

## **TERMS AND CONDITIONS**

These Terms (together with our Privacy Policy and Terms of Website Use) tells you information about us and the legal terms and conditions on which we sell any of the products (Products) listed on our website (our Site) to you.

These Terms will apply to any contract between us for the sale of Products to you and by agreeing to these Terms you enter into a Contract with us (Contract). Please read these Terms carefully and make sure that you understand them, before ordering any Products from our Site. Please note that before placing an order you will be asked to agree to these Terms. If you refuse to accept these Terms, you will not be able to order any Products from our Site.

You should print a copy of these Terms or save them to your computer for future reference.

We amend these Terms from time to time as set out in clause 7. Every time you wish to order Products, please check these Terms to ensure you understand the terms which will apply at that time.

### **1 INFORMATION ABOUT US**

We operate a number of websites including [www.nikecsolutions.com](http://www.nikecsolutions.com), [www.hubshare.com](http://www.hubshare.com), [www.nikecstore.com](http://www.nikecstore.com), [www.nikecbinder.com](http://www.nikecbinder.com) and [www.digitalbinderstore.com](http://www.digitalbinderstore.com). We are Nikec Solutions UK LTD, a company registered in England and Wales under company number 3488348 and with our registered office at 52-54 Gracechurch Street, London EC3V 0EH, United Kingdom. Our main trading address is 52-54 Gracechurch Street, London EC3V 0EH, United Kingdom. Our VAT number is GB685-6947-65.

### **2 OUR PRODUCTS**

We sell two types of software products to our customers. We licence customers to download products, for them to use on their own computer equipment (Licensed Software) and we also make some products available via the internet as Software as a Service (Online Services).

When provisions in these Terms apply to the Online Services but not to Licensed Software or vice versa, the Terms shall specify as appropriate. All references to Products shall apply to both the Licensed Software and the Online Services.

### **3 USE OF OUR SITE**

Your use of our Site is governed by our Terms of Website Use. Please take the time to read these, as they include important terms which apply to you.

### **4 HOW WE USE YOUR PERSONAL INFORMATION**

We only use your personal information in accordance with our Privacy Policy. Please take the time to read our Privacy Policy, as it includes important terms which apply to you.

### **5 BUSINESS OR CONSUMER?**

If you are a consumer, you may only purchase Products from our Site if you are at least 18 years old, if you are younger than 18 please do not attempt to purchase the Products.

If you are a business, you confirm that you have authority to bind any business on whose behalf you use our Site to purchase Products.

### **6 HOW THE CONTRACT IS FORMED BETWEEN YOU AND US**

Our Site pages will guide you through the steps you need to take to place an order with us. Our order process allows you to check and amend any errors before submitting your order to us. Please take the time to read and check your order at each page of the order process.

After you place an order, you may receive an e-mail from our payment provider. However, please note that this does not mean that your order has been accepted. Our acceptance of your order will take place as described in clause 6.

If we wish to accept your order we will confirm our acceptance to you by sending you an e-mail that confirms your order has been accepted (Acceptance Confirmation). The Contract between us will only be formed when we send you the Acceptance Confirmation.

If we are unable to supply you with a Product we will inform you of this by e-mail and we will not process your order. If you have already paid for the Products, we will refund you the full amount charged as soon as possible.

## **7 OUR RIGHT TO VARY THESE TERMS**

We amend these Terms from time to time.

Every time you order Products from us, the Terms in force at the time of your order will apply to the Contract between you and us.

## **8 YOUR RIGHT OF RETURN AND REFUND**

Consumers are given some protection by Law to withdraw from contracts. We are committed to providing a high level of customer service therefore we want to extend such a right to withdraw to our business customers as well as to consumers. This means that for a period of 15 days from our provision to you of the Access Codes if you change your mind or decide for any other reason that you do not want to use, receive or keep the Products, you can notify us of your decision to cancel the Contract and receive a refund.

To cancel a Contract, you just need to let us know that you have decided to cancel. You can contact our Customer Services team by email at [orders@nikecsolutions.com](mailto:orders@nikecsolutions.com). If you are e-mailing us or writing to us please include details of your order to help us to identify it. Please also provide us with an explanation as to why you wish to cancel the order. If you send us your cancellation notice by e-mail or by post, then your cancellation is effective from the date you send us the e-mail or post the letter to us.

If you cancel your Contract we will:

- refund you the price you paid for the Products.
- refund any delivery costs you have paid if applicable.

We will refund you on the credit card or debit card used by you to pay.

If a Product has been delivered or made available to you before you decide to cancel your Contract:

- then you must stop using the Product immediately following you notifying us that you wish to cancel the Contract and furthermore you must comply with any requests that we may have in relation to the removal of the Products from your computer equipment or any other requirements we have in relation to such cancellation.

- we will delete your account and where applicable we will delete any data which has been processed by the Online Services.

## 9 DELIVERY

Following receipt of our Acceptance Confirmation delivery of the Products shall take place in accordance with this clause 9.

In order to enable you to access and use the Products in accordance with your order we will send you various usernames, passwords and software keys (Access Codes).

### **Licensed Software**

In relation to Licensed Software you will be able to download the appropriate Licensed Software from our Site and you will, subject to clause 13, be able to run the Licensed Software by applying the Access Codes which we will email to you following confirmation of your order.

### **Online Services**

In relation to Online Services you will, subject to clause 14, be able to access such Online Services by applying the Access Codes which we will email to you following confirmation of your order.

## 10 PRICE OF PRODUCTS AND DELIVERY CHARGES

The prices of the Products will be as quoted on our Site at the time you submit your order. We take all reasonable care to ensure that the prices of Products are correct at the time when the relevant information was entered onto the system. However please see clause 10.5 for what happens if we discover an error in the price of Product(s) you ordered.

Prices for our Products may change from time to time, but changes will not affect any order you have already placed.

The prices of Products are stated exclusive of VAT which will, when relevant, be charged at the applicable current rate chargeable in the UK for the time being.

If applicable our delivery charges are as advised to you during the check-out process, before you confirm your order.

Our Site contains a large number of Products. It is always possible that, despite our reasonable efforts, some of the Products on our Site may be incorrectly priced. We will normally check prices as part of our confirmation procedures so that if the Product's correct price is higher than the price stated on our Site, we will contact you as soon as possible to inform you of this error and we will give you the option of continuing to purchase the Product at the correct price or cancelling your order. In such circumstances we will not process your order until we have your instructions. If we are unable to contact you using the contact details you provided during the order process, we will treat the order as cancelled and notify you in writing.

## 11 HOW TO PAY

You can only pay for Products using a debit card or credit card. The cards which you are able to use will be made known to you during the payment process.

Payment for the Products and all applicable delivery charges shall be made in advance. No order can be completed until full payment of the applicable charges have been made and confirmed by the relevant banks and payment processors.

## 12 **END USERS**

Whether you purchase Licensed Software or Online Services from us you will be restricted in relation to the number of End Users who can use the Products which shall be limited as set out in your order.

You warrant that you shall not use Licensed Software or the Online Services in breach of any End User number restrictions and you shall permit us to carry such audits and have such remote access to the Licensed Software as we require to enable us to verify such compliance.

To the extent that you use the Licensed Software or the Online Services in breach of any End User restrictions you shall pay us in full for any lost revenue and you shall cover all of our costs which we incur, in connection with any audit or investigation which uncovers any such breach.

## 13 **LICENSED SOFTWARE**

From the application by you of the Access Codes to the Licensed Software, we grant you a non-exclusive and non-transferrable licence to use the Licensed Software on your computer system for processing data for your own internal business purposes in order to enable you to use the Licensed Software in accordance with these Terms but for no other purpose whatsoever. You shall not permit any third party to use the Licensed Software nor use the Licensed Software on behalf of or for the benefit of any third party in any way whatsoever (including, without limitation, using the Licensed Software for the purpose of operating bureau service facilities, management service, outsourcing or any other type of service). A condition of this license is that you shall comply with all obligations made known to you by us or via our Site in relation to the computer equipment required to operate the Licensed Software.

You acknowledge that you are licensed to use the Licensed Software only in accordance with these Terms and not further or otherwise.

Except as expressly set out in the Terms or as permitted by applicable law, you undertake that you shall:

- not copy the Licensed Software except where such copying is strictly necessary for the purpose of back-up or operational security and only as permitted by us.
- not rent, lease, sub-license, encumber, loan, translate, merge, adapt, vary or modify the Licensed Software.
- not make alterations to, or modifications of, the whole or any part of the Licensed Software nor permit the Licensed Software or any part of it to be combined with, or become incorporated in, any other programs.
- not disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the Licensed Software nor attempt to do any such things except to the extent that we agree that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988 or other applicable law) such actions cannot be prohibited because they are essential for the purpose of achieving interoperability of the Licensed Software with another software program (and we are not prepared to provide you with the information required to achieve

interoperability), and provided that information obtained by you during such activities:

- is used only for the purpose of achieving inter-operability of the Licensed Software with the other software program.
- is not disclosed or communicated without our prior written consent to any third party. and
- is not used to create any software which is substantially similar to or may in any way compete with the Licensed Software.
- keep all copies of the Licensed Software secure and maintain adequate security measures to safeguard the Licensed Software from theft, access or use by any unauthorised party.
- to comply with your obligations regarding patches and new releases in accordance with the Support programme set out in Annex 2.

We shall provide the Licensed Software in accordance with the warranty as set out in Annex 1.

## 14 **ONLINE SERVICES**

From the application by you of the Access Codes to the Online Services, we will make the Online Services available to you on a non-exclusive and non-transferrable basis so that you can use the Online Services for processing data for your own internal business purposes in order to enable you to use the Online Services in accordance with these Terms but for no other purpose whatsoever. You shall not permit any third party to use the Online Services nor use them on behalf of or for the benefit of any third party in any way whatsoever (including, without limitation, using the Online Services for the purpose of operating bureau service facilities, management service, outsourcing or any other type of service). 14.2 You acknowledge that you are permitted to use the Online Services only in accordance with these Terms and not further or otherwise.

Except as expressly set out in the Terms or as permitted by applicable law, you undertake that you shall:

- not copy the Online Services.
- not rent, lease, sub-license, encumber, loan, translate, merge, adapt, vary or modify the Online Services.
- not disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the Online Services nor attempt to do any such things
- maintain adequate security measures to safeguard the Online Services from access or use by any unauthorised party.

We shall provide the Online Services in accordance with the Service Levels set out in Annex 1.

You acknowledge and accept that we may without notice or the prior consent from you (i) change the features of the Online Services as a result of changes in regulations, and (ii), with a view to constantly improving the Online Services, make changes to the technical resources,

including the hosting resources, and to the adopted technical solutions, subject to the observance of the Service Levels.

Data which you produce as a result of your use of the Online Services (the Data) is your property. We are merely the depository for such Data and cannot be held liable for the contents of the Data stored on our servers as part of the Online Services. In this respect, you shall comply with the provisions of the Data Protection Act 1998 and take all appropriate steps with the Information Commissioner's Office ("ICO"), should the need arise.

We shall endeavour to apply appropriate security measures to protect the confidentiality of the Data stored on our servers.

You undertake to provide and be exclusively responsible for the provision of accurate data which comply with all applicable legislation and practices and not to include and/or communicate any unlawful data and/or data which infringe the rights of third parties, including any intellectual property rights.

You undertake, at your own expense, to defend us if we were to be the subject of a claim regarding the Data and other information supplied by you, and to pay all compensation or other losses which may become payable.

You acknowledge and accept that, other than as expressly set out in these Terms we are not bound by any obligation to control the Data we host. In particular, you agree that we cannot under any circumstances be held liable in the event of:

- the incorrect input of Data.
- a change to or removal of Data as a result of errors attributable to you.
- the non-observance of the recommendations issued by us. or
- the non-observance by you of the applicable legal or regulatory provisions, including with regard to the protection of personal data and steps to be taken with the Information Commissioner's Office, if so required.

You acknowledge that:

- data transmissions on telecommunications networks only have a relative technical reliability as they circulate on heterogeneous networks with different technical features and capacities, which are sometimes saturated at certain times of the day and/or may experience malfunctions.
- given the technical nature of the technologies implemented and the impossibility of controlling the networks connected to our network, we cannot under any circumstances be held liable for the reliability of data transmissions, access times, any restrictions on access on specific networks and/or servers connected to the Internet.
- the data circulating on telecommunications networks, despite the existing methods of protection put in place by us may be diverted and, therefore, the communication of the Data and, in general, all information, is carried out by you at your own risk.

We shall provide Support in relation to the Products as set out in Annex 2.

## 16 YOUR OBLIGATIONS REGARDING THE PRODUCTS

You shall comply with the following obligations:

- co-operate with us in all matters relating to these Terms.
- provide to us in a timely manner, such information and assistance as we may require in relation to these Terms and ensure that it is accurate in all material respects.
- you must provide us with such remote access to the Products when in Licensed Software form by accessing the internet via the computer equipment you use to host the Licensed Software and by complying with any other requirements which we may impose in relation to such remote access and otherwise.
- use the Products strictly in accordance with the Terms and with any instructions which we make available on our Site or otherwise.
- preserve the confidentiality of the Access Codes and ensure that they are only used as authorised by these Terms.
- ensure that all those who use the Products (or any part of it) are aware of your obligations under these Terms and that they agree to comply with such obligations.
- only use the Products for the purpose for which you are provided with them.
- not use the Products or any part of them for any illegal or fraudulent purpose.
- inform us immediately if you become aware of any breach by you or any third party of any of the Terms.
- be responsible for the health and safety of us and your employees or sub-contractors to the extent that they enter into or carry out any part of these Terms at your premises or any other premises owned by, under the control of or otherwise used by you. You must ensure that such people are given all assistance and information required and that they are made aware of all rules, procedures and other relevant matters in relation to health and safety.

For the purpose of clause 0 an External Element is an element, factor or party outside of our reasonable control (including but not limited to the Internet, your equipment or any third party equipment, the suppliers of hardware, the telecommunications infrastructure, third party networks, telecommunication networks, or any other third parties' acts or omissions, changes in any applicable law or regulation or any action or request of the police, the judiciary or any other body with applicable authority). An External Element Effect means where an External Element affects our ability to provide the Products in accordance with these Terms or otherwise causes us to breach any of the Terms.

You acknowledge that we cannot control the continuity, performance, action, availability, impact or reliability of the External Elements. You acknowledge that we shall not be responsible for External Element Effects and shall not be liable to you in relation to any External Element Effects or any of the results or consequences that flow from such an External Element Effect.

## 17 INTELLECTUAL PROPERTY RIGHTS

For the purpose of this clause 17 Intellectual Property Rights shall mean all intellectual property rights howsoever arising and in whatever media, whether or not registered or capable of registration, including (without limitation) copyright, database rights, patents, service marks, trade marks (whether registered or not), trade names, registered design rights, unregistered design rights, domain names, know-how, confidential information and any applications for the protection or registration of these rights and all renewals and extensions of them throughout the world.

You acknowledge that all Intellectual Property Rights in the Products, the Site and all documents relating to the same belong to us or where appropriate our licensors. Nothing in the Terms assigns any such Intellectual Property Rights to you and the only right you have in relation to such Intellectual Property Rights, is the right to use them in accordance with these Terms.

You shall immediately inform us if you become aware of any circumstances where the Products infringe the Intellectual Property Rights of any third party or where any third party infringes (or may infringe) any of the Intellectual Property Rights that exist in the Products.

We will indemnify you against all costs, claims, demands, expenses and liabilities of whatsoever nature incurred by you due to the Products infringing the UK copyright of any unaffiliated third party, subject to the following conditions:

- you shall promptly notify us in writing of any allegations of infringement of which it has notice and will not make any admissions without our prior written consent nor take any step (or omit to take any step) which would prejudice our defence of the claim.
- you, at our request and expense, shall allow us to conduct and/or settle all negotiations and litigation resulting from any such claim.
- you shall, at our request, afford all reasonable assistance with such negotiations or litigation.

The indemnity contained in clause 0 shall only apply if the infringement does not arise directly or indirectly out of:

- any failure on your part to mitigate your loss.
- your or any third party's act or omission, negligence, wilful default or breach of the Contract.
- any incorrect or inaccurate use of the Products.
- any use of the Products in combination with any other equipment, software or services.
- any material supplied by you.
- any action taken by us following your instructions. or
- any modification, alteration or adjustment made by (or on behalf of) you to the Products.



If the your normal use or possession of the Products is held by a court of competent jurisdiction to constitute an infringement of a third party's Intellectual Property Rights, or if we are advised by legal counsel that it will do so we will work with such third party with the aim of agreeing to a continuation of use of the Products by you or will make such modification necessary to avoid further infringement (or potential infringement).

The provisions of this clause 17 set out our entire liability in respect of the infringement by the Products (or any part of them) of the Intellectual Property Rights of any third party.

## 18 **OUR LIABILITY**

Nothing in these Terms limits or excludes our liability for:

- death or personal injury caused by our negligence.
- fraud or fraudulent misrepresentation.
- breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession). or
- defective products under the Consumer Protection Act 1987.
- any liability which we are not permitted by law to exclude or limit on the basis that you are a consumer.

Subject to clause 18.1, we will under no circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- any loss of profits, sales, business, or revenue.
- loss or corruption of data, information or software.
- loss of business opportunity.
- loss of anticipated savings.
- loss of goodwill. or
- any indirect or consequential loss.

For the avoidance of doubt the exclusions, set out in clause 0 apply whether such losses are direct, indirect, consequential or otherwise.

Subject to clause 0, our total liability to you in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price you paid for the Products.

Except as expressly stated in these Terms, we do not give any representation, warranties or undertakings in relation to the Products. Any representation, condition or warranty which might be implied or incorporated into these Terms by statute, common law or otherwise is excluded to the fullest extent permitted by law.

We do not warrant that the use of the Products will be uninterrupted or error-free or that the transfer of Data will be free from any interference by any third party.

You accept responsibility for the selection of the Products to achieve their intended results and acknowledge that the Products have not been developed to meet your individual requirements.

## 19 **TERM AND TERMINATION**

This Contract and your rights to use the Products will continue for the period which you have subscribed for when you order the Products (the Subscription Period).

If you wish to continue to use the Products after the Subscription Period you must place a new order for the Products via our Site and such order shall be subject to the terms which apply at the time you place such order.

We may suspend or terminate the Contract immediately upon written notice to you if we are required by law or by anybody with applicable authority to so suspend or terminate the Contract (or any part of it).

Either party may suspend or terminate the Contract immediately on notice, if the other party commits a material breach of the Contract and, if the breach is capable of remedy, fails to remedy the breach with 30 days of a written notice to do so, such notice to include notice of an instruction to terminate following a failure to so remedy.

If the Contract expires or is terminated then:

- the Subscription Period shall automatically come to an end and we shall immediately cease to have any obligations to you in relation to the Products.
- all warranties and other protection granted by us under these Terms in relation to the Products shall immediately cease.
- you must immediately cease any further use of the Products and any further use is strictly prohibited.
- you shall comply with any requests that we have in relation to your removal of the Products from your computer equipment or any other requirements we may have in relation to the Products following such termination or expiry.
- Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly or by implication intended to survive termination.

Upon the termination of the Contract for any reason whatsoever, we shall delete all Data hosted on our servers in connection with your use of the Online Services. It is therefore your responsibility to take a copy of the Data prior to any such termination.

## 20 **EVENTS OUTSIDE OUR CONTROL**

We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under a Contract that is caused by an Event Outside Our Control. An Event Outside Our Control is defined below in clause 0.

An Event Outside Our Control means any act or event beyond our reasonable control, including without limitation strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications networks or impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport.

If an Event Outside Our Control takes place that affects the performance of our obligations under a Contract:

- we will endeavour to contact you as soon as reasonably possible to notify you. and
- our obligations under a Contract will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control. Where the Event Outside Our Control affects our delivery of Products to you, we will arrange a new delivery date with you after the Event Outside Our Control is over.
- You may cancel a Contract affected by an Event Outside Our Control which has continued for more than 30 days. To cancel please contact us.

## 21 **COMMUNICATIONS BETWEEN US**

When we refer, in these Terms, to “in writing”, this will include e-mail.

Any notice or other communication given by you to us, or by us to you, under or in connection with the Contract shall be in writing and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service or e-mail.

A notice or other communication shall be deemed to have been received: if delivered personally, when left at our registered office. if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or if sent by e-mail, one Business Day after transmission.

In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that such e-mail was sent to the specified e-mail address of the addressee.

## 22 **OTHER IMPORTANT TERMS**

We may transfer our rights and obligations under a Contract to another organisation, but this will not affect your rights or our obligations under these Terms.

You may only transfer your rights or your obligations under these Terms to another person if we agree in writing.

This Contract is between you and us. No other person shall have any rights to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise. 22.4 Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.

Unless expressly provided for under these Terms, this Contract supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of this Contract. You confirm that you have not entered into this Contract on the basis of any representation that is not expressly incorporated into this Contract.

If we fail to insist that you perform any of your obligations under these Terms, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.

If you are a consumer, please note that these Terms are governed by English law. This means a Contract for the purchase of Products through our site and any dispute or claim arising out of or in connection with it will be governed by English law. You and we both agree to that the courts of England and Wales will have non-exclusive jurisdiction. However, if you are a resident of Northern Ireland you may also bring proceedings in Northern Ireland, and if you are a resident of Scotland, you may also bring proceedings in Scotland.

If you are a business, a Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

If you are a business, we both irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with a Contract or its subject matter or formation (including non-contractual disputes or claims).

## ANNEX 1

### 1 **WARRANTY**

We warrant that the Products will conform in all material respects to the Products description provided on the Site for a period of 90 days from the provision of the Access Codes to you (Warranty Period). If, within the Warranty Period, you notify us in writing of any defect or fault in the Products in consequence of which they fail to conform in all material respects to such description, and such defect or fault does not result from you, or anyone acting with your authority, having amended the Products or used them outside of or otherwise not in compliance with these Terms or for a purpose or in a context other than the purpose or context for which they were designed or in combination with any other software not provided by us, we shall, at our option, do one of the following:

- repair the Products.
- replace the Products. or
- terminate the Contract immediately by notice in writing to you and refund any of the price paid by you as at the date of termination less a reasonable sum in respect of your use of the Products to the date of termination, provided you provide all the information that may be necessary to assist us in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable us to re-create the defect or fault.

### 2 **SERVICE LEVELS**

For the purposes of this clause 2 the following definitions shall apply:

“Emergency Maintenance” is urgent, unplanned necessary maintenance work to be carried out by us in relation to the Products. “Planned Maintenance” is planned maintenance work such as routine upgrade, repair, maintenance, replacement, regulatory inspection or other work on any systems or networks used in connection with the provision and operation of the Products that we reasonably deem necessary.

We shall endeavour to ensure that the Online Services shall be available for 99% of the time excluding Emergency Maintenance and Planned Maintenance.

## **ANNEX 2**

### **SUPPORT**

#### **1 HELPDESK**

Our e-mail Helpdesk will be available throughout the Support Hours. Support Hours shall be:  
9am-6pm Monday to Friday GMT (excluding bank and national holidays)

Our Helpdesk will be available by e-mail at support@nikecsolutions.com.

We will respond to emails for support with 24 Support Hours.

#### **2 RELEASES**

If we issue a service patch or update for your purchased version of the Licensed Software we shall make such new Release available through the download section of your account. You shall comply with such requirements in relation to the application of such new Release or Patch as we may reasonably make known to you.

## **ANNEX 3**

### **DATA PROCESSING TERMS**

#### **1 INTRODUCTION**

Any terms or words defined in Data Protection Law (being (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998) and used in a provision of this Annex 3 relating to personal data shall, for the purposes of that provision, have the meaning set out in Data Protection Law.

If and to the extent that we act as a processor on behalf of you, this Annex 3 shall apply. This Annex 3 shall be read in accordance with Data Protection Law, and in the event that any term, condition or provision of this Annex 3 is deemed invalid, unlawful, unenforceable or non-compliant with Data Protection Law to any extent, it shall be deemed modified to the minimum extent necessary to make it valid, legal, enforceable and compliant under Data Protection Law whilst maintaining the original intention of this Annex 3.

#### **2 PROCESSING DETAILS AND GENERAL OBLIGATIONS**

Both we and you will comply with all applicable requirements of Data Protection Law. This Annex 3 is in addition to, and does not relieve, remove or replace, your or our obligations under Data Protection Law. Without prejudice to the generality of such obligations, you must ensure that you have all necessary consents and notices in place to enable lawful transfer of the personal data to us for the duration and purposes of the Contract.

You acknowledge your understanding that for the purposes of Data Protection Law, you are the data controller and we are the data processor in relation to any personal data processed on behalf of you in connection with the performance by us of our obligations under the Contract. Where, in respect of any personal data, you are a data processor on behalf of a third party, you warrant that your instructions and actions regarding such personal data (including the appointment of us as a data processor) have been authorised by such third party.

The details of the processing which we undertake as data processor are as follows (and you acknowledges and agrees all such details as accurate and comprehensive):

- **Subject-matter.** Cloud storage of electronic files and making these available to authorised individuals. Access to and migration of electronic files as necessary to carry out requested support services.
- **Nature and Purpose.** Processing of any personal data is entirely incidental to the service provision by us set out in the Contract, and is limited to storage, authorised disclosure, access and migration. No migration of, access or changes to, or other processing of any personal data is carried out as part of the service provision other than as may be required on your specific written instructions.

- Duration. For the duration of the service provision and thereafter until the personal data is returned or deleted by us as set out in the Contract.
- Types of Personal Data and Categories of Data Subject. As may be provided to us by (or at the direction of) you or authorised individuals using the Online Services. We have no visibility of, or control over, this information.

### 3 PROCESSOR OBLIGATIONS

We shall, where we act as a data processor on your behalf:

- process that personal data only on your written instructions (and you hereby instruct us to process that personal data as required to perform our obligations under the Contract) unless we are required by the laws of England and Wales or of any member of the European Union or by the laws of the European Union applicable to us to process personal data (Applicable Laws). Where we are relying on Applicable Laws as the basis for processing personal data, we shall notify you of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit us from so notifying you;
- only appoint sub-processors as permitted under this Annex 3;
- ensure that we have in place appropriate technical and organisational measures as required by Data Protection Law;
- ensure that all our personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
- not transfer any personal data outside of the European Union and the UK (Permitted Territory) unless we do so in accordance with Data Protection Law and your prior written authorisation has been obtained or such transfer is on your written instructions (and you hereby instruct and authorise us to transfer personal data outside the Permitted Territory where required for the provision of the Services, including but not limited to where personal data is accessed by or on your behalf from outside the Permitted Territory, and where you have been notified that an authorised sub-processor is located or stores or accesses personal data outside the Permitted Territory);
- taking into account the nature of the processing, assist you, at your cost, in responding to any request from a data subject (insofar as this is possible) and in ensuring compliance with your obligations under Data Protection Law with respect to (taking into account the information available to us) security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- notify you without undue delay on becoming aware of a personal data breach, and (with regard to our obligations to make information available to you) immediately inform you if (in our opinion) an instruction of yours infringes Data Protection Law;
- at your written direction, delete or return (at your cost) personal data and copies thereof to you on termination of the Contract unless required by Applicable Law to store the personal data; and
- make available to you all information necessary to demonstrate our compliance with this Annex 3 and Data Protection Law (which shall remain our confidential



information and which you shall not disclose or use other than to confirm our compliance with Data Protection Law) and allow for and contribute to audits by you or your designated auditor at your expense, on reasonable written notice during business hours and subject to such reasonable measures as we (or any sub-processor) require in relation to security and confidentiality requirements and not causing disruption to business activities.

You specifically authorise the appointment of any sub-processor identified in the Contract or which we have otherwise already notified you of, and generally authorise us to appoint further or alternative sub-processors on such sub-processors' terms of business which incorporate data protection obligations which are the same or more onerous in their effect as those set out in this Annex 3. Where we appoint or replaces a sub-processor we shall notify you not less than 30 days in advance of any intended changes concerning the addition or replacement of such sub-processors. If you wish to object to such changes, you must do so within 30 days of receiving such notice, by notifying us in writing accompanied by its reasons for such objection. Following any such objection, we may engage with you to provide alternatives or assurances in relation to such change. If you (acting reasonably in relation to your legal or regulatory compliance obligations) continue to object to such changes you may, within 30 days of receipt of the original notice, terminate on written notice without penalty the relevant services directly affected by that change. Where you do not provide written notice of such termination, or continue to use such services following the change, you shall be deemed to have accepted such change. You authorise us to use Backbone Connect Ltd as our UK Data Centre for the Online Services.