K2 CLOUD SUBSCRIPTION AGREEMENT

This K2 Cloud Subscription Agreement ("Agreement") is between you (as an individual or company or other legal entity) and K2 Software, Inc. ("K2") and governs your use acquisition and use of the K2 Cloud service (the "Service").

By accepting this Agreement, either by clicking a box indicating that you accept the Agreement or by executing a K2 order form that references this Agreement, you agree to the terms of this Agreement. If you are accepting this Agreement on behalf of a company or other legal entity, you represent that you have the authority to enter into such acceptance and to bind such entity and its affiliated users to the terms of this Agreement, in which case references to "you" and "your" in this Agreement shall mean such entity. If you do not have such authority or if you do not agree with the terms of this Agreement, do not accept this Agreement and do not use the Service.

This Agreement applies to the Service specified herein and does not replace or supersede any separate agreement(s) you may have with K2 applicable to other K2 products and/or services.

This Agreement also governs any free trial for the Service.

This Agreement is effective as of the date of your acceptance of this Agreement.

1.   Definitions

1.1   "Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with, the subject entity. "Control" means having direct or indirect control of more than fifty percent (50%) of the voting shares of the subject entity.

1.2   "Data" means all electronic data or other information submitted by you as part of the Subscription Service.

1.3   "Form" means a form designed and published in the Service-provided web designer.

1.4   "Order" means the K2 ordering document accepted by you, or other ordering document accepted by K2, which specifies the type of Service ordered by you. Orders are incorporated in this Agreement by reference.

1.5   "Service" means the K2 Cloud Service provided by K2.

1.6   Service Policies means the K2 Cloud Service policies applicable at the time the Service is ordered.

1.7   "Users" mean individuals who are authorized by you to use the Service under your license. Users may include your employees, contractors, agents, consultants and other third parties authorized by you to utilize the Service on your behalf.

1.8   "Workflow" means a set of actions designed and published in the Service-provided web designer which include an automated or manual start with singular or multiple end points.

2.   Trial Service

2.1   If you have registered for a free trial of the Service ("Trial Service"), K2 will make available to you the Trial Service until the earlier of (i) the end of the trial period for which you have registered to use the Trial Service; or (ii) the start date for the Subscription Service ordered by you. K2 may also present additional terms applicable to your trial when you register for the Trial Service, and such terms are incorporated into this Agreement by reference.

2.2   ANY DATA OR OTHER MATERIAL YOU ENTER INTO THE TRIAL SERVICE, AND ANY CUSTOMIZATIONS MADE TO THE TRIAL SERVICE BY OR FOR YOU, DURING YOUR TRIAL WILL BE PERMANENTLY LOST UNLESS YOU PURCHASE A SUBSCRIPTION TO THE SERVICE, BEFORE THE END OF THE TRIAL PERIOD. K2 WILL HAVE NO OBLIGATION TO MAINTAIN ANY OF YOUR DATA.

2.3   Notwithstanding anything to the contrary, the Trial Service is provided "as-is" with no warranty of any kind.

3.   Subscription Service

3.1   K2 shall make the Service available to you and your Affiliates pursuant to this Agreement, the Service Policies, and the applicable Order during the subscription term. You acknowledge and agree that you have not relied on any future availability of any functionality or features of the Services in ordering the Subscription Service from K2.

3.2   Unless otherwise specified in the applicable Order, the Service is purchased as a subscription based on the specified number of Users for up to the specified number of Workflows and Forms. You may add additional Users to your Service subscription during the applicable subscription term at the same pricing scale as that for the previously-acquired Users, prorated for the remainder of the subscription term in effect at the time the additional User subscriptions are added. The subscription for the added Users will terminate at the same time as the previously-acquired subscriptions. User subscriptions are for designated Users only and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who will no longer access or use the Service. Increasing the number of Workflows and Forms may require you to subscribe to a different subscription tier.

3.3   K2 will provide basic technical support for the Service as specified in the Service Policies.

3.4   K2 will maintain appropriate administrative and technical safeguards to maintain the security, confidentiality and integrity of your Data. K2 shall not monitor, access or modify your Data or usage of the Service except to provide the Service, address technical issues with the Service, at your request or with your permission, or as compelled by law as specified in Section 6.

3.5   You shall use the Service only for your own internal business operations, be responsible for Users' compliance with the terms of this Agreement, be responsible for all aspects of your Data and how you acquired your Data, prevent unauthorized access to or use of the Service, use the Service only in according to the documentation for the Service and this Agreement, comply with applicable laws and other regulations.

3.6   You shall not (i) allow anyone other than Users to use the Service; (ii) sell, resell, license, sublicense, rent, lease or share the Service, or use the Service as an application service or outsourcing offering; (iii) use the Service to store or send any infringing, libelous or otherwise tortious or unlawful data or material, or any data or material in violation of third party privacy rights, or to send junk mail or spam; (iv) use the Service to store or send any computer viruses, time bombs, worms, Trojan horse code, and/or other malicious or harmful code, macros, scripts, files, programs or agents; (v) attempt to gain unauthorized access to the Service or applicable infrastructure; or (vi) interfere with or disrupt the delivery of the Service or any data or other material utilized or stored by the Service. You shall not cause or permit the reverse engineering, decompilation or disassembly of the Service or any portion thereof, except and only to the extent that such activity is expressly permitted by applicable law. You shall not disclose results of any Service benchmark tests without K2's prior written consent. The Service may not be used for purposes of competitive analysis or development of a competitive offering.

3.7   Subject to your limited rights to the Service as expressly granted under this Agreement and the applicable Order, K2 reserves all rights, title and interest in and to the Service, included all related intellectual property rights.

3.8   Unless otherwise specified, (a) a quantity in an Order refers to the number of Users licensed to use the Service, and the Service may not be accessed by more than that number of Users, (b) a User's password may not be shared with any other individual, and (c) a User identification may be reassigned to a new individual replacing one who no longer requires ongoing use of the Service. If you exceed your contractual User limit, you will execute an Order for additional Users promptly upon K2 request, and/or pay any invoice for additional Users in accordance with Section 4 (Fees and Payments).

3.9   Some products and services offered by third parties may be used with the Service ("Third Party Products"). Any acquisition and/or use of such Third Party Products, and any exchange of data between you and the Third Party Product provider, is solely between you and the Third Party Product provider. K2 does not warrant or support Third Party Products. If you install or enable Third Party Products for use with the Service, you acknowledge and agree that K2 may allow providers of such Third Party Products to access your Data as required for the operation of such Third Party Products with the Service. K2 is not responsible for any such access by Third Party Product providers.

4.   Fees and Payments

4.1   You agree to pay all fees specified in all Orders by the designated due date. Except as may be otherwise provided in a specific Order (i) fees are due 30 days from the invoice date; (ii) fees are based on the purchased Service and number of Users, and not on actual use; (iii) your payment obligations are non-cancelable and the fees paid non-refundable; and (iv) the number of User subscriptions purchased may not be decreased during the applicable subscription term specified in the Order.

4.2   Fees not received by the due date may accrue late interest at the lesser of 1.5% of the outstanding balance per month, or the maximum rate allowed by law, from the payment due date until payment is made in full. You shall pay on demand K2's reasonable attorney fees and other costs incurred by K2 to collect any fees due to K2 under this Agreement following your breach of the payments terms specified herein.

4.3   K2 may elect to suspend your use of the Service if your payment obligations are 30 or more days past due, until such amounts are paid in full.

4.4   Fees for the Service do not include applicable taxes or other governmental fees. You are responsible for paying any and all federal, state and local sales, use, license, ad valorem, value-added, property or other similar taxes, duties and charges (collectively "Taxes") resulting from this Agreement, your use of the Service or the fees paid to K2 under this Agreement, except for taxes based on K2's income, employees and property. If K2 has the legal obligation to collect or pay Taxes for which you are responsible, you agree to pay such amounts upon invoice from K2, unless you provide a valid tax exemption certificate from the applicable taxing authority.

5.   Data Rights

5.1   Subject to the limited rights granted by you under this Agreement, K2 acquires no right title or interest from you in or to your Data, including any intellectual property rights therein.

5.2   If you, a User or a third party acting on your behalf creates applications or program code intended to operate with the Service, you authorize K2 to host, adapt and otherwise use such applications and program code as necessary for K2 to provide the Service. Subject to the preceding and K2's underlying rights in the Service, K2 acquires no rights, title or interest in or to such applications or program code, including any intellectual property rights therein.

5.3   You acknowledge and agree that support for the Service will be provided from the applicable country or countries associated with your location as specified in the Service Policies, and may be subject to laws and regulations applicable within that region. You are required to abide by local privacy and data laws in your resident country and within the region hosting your data.

5.4   You acknowledge and agree that you retain effective control of data that you provide to, or links from, the Service. The Service does not control such data and has limited access only for support purposes. K2 will only access information stored by you upon your explicit consent or implicit consent for the limited purposes of being able to provide the Service to you or for any situation considered generally permitted by local laws. You acknowledge and agree that the Service only retains customer data in order to provide the Service. Upon termination or expiration of the Service, customer data will be destroyed as provided herein and in the Policies.

5.5   You acknowledge and agree that data crossing national or regional borders may be subject to the local laws and requirements of the destination country or region.

5.6   In order to fulfill requirements from various data protection and data privacy agencies within multiple countries, customers are required to disclose to K2 and to classify the general type of data that they will be storing or using within the Service, and if they plan to host sensitive data. Some examples of such data include: medical data, employee records, tax records, biometric/genetic data, or other similarly sensitive data.

6.   Confidential Information

6.1   "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes Your Data; K2 Confidential Information includes the Service; and Confidential Information of each party includes the terms and conditions of this Agreement and all Orders (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

6.2   The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement or any Order to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this Section.

6.3   The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's expense, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

6.4   If you, including Users, provide K2 with any suggestions, comments, functionality requests or other feedback regarding the Service, K2 shall be free to use and incorporate such communications as it sees fit, entirely without obligation or restriction of any kind.

7.   Warranty

7.1   K2 warrants that while you are subscribed to the Service, the Service shall function in material respects as described in the Documentation for the Service.

7.2   For any breach of the above warranties, your exclusive remedy and K2's entire liability shall be, at K2's discretion, the correction of errors in the Service that cause breach of the warranty, or if K2 cannot

substantially correct such breach, K2 may terminate your use of the Service and refund to you any prepaid fees covering the remainder of the Service subscription term after the effective date of termination.

7.3   K2 DOES NOT WARRANT OR GUARANTEE THAT THE SERVICE WILL MEET YOUR REQUIREMENTS, WILL OPERATE ERROR-FREE OR UNINTERRUPTED OR THAT K2 WILL CORRECT ALL ERRORS IN THE SERVICE. TO THE EXTENT PERMITTED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND K2 EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

8.   Indemnification

8.1   Subject to the terms specified herein, K2 will defend, indemnify and hold you harmless against any claims that the Service as used by you according to this Agreement, the applicable Order and the documentation for the Service infringes a third party's intellectual property rights.

8.2   Subject to the terms specified herein, you will defend, indemnify and hold K2 harmless against: (a) any claims or actions by any third party (including any of your customers) in connection with your Data or your use of the Service, except with respect to matters which are covered by K2's indemnification obligations as provided above; and (b) any loss or damage arising from any of your agents or contractors with respect to the Service for which you are responsible under this Agreement.

8.3   If any action shall be brought against either party in respect to which indemnity may be sought from the other pursuant to the provisions of this Section, the indemnified party shall promptly notify the indemnifying party in writing, not later than 30 days after the indemnified party receives notice of the claim, specifying the nature of the action and the total monetary amount sought or other such relief as is sought therein. The indemnified party shall cooperate with the indemnifying party in all reasonable respects in connection with the defense of any such action. The indemnifying party will have sole control over the defense and settlement of the action

8.4   If K2 believes or it is determined that the Service may violate a third party's intellectual property rights, K2 may choose in its discretion to: (a) modify the Service to be non-infringing; (b) obtain a license for you to allow for your continued use of the Service; or (c) terminate your subscription to the Service and refund to you any prepaid fees covering the remainder of the Service subscription term after the effective date of termination.

8.5   K2 has no obligation to indemnify, defend or hold you harmless: (a) if the Service is altered or modified by you or anyone else authorized by you other than K2, or used outside the scope of use identified in the Service documentation, the applicable Order or this Agreement; (b) to the extent that an infringement claim is based upon any software, design, specification, instruction, data or other material not furnished by K2; or (c) to the extent an infringement claim is based upon the combination of the Service with any products or services not provided to you by K2.

8.6   This Section provides the parties' exclusive remedies and liabilities for any type of claim or damages described in this Section.

9.   Limitation of Liability

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF PROFITS, REVENUE, DATA OR DATA USE, ARISING FROM THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SERVICE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. K2'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE USE OF THE SERVICE, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE FEES PAID BY YOU TO K2 UNDER THIS AGREEMENT.

10. Term and Termination

10.1   This Agreement commences on the date you accept it and continues until all User subscriptions granted under this Agreement have expired or been terminated. If you use the Service for a free trial and do not purchase a subscription before then end of the trial period, this Agreement will automatically terminate at the end of the trial period.

10.2   User subscriptions for the Service purchased by you commence on the start date specified in the applicable Order and continue for the specified subscription term. Except as may be otherwise specified in the applicable Order, all User subscriptions shall automatically renew for one year, unless either party gives the other notice of non-renewal at least 30 days before the end of the then-current subscription term. The fees due for such renewed User subscriptions shall be the same as those due for the previous annual term, unless K2 has already provided notice of a fee increase at least 30 days before the end of such previous annual term, in which case the fee increase shall be effective upon the renewal and thereafter.

10.3   If either party breaches a material term of this Agreement and fails to correct the breach within 30 days of written notice specifying the breach, the other party may terminate this Agreement. Either party may also terminate this Agreement immediately by written notice if the other party becomes insolvent or bankrupt or enters into any arrangement or composition with its creditors or if a receiver, trustee or administrator is appointed to operate or otherwise direct such party's business or assets.

10.4   Upon any termination by you for uncured breach by K2, K2 shall refund any prepaid unused fees covering the remainder of the term of all User subscriptions after the effective date of termination. Upon any termination by K2 for uncured breach by you, you shall pay any unpaid fees covering the remainder of the term of all Orders after the effective date of termination. In no event shall any termination relieve you of the obligation to pay any fees payable to K2 prior to the effective date of termination.

10.5   K2 will maintain your Data in the Service 30 days after the effective date of termination of your subscription. After such 30 day period, K2 will have no obligation to maintain any of your Data.

10.6   Provisions of this Agreement which survive termination or expiration include those relating to limitation of liability, infringement indemnity, payment and others which by their nature are intended to survive.

11. General

11.1   All notices and requests in connection with this Agreement shall be deemed given as of the day they are received either by messenger, delivery service, or in the U.S. mail, postage prepaid, certified or registered, return receipt requested. Billing-related notices to you shall be addressed to the applicable billing contact as designated by you. All other notices to you shall be addressed to the applicable contact for the Service as designated by you. By accepting this Agreement, you explicitly agree K2 is permitted to send you future electronic communications regarding K2 products, services and other offerings.

11.2   The parties are independent contractors under this Agreement. Neither party shall act, and shall not be deemed as, an agent for the other, nor shall either party have any right or power hereunder to act for or to bind the other in any respect. Notwithstanding anything to the contrary, this Agreement shall not be deemed to create any employer-employee, agency, franchise, joint venture or partnership relationship between the parties.

11.3   You may not assign this Agreement or any portion thereof to any third party unless K2 expressly consents to such assignment in writing, such consent not to be unreasonably withheld. For purposes of this Agreement, a merger, consolidation or other corporate reorganization or a transfer or sale of a controlling interest in your stock, or all or substantially all of its assets, shall be deemed to be an assignment. K2 will have the right to assign this Agreement and/or any portion thereof as K2 may deem appropriate. This Agreement will inure to the benefit of and be binding upon the parties, their successors, administrators, heirs and permitted assigns.

11.4   Failure to enforce any rights hereunder, irrespective of the length of time for which such failure continues, shall not constitute a waiver of those or any other rights, nor shall a waiver by either party in one or more instances be construed as constituting a continuing waiver or as a waiver in other instances.

11.5   This Agreement shall be construed and controlled by the laws of the State of Washington, United States of America, and you hereby consent to exclusive jurisdiction and venue in the federal courts sitting in King County, Washington, unless no federal subject matter jurisdiction exists, in which case Licensee consents to exclusive jurisdiction and venue in the Superior Court of King County, Washington. You further waive all defenses of lack of personal jurisdiction and forum non-conveniens. Process may be served on either party in the manner authorized by applicable law or court rule. In any action to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and other expenses. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement or to the transactions processed under this Agreement.

11.6   If any provision or provisions of this Agreement is held invalid, illegal or unenforceable by a court of competent jurisdiction, such provision(s) shall be severed, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use all commercially reasonable efforts to agree upon a valid and enforceable provision for the severed provision(s), taking into account the intent of this Agreement.

11.7   Federal government end use of the Service is provided solely with those rights customarily provided to the public as referenced in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). Any variation on such customary commercial rights will require a separate written agreement with K2.

11.8   You acknowledge that the Service may be subject to United States export jurisdiction as well as other jurisdictions. You shall comply with all applicable international and national laws that apply to the Service, including United States Export Administration Regulations, as well as end-user, end-use and destination restrictions which may be issued by the United States and other governments. You shall not permit Users to access or use the Service in any U.S.-embargoed country or in violation of any export law or regulation.

11.9   This Agreement and the information which is incorporated into this Agreement by written reference (including reference to information contained in a URL or referenced policy), together with the applicable Order(s), is the complete agreement for the Service provided to you, and this Agreement supersedes all prior or contemporaneous agreements or representations, written or oral, regarding the Service. THE TERMS OF THIS AGREEMENT AND ANY CORRESPONDING ORDER(S) SHALL SUPERSEDE THE TERMS CONTAINED IN ANY PURCHASE ORDER OR OTHER NON-K2 ORDERING DOCUMENT OR CORRESPONDENCE, REGARDLESS OF WHEN SUCH ORDERING DOCUMENT IS RECEIVED OR IF K2 SIGNS SUCH ORDERING DOCUMENT, AND NO TERMS INCLUDED IN ANY SUCH PURCHASE ORDER OR OTHER NON-K2 ORDERING DOCUMENT OR CORRESPONDENCE SHALL APPLY TO K2 OR TO THE SERVICE. This Agreement and Orders shall not be modified and the rights and restrictions contained therein shall not be altered or waived except in a writing signed by authorized representatives of each party.