppliers and subcontractors disclaim any and all liability for their content and privacy policies and do not endorse any linked material.
- 15.**
- 8.8 You assume sole responsibility for: (i) results obtained from your use of the Standard Services, Premium Services, Documentation and any Third Party Services and for conclusions drawn from such use; and (ii) for any agreements, including without limitation Vendor Services Agreements you enter into with any Vendors and the provision of Vendor Services under such agreements. We shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to us by you in connection with the Standard Services, Premium Services and/or Third Party Services, or any actions taken by us at your direction in your use of the Standard Services, Premium Services and/or Third Party Services or engagements with any Vendors. The Standard Services, Premium Services and Third Party

Services are not intended to be used as the sole basis for any business decision and are based upon data provided by you, Vendors and/or third parties, the accuracy and/or completeness of which it would not be possible and/or economically viable for us to guarantee.

16.

9. Term and Termination

17.

9.1 These Terms shall, unless otherwise terminated as provided in this section 9, commence on the Effective Date and shall continue (i) for the Standard Services, for the period stated in section 1.1; and (ii) for Premium Services, for the Subscription Term, which may be renewed for additional Renewal Periods upon request by you and payment of the applicable Fees for any such Renewal Periods. Without a Renewal Period in place, your access and use of the Premium Services shall automatically terminate. Expiration or termination of your access and use of the Premium Services shall not affect your access and use of the Standard Services which shall remain in effect until expiration or earlier termination in accordance with section 1.1 and this section 9.

18.

9.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate these Terms and/or any Premium Services in whole or part without liability to the other at any time with immediate effect upon written notice if the other party:

19.

9.2.1 is in material breach of any of its obligations under these Terms and, in the case of a breach which is capable of remedy, fails to remedy such breach within thirty (30) days following notice of the breach; or

9.2.2 voluntarily files a petition under bankruptcy or insolvency law; shall have a receiver or administrative receiver appointed over it or any of its assets; shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business; or is subject to any analogous event or proceeding in any applicable jurisdiction.

20.

9.3 Early Termination. After the Initial Subscription Term, you may at any time during the applicable Subscription Term terminate the subscription for any or all of the Premium Services under an Order Form with sixty (60) days prior written notice to us; provided that you shall not receive a refund for any prepaid fees and shall be liable for the remainder of the fees applicable to the period of the then current Subscription Term after the date of termination as set out below:

9.3.1 Full payment of the applicable fees for the first three (3) months remaining of the then current Subscription Term; and

9.3.2 Fifty (50) percent of the applicable fees payable for the remaining months of the then current Subscription Term thereafter.

21.

9.4 Subject to section 9.5, on expiration or termination of these Terms and/or any Order Form for any reason:

22.

9.4.1 Your rights of use granted under these Terms and/or any Order Form (where only an Order Form has been terminated) shall immediately terminate and you shall cease the use of the Standard Services and/or Premium Services or where only an Order Form has been terminated, the Services purchased under such Order Form;

23.

9.4.2 You shall promptly pay all monies due or to become due under these Terms and/or the relevant Order Form through the effective date of termination, including any fees in respect of early termination pursuant to section 9.3;

24.

9.4.3 each party shall return and make no further use of any equipment, property, Software, Standard Services, Premium Services and Documentation, Confidential Information and other items (and all copies of them) belonging to the other party, subject to section 4.2 and our retention of a back-up copy of Your Data in our possession for up to 30 days after the date of termination in accordance with section 9.4.4 below. Where only an Order Form has been terminated, you will not be required to return or make no further use of the Services other documents and materials which relate to your continued use of the remaining Standard Services and/or Premium Services;

25.

9.4.4 we may destroy or otherwise dispose of any of Your Data in our possession unless we receive, no later than thirty (30) days after the effective date of the termination of these Terms, a written request for the delivery to you of the then most recent back-up of Your Data. We shall deliver the back-up to you following our receipt of such a written request. You shall pay all reasonable fees and expenses incurred by us in returning or disposing of Your Data.

26.

9.5 In the case of termination of only one or all of the Premium Service(s), your use of the Standard Services and any remaining Premium Service(s) shall remain unaffected and these Terms shall continue to apply in full force and effect to your use of the Standard Services and/or remaining Premium Services until such use expires or is terminated in accordance with these Terms.

27.

10. General

28.

10.1 **Entire Agreement.** These Terms together with the Privacy Policy and any applicable Order Form set out the entire agreement and understanding between the parties and supersede any previous agreement between the parties relating to their subject matter. Unless otherwise expressly agreed in writing these Terms apply in place of and prevail over any terms or conditions contained in or referred to in any correspondence or elsewhere or implied by trade custom or course of dealing. Any general terms of business or other terms and conditions of any order or other document issued by you in connection with these Terms shall not be binding on us. In entering into these Terms you acknowledge and agree that you have not relied on any representations made by us except as set forth in these Terms. Any such representations are excluded. Nothing in this section shall limit liability for any representations made fraudulently.

29.

- 10.2 **Changes to Services.** We may vary the Standard Services and/or Premium Services at any time and without any liability to you. We will notify you of any such changes.
- 30.**
- 10.3 **Waiver.** A waiver of any right under these Terms is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given. Unless specifically provided otherwise, rights arising under these Terms are cumulative and do not exclude rights provided by law.
- 31.**
- 10.4 **Invalid provisions.** If any provision (or part of a provision) of these Terms is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 32.**
- 10.5 **Governing Law and Jurisdiction.** These Terms will for all purposes be solely and exclusively governed, construed and enforced in accordance with the laws of New York (without regard to the conflicts of law provisions thereof). Both parties submit to the exclusive jurisdiction of the courts of New York.
- 33.**
- 10.6 **Third Party Rights.** Subject to section 6.1, a person who is not a party to these Terms has no rights to enforce, or to enjoy the benefit of, any term of these Terms, but this does not affect any right or remedy of a third party which is expressly provided for under these Terms.
- 34.**
- 10.7 **Sub-contracting and Assignment.** You may not assign or otherwise transfer these Terms or any of your rights or obligations or purport to do any such acts under them to any third party without our prior written consent. We shall have the right, upon written notice to you, to assign these Terms to any of our Associated Companies, or to an entity resulting from a merger, acquisition or other reorganisation of our business. In addition, we shall have the right to sub-contract any of our obligations hereunder to a third party, provided that we shall continue to remain responsible for the performance of the Standard Services and/or Premium Services hereunder. Any attempted assignment, sub-contracting or other transfer in violation of this provision shall be null and void. Solely for the purposes of the provision of the Vendor Payment Services, our Payment Provider may use third party service providers which may apply separate terms and conditions and such terms and conditions are incorporated herein by reference.
- 35.**
- 10.8 **No partnership or agency.** Nothing in these Terms 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).
- 36.**
- 10.9 **Force Majeure.** We shall have no liability to you under these Terms if we or our Third Party Suppliers are prevented from or delayed in performing our or its obligations under these Terms, or from carrying on our or its business, by acts, events, omissions or accidents beyond our reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving our workforce or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, fire, flood or storm. We shall provide you with notice of such an event and its expected duration.
- 37.**
- 10.10 **Notices.** All notices to be given under these Terms shall be given in English in writing. You will give all notices under or in connection with these Terms to the address stated at the end of these Terms, or otherwise provided to you on our website or notified by us to you in writing. You agree and consent to receiving all notices and communications from us under or in connection with these Terms electronically. We will provide any such notices and communications by posting them on our website or emailing them to you via the email you provided in the registration process. By giving your consent you are confirming that you have access to the necessary equipment to receive and open any such notices. You may withdraw your consent upon written notice to us and request paper copies at any time provided that you agree that we may charge you fees for such paper copies.
- 38.**
- 10.11 **Variations.** Save as otherwise expressly stated in these Terms, these Terms may only be modified or varied in writing executed by duly authorised representatives of both parties.
- 39.**
- 10.12 **Survival.** In addition to those provisions which by their nature are intended to survive any termination of these Terms, sections 5, 6, 8, 9 and 10 of these Terms shall survive such termination or expiration of these Terms.
- 40.**
- 10.13 **Export Control.** The Standard Services, Premium Services, Documentation and other Kalo materials are subject to the export control laws of various countries, including without limitation the laws of the United States and the UK. You agree that you will not submit the Standard Services, Premium Services, Documentation or other Kalo materials to any government agency for licensing consideration or other regulatory approval without our prior written consent and will not export the Standard Services, Premium Services, Kalo Data, Documentation or Kalo materials to countries, persons or entities prohibited by such laws. You shall also be responsible for complying with all applicable governmental regulations of the country where you are registered, and any foreign countries with respect to the use of the Standard Services, Premium Services, Documentation or other Kalo materials by you and your users. You will not engage in any activity that would cause Kalo to be in violation of any such export control laws and regulations.
- 41.**
- 11. Definitions**

Capitalised terms not otherwise defined in these Terms shall have the meanings set out below:

- 11.1 **Applicable Data Protection Law:** means (i) until 24 May 2018, the Data Protection Act 1998, or (ii) from 25 May 2018 onwards, Regulation (EU) 2016/679 of the European Parliament on the protection of natural persons with regard to the processing of personal data and any act of UK parliament which brings this into force and any other applicable data protection laws and regulations regarding the privacy and the protection of "personal data" or "personally identifiable information" (as defined by such laws). For the purposes of this Agreement the terms, "controller", "processor", "sub-processor", "data subject", "process" and "processing" has the meaning set out in Applicable Data Protection Law;
- 11.2 **Associated Company:** an entity that directly or indirectly controls, is controlled by, or is under common control with, a party to these Terms. For the purposes of the foregoing, "control" means the ownership of (i) greater than fifty per cent of the voting power to elect directors of the entity, or (ii) greater than fifty per cent of the ownership interest in the entity;
- 11.3 **Authorised Users:** your employees, agents and independent contractors who are authorised by you to use the Premium Services and the Documentation, and for which you have purchased User Subscriptions;
- 11.4 **Business Day:** 9.00am to 5.00pm local Eastern Time on any day which is not a Saturday, Sunday or statutory public holidays in California;
- 11.5 **Business Hours:** the hours between 9.00 am to 5.00 pm local Eastern Time each Business Day;
- 11.6 **Claim Year:** each consecutive twelve (12) month period commencing on the effective date of the Order Form or date of purchase of the User Subscription as applicable;
- 11.7 **Confidential Information:** information that is proprietary or confidential and is (i) clearly labelled as such, (ii) is otherwise information that a reasonable person would consider to be confidential; or, in the case of Kalo, any information relating to any Vendors which is received, viewed, accessed and/or used by you through your use of the Standard Services and/or Premium Services or any Third Party Services;
- 11.8 **Documentation:** the document(s) made available to you by Kalo which set(s) out a description of the Standard Services and Premium Services and the user instructions for the Standard Services and Premium Services;
- 11.9 **Effective Date:** the date of acceptance of these Terms on the earlier of you (i) clicking a box indicating your acceptance of these Terms, (ii) accessing or using the Standard Services and/or Premium Services or (iii) executing an Order Form that references these Terms;
- 11.10 **Fees:** the Subscription Fees, Talent Pooling Services Fee, Vendor Payment Services Fee and any additional fees payable in connection with the Vendor Payment Services pursuant to section 7.1.2 (including without limitation, Vendor Funds, Wallet Funds and any related expenses or fees incurred by Customer), any fees payable for the Third Party Tax Services and any additional fees or expenses payable by you for or in connection with the Premium Services as set out in the applicable Order Form;
- 11.11 **Freelancer:** any individual freelancer available through the Standard Services and/or Premium Services for you to engage with for such Freelancer's provision of its Vendor Services;
- 11.12 **Freelancer Classification Services:** means provision of tools by us to help you assess and determine the classification of your selected Freelancer's employment status of either an "independent contractor" or "employee" for the purposes of you determining your employment and tax liabilities (if any) in respect of such Freelancers. Such tools use the information provided by Freelancer and you in response to the set of questions provided to Freelancer and you by Kalo;
- 11.13 **Gap Funds:** has the meaning given in section 7.1.2.4;
- 11.14 **Inappropriate Content:** content which (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; (b) facilitates illegal activity; (c) depicts sexually explicit images; (d) promotes unlawful violence; (e) is discriminatory based on race, gender, color, religious belief, sexual orientation, disability, or any other illegal activity; or (f) causes damage or injury to any person or property;
- 11.15 **Initial Subscription Term:** the initial twenty four (24) months term of the subscription to use the Premium Services commencing on the effective date of the applicable Order Form, or such other period as agreed by the parties in the applicable Order Form;
- 11.16 **Intellectual Property Rights:** including without limitation, rights in patents, trademarks, service marks, trade names, other trade-identifying symbols and inventions, copyrights, design rights, database rights, rights in know-how, trade secrets and any other intellectual property rights arising anywhere in the world, whether registered or unregistered, and including applications for the grant of any such rights;
- 11.17 **Invoice Approval Period:** either the weekly, bi-weekly or monthly period chosen by you during which you will approve the applicable Vendor invoices issued through our Vendor Payment Services during such period and such chosen period will first commence on the date as agreed in the Order Form;
- 11.18 **Kalo Data:** (i) the Kalo vendor data used as part of the Onboarding Database in order to extend the vendor data provided by you to us to provide a complete populated account for each such Onboarding Vendor in the Onboarding Database or such other information or data provided by us as part of the Standard Services; (ii) the Talent Pooling Database; (iii) any details of Vendors entered through their access to the Standard Services and/or Premium Services, including without limitations any applications through the Registration Page or otherwise; and (iv) any meta data extracted by us from your use of the Standard Services and/or Premium Services;
- 11.19 **Onboarding Database:** the database accessed by you through the Onboarding Services which is a database created by us using the list of Onboarding Vendors already known to and provided by you to Kalo and any Prospects we add to such Onboarding Database as part of the Talent Pooling Services;
- 11.20 **Onboarding Services:** means the Vendor onboarding services which enables you to rate, review and search for Onboarding Vendors using the Onboarding Database, make a request for services and select and engage with Onboarding Vendors for Vendor Services pursuant to a Vendor Services Agreement, as further described in the Documentation;
- 11.21 **Onboarding Vendors:** any supplier of Vendor Services (which may be Freelancers or companies) available to view as part of the Onboarding Database provided through the Standard Services who you are seeking to engage with and/or engages with for their Vendor Services under a Vendor Services Agreement and which is not a Talent Pooling Vendor;
- 11.22 **Ondemand Option:** the payment option selected by you as part of the Vendor Payment Services, whereby you are required to pay ondemand the Vendor Funds required to meet the payment of the invoice by the Payment Provider for the then current Invoice Approval Period;
- 11.23 **Order Form:** has the meaning given in the first paragraph of these Terms above;

- 11.24 **Payment Date:** means the date of the commencement of each Payment Period (as may be amended pursuant to section 7.1.2.5), with the first Payment Date commencing on the date as agreed by the parties in the Order Form;
- 11.25 **Payment Period:** in respect of the Wallet Option, means the period which covers the number of Invoice Approval Periods as determined by the parties in the original Order Form or as may be amended from time to time by the parties in writing (which may be by email). For example if Customer has weekly Invoice Approval Periods, the Payment Period may cover 4 Invoice Approval Periods;
- 11.26 **Payment Provider:** the third party payment facilitator used for the Vendor Payment Services to facilitate your payments to Vendors in respect of their Vendor Services;
- 11.27 **Payment Provider Terms:** the then current terms and conditions of the applicable Payment Provider(s) referenced in an Order Form which govern the payments by the applicable Payment Provider(s) on behalf of you of the applicable fees payable by you to Vendor in respect of a Vendor Services Agreement and which may be amended at any time by us and/or the Payment Provider(s) upon notice you;
- 11.28 **Personal Data:** has the meaning given in Applicable Data Protection Laws;
- 11.29 **Premium Services:** the Premium Services which are selected by you for purchase either through our online ordering page or by signing an Order Form for such Premium Services, which may include one or all of the following: (i) access to Third Party Services, (ii) the Freelancer Classification Services, (iii) the Vendor Payment Services, (iv) Talent Pooling Services; (v) Third Party Tax Services; and/or (vi) any other Premium Services as made available by us from time to time, as further described in the Documentation;
- 11.30 **Prospect(s):** has the meaning given in section 7.1.6.1;
- 11.31 **Registration Page:** has the meaning given in section 7.1.6.1;
- 11.32 **Renewal Period:** any twelve (12) month renewal period of the subscription to use the Premium Services following the Initial Subscription Term;
- 11.33 **Services:** the Standard Services and Premium Services;
- 11.34 **Software:** the online Vendor management software applications provided by us as part of the Standard Services and Premium Services;
- 11.35 **Standard Services:** (i) the Onboarding Services, including access to and use of the Onboarding Database and Kalo Data and (ii) access to the Kalo hosting platform, as further described in the Documentation;
- 11.36 **Subscription Fees:** the subscription fees payable by you to us for the User Subscriptions to use the Premium Services, as set out in the Order Form;
- 11.37 **Subscription Term:** the Initial Subscription Term and any subsequent Renewal Periods;
- 11.38 **Support Services:** the standard Support Services for the Premium Services made available by us from time to time, including any applicable Software maintenance upgrades;
- 11.39 **Talent Pooling Services:** the provision, hosting and maintenance of a Talent Pooling Page developed by us for the purposes of advertising of services required by you and to enable Prospects to complete an application through such Talent Pooling Page for consideration by you and other related services as further described in section 7.1.6 and in the Documentation;
- 11.40 **Talent Pooling Services Fee:** means the fees for the Talent Pooling Services as agreed in the applicable Order Form;
- 11.41 **Talent Pooling Database:** a database owned and created by us using a list of Vendors sourced by us and who are not part of the list of Onboarding Vendors provided by you to us and which we may use to provide parts of the Talent Pooling Services;
- 11.42 **Talent Pooling Link:** has the meaning given in section 7.1.6.1;
- 11.43 **Talent Pooling Page:** has the meaning given in section 7.1.6.1;
- 11.44 **Taxes:** includes without limitation withholding, sales, use, excise, value added tax and similar taxes but shall not include taxes based on our gross income;
- 11.45 **Third Party Services:** the Third Party Services provided by Third Party Suppliers under the separate applicable Third Party Terms for the relevant Third Party Service, for which Kalo provides a link to for use by you at your sole option and expense to provide you with additional tools to help you choose a Vendor; such Third Party Services may include services such as background checks of Vendors;
- 11.46 **Third Party Services Fees:** the fees payable by you on a pay-per-use basis for the Third Party Services it has chosen to purchase as set out in the then current price list for such Third Party Services as provided to you from time to time prior to purchase;
- 11.47 **Third Party Supplier:** any third party provider of Third Party Services and/or the Third Party Tax Services, as applicable;
- 11.48 **Third Party Tax Services:** the electronic distribution of 1099s and e-filing by the applicable Third Party Supplier on behalf of Customer, as applicable;
- 11.49 **Third Party Terms:** any separate terms and conditions of a Third Party Supplier for the provision and use of any Third Party Services and/or Third Party Tax Services;
- 11.50 **User Subscriptions:** the user subscriptions purchased by you in accordance with these Terms for the number of Authorised Users to use the Premium Services, which entitle such Authorised Users to access and use the Premium Services and the related Documentation in accordance with these Terms;
- 11.51 **Users:** your employees, agents and independent contractors who are authorised by you to use the Standard Services and in respect of the Premium Services, your Authorised Users;
- 11.52 **Vendors:** any Onboarding Vendors and where applicable, Prospects whom you may and/or do engage with for their Vendor Services under a Vendor Services Agreement;
- 11.53 **Vendor Funds:** means in respect of the Ondemand Option, the aggregate fees due for payment by you under the Vendor invoices approved by you during the applicable Invoice Approval Period;
- 11.54 **Vendor Payment Services:** the vendor payment service accessed by you in accordance with section 7.1.2 to facilitate your payment of the applicable fees to Vendors for the Vendor Services through the Payment Provider;
- 11.55 **Vendor Payment Services Fees:** the fees payable by you to us for the provision of the Vendor Payment Services on a per transaction basis as set out in the applicable Order Form;
- 11.56 **Vendor Services:** means the Vendor Services offered by Vendors to you and provided to you by such Vendors as independent contractors under a Vendor Services Agreement;

- 11.57 **Vendor Services Agreement:** means the separate and independent agreement you enter into with Vendors as between you and such Vendor(s) for the Vendor Services;
- 11.58 **Virus:** any thing or device (including any software, code, file or programme) which may prevent, impair or otherwise adversely affect the access to or operation, reliability or user experience of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device, including worms, trojan horses, viruses and other similar things or devices;
- 11.59 **Wallet Funds:** means the applicable funds estimated and paid by you to Payment Provider on each Payment Date to cover payment of all invoices due for payment for the applicable Payment Period;
- 11.60 **Wallet Option:** the payment option selected by you as part of the Vendor Payment Services, whereby you are required to pay the Wallet Funds to Payment Provider to be kept on account and which are used by Payment Provider to make the payment of the invoices due for payment for the applicable Payment Period; and
- 11.61 **Your Data:** the data and information you provide us, the Third Party Suppliers and/or Payment Provider and/or inputted by you, Users, or us on your behalf for the purpose of using the Standard Services and/or Premium Services or facilitating your use of the Standard Services and/or Premium Services, or data collected and processed by or for you through your use of the Standard Services and/or Premium Services, but excluding Kalo Data; provided that such data shall not include any information or data which is entered and/or provided to Kalo by Vendors you invite to register through the Talent Pooling Services and/or which register through the Registration Page which shall be subject to the separate agreement between Kalo and the applicable Vendor.

Appendix – mutual data processing obligations

42. Any capitalized terms not otherwise defined in this Appendix shall have the meaning given in the definition clause 11 of the Terms. For the purposes of this Appendix (i) the terms "controller", "processor", "sub-processor", "data subject", "process" and "processing" has the meaning set out in Applicable Data Protection Law; and (ii) sub-processor shall mean any sub-processor appointed by processor to process Personal Data in connection with the Terms. Each party agrees that where it is a processor of Personal Data belonging to the controller under the Terms and/or an Order Form, the below terms and condition of this Appendix shall apply:

1. the processor shall only process the controller's Personal Data in accordance with this Appendix and written instructions from the controller and not for its own purposes, and shall inform the controller if in its opinion controller's instructions infringe Applicable Data Protection Law;
2. the processor must ensure that people processing controller's Personal Data are subject to the same duties of confidence as set out in this Appendix and agreed by the parties;
3. at the end of the Subscription Term or otherwise upon controller's request, processor shall at controller's option either securely destroy or return controller's Personal Data to controller and delete existing copies, except where processor is required by law to keep a copy;
4. the processor shall not transfer any such Personal Data of Controller outside of the European Economic Area unless it has complied with its applicable obligations under Applicable Data Protection Laws in ensuring adequate safeguards in relation to such transfer;

43.

5. in the event that processor receives a request, notification or complaint from a data subject or a regulatory authority which is addressed to, or intended for, controller, processor shall promptly pass on such request, notification, complaint or communication to controller;
6. processor shall assist the controller in responding to any request from a data subject and in ensuring compliance with its controller's obligation under Applicable Data Protection Laws with respect to breach notifications, conducting a data protection impact assessment and consulting with regulatory authorities
7. assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to breach notifications, impact assessments and consultations with supervisory authorities or regulators;
8. processor shall implement and maintain appropriate technical and organisational measures to protect controller's data against unauthorised or unlawful processing and against accidental loss, destruction, damage, theft, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction, damage or theft of controller's data and having regard to the nature of the personal data which is to be protected. As a minimum, these should include any requirements under Applicable Data Protection Laws and the requirements set out in this Appendix or an Order Form;
9. if processor becomes aware of any accidental, unauthorised or unlawful destruction, loss, alteration, or disclosure of, or access to controller's data (a **Security Incident**), processor shall notify controller without undue delay and:
 - a) provide controller without undue delay with a detailed description of the Security Incident and the identity of each affected data subject, with periodic updates, and any other information controller may reasonably request in relation to such Security Incident;
 - b) take action immediately at processor's expense, to investigate the Security Incident and to identify, prevent and mitigate the effects of the Security Incident, and carry out any recovery or action necessary to remedy the Security Incident: and
 - c) not release or publish any filing, communication, notice, press release or report concerning the Security Incident without controller's prior written consent (except where required by law to do so).
10. processor shall allow controller and its respective auditors or authorised agents, at controller's own cost and expense and upon reasonable prior written notice, to conduct audits or inspections during the Subscription Term and for 12 months thereafter, which will include providing access to the premises, resources, personnel processor or its sub-processors (if applicable) use in connection with the provision of the Services, and provide all reasonable assistance in order to assist controller in exercising its audit rights under this clause. The purposes of an audit pursuant to this clause shall be to verify that processor and its sub-processors (if applicable) are processing controller's data in accordance with the obligations under this Appendix and Applicable Data Protection Law;
11. controller consents to processor appointing sub-processors, provided that processor has entered or (as the case may be) will enter with such sub-processors into a written agreement incorporating terms which are the same as or substantially similar to those set out in this Appendix. Processor will make available to the controller a list of its then current sub-processors upon request by the controller and will inform controller of any intended changes to the list of

such sub-processors. Processor shall remain fully liable for all acts or omissions of any sub-processors appointed by it pursuant to this section 11; and

12. nothing in this Appendix shall relieve the processor of its own direct responsibilities and liabilities under Applicable Data Protection Laws.

Version date: 18th October, 2018

Kalo Industries Inc.
300 California St, Suite 220, San Francisco, CA 94105