

# 1 KWIK Systems Terms, Conditions & Licence

## 1.1 SUPPLY, LICENCE & MUTUAL CONFIDENTIALITY AGREEMENT IN RESPECT OF THE KWIK SYSTEMS FAMILY AND ASSOCIATED CONSULTANCY SERVICES

The use of this family of software products is deemed as agreement to the conditions & licencing terms held within this document and any changes thereto during the currency of the agreement. No exceptions or amendments to this agreement will be made without written agreement between the parties. Terms will apply to software amendments made specifically on behalf of a user and will be detailed as part of the original costing, whereupon these conditions will form an addendum to the terms held within this document.

## 1.2 BACKGROUND

KeeResources and the Client wish to disclose and exchange information to gain access to a pool of information directly related to the Motor Industry to be incorporated within the KeeResources program suites, comprising KWIK systems. The program is supplied based on right to the gathered information only where the Client is prepared to submit on a continuous basis and have their data incorporated within any KWIK system. The systems include KWIKview, KWIKcreate, KWIKaudit, KWIKinfo, KWIKtrakka, and KWIKreview, or others current at the time of supply. The supply is on the express basis that the user shares only those types of data which they submit to the pool. This agreement also covers all other supply of services, consultancy, or data as agreed between the parties. ("The Purpose")

**IT IS AGREED** as follows:

## 1.3 Mutual Confidentiality and Intellectual Rights

1 In this Agreement:

"Authorised Representative(s)" means those employees, officers and directors of the receiving party or of any member of its Group together with its professional advisers;

"Confidential Information" means any information or data relating to the disclosing party, any member of the disclosing party's Group or to their respective businesses which is in written, electronic or other visual or machine readable form or which is communicated orally, including but not limited to, any kind of commercial or technical information, business, financial and marketing information, computer software and know-how which is made available to the receiving party in connection with the Purpose. This will also deem to include any method of delivery of information by any form of emergent technology;

PROVIDED THAT Confidential Information does not include any information that the receiving party is able to demonstrate:

is already in the public domain or which becomes available to the public through no breach of this Agreement by the receiving party or its Authorised Representatives;

was in the possession of the receiving party prior to receipt from the disclosing party;

is independently developed by the receiving party without any use of Confidential Information;

is approved for release by the written agreement of the disclosing party; or

is required to be disclosed by law or the rules of any governmental or regulatory Organisation;

"Group" means the group of companies comprising the company in question together with its Holding companies, subsidiaries and affiliates.

2. For a period of five years following the expiry of this or any subsequent agreement, the receiving party shall procure that the members of its Group and its Authorised Representatives shall;-

- keep the Confidential Information confidential and shall not disclose it to anyone other than to its Authorised Representatives who need to know such information for the purposes of considering or advising in relation to the Purpose; and
- use the Confidential Information exclusively for the Purpose and shall not permit the Confidential Information to go out of its possession or control; and
- not make any announcement concerning, or otherwise publicise, the Purpose or any other arrangement with the receiving party in any way relating to the Purpose; and
- procure that each Authorised Representative to whom disclosure of Confidential information is made, is made aware in advance of disclosure of the provisions of this Agreement and shall procure that each Authorised Representative adheres to these provisions as if such person were a party to this Agreement; and immediately upon request by the disclosing party deliver to the disclosing party all Confidential Information (including all copies, analyses, memoranda or other notes made by the receiving party or its Authorised Representatives) and delete all electronically held Confidential Information or, with the consent of the disclosing party, destroy the same and confirm in writing to the disclosing party with a certificate confirming that the provisions of this clause have been complied with.

The obligations of confidentiality contained in this Agreement shall apply mutatis mutandis to any product, sample, prototype or other such article received from or on behalf of the Disclosing Party ("Sample"). The Receiving Party shall not dismantle, decompile, analyse or reverse engineer any part of any product or sample (or allow or request any other party to do so) without the prior written consent of the Disclosing Party and any information derived therefrom shall be deemed to be Confidential Information. Any Sample shall be returned to the Disclosing Party immediately on request.

4. In this Clause 4:

"Intellectual Property Rights"	Means patents, copyright, moral rights, design rights, topography rights, database rights, trade mark and service mark rights, rights in inventions, know-how, trade secrets and Confidential Information and all similar proprietary, industrial, intellectual or commercial rights and forms of protection having equivalent effect anywhere in the world;
"Patents"	Means all patents granted or applied for under the Patents Act 1977 and any amending legislation including but not limited to the Copyright Designs and Patents Act 1988;
"Inventions"	Means any new invention involving an inventive step that is capable of industrial or commercial application and is otherwise capable of registration under section 1 of the Patents Act 1977 or any subsequent amending or repealing legislation.

No right or licence is granted to the receiving party in relation to the Confidential Information otherwise than as set out in this Agreement. More particularly the receiving party shall not acquire and shall not claim any right title or interest in the Intellectual Property Rights of the disclosing party by virtue of the disclosure of Confidential Information pursuant to this Agreement and the use thereof for the Purpose.

The disclosing party hereby grants to the receiving party during the continuance of this Agreement a non-exclusive licence to use such of its Intellectual Property Rights as are reasonably necessary solely for the Purpose. Any such licence shall terminate immediately upon the making of a request by the disclosing party pursuant to Clause hereof. All rights not hereby specifically and expressly granted to the receiving party are reserved to the disclosing party.

The receiving party acknowledges that damages would not be a sufficient remedy for any threatened or actual breach of this Agreement and that the disclosing party will be entitled to other remedies, including but not limited to, injunctive relief and specific performance.

6. The receiving party acknowledges that neither disclosing party nor any of its Authorised Representatives makes any express or implied warranty about, or accepts responsibility for, the accuracy or completeness of any of the information supplied under this Agreement.

7. Neither party shall assign this Agreement without the prior written consent of the other party.

## **1.4 USAGE OF PRODUCTS and SERVICES**

KeeResources supplies KWIK systems and other data and services to the Client on the basis that the Client will not acquire any right, title or other interest, commercial or otherwise in the product or services, the transfer media or documentation or layout stylisations that accompanies or forms any part of the product or services including any enhancements/amendments over time.

KeeResources will continue to make structural and functional changes to the system over time, and will make the Client aware of any change which could fundamentally affect the Client's usage. Enhancements required by any legislative change or flaws with the operation of the system are included within the annual maintenance charge. Routine changes and enhancements introduced by KeeResources without request by the user will be not normally incur a cost. Any structural change required by an individual Client on an exclusive basis will be undertaken once costs are agreed between the parties, always assuming the changes are reasonably capable of being undertaken without any negative impact on other user. Any major new modules incorporating additional functionality will potentially be subject to both an additional initial fee and additional recurrent monthly charges, these being notified in advance to the Clients and being capable of being excluded by any Client not wishing to participate. Terms and conditions for any additional modules will be covered by this agreement unless some aspect specifically requires amendment or exclusion of any individual part, which will in no way void the substance of this agreement.

The system shall only be used as specified in the quotation for supply, and any request to upgrade the service will require a written quotation for an amendment to the supply to be duly ordered by the Client.

The amalgamated data held within any KWIK system is not the property of KeeResources, nor the property of any individual Client or any other party. All Clients submitting data have equal rights to use of the data to which they are entitled for the period of currency of supply to the pool.

KeeResources reserves the right to withdraw supply of the product after completion of any agreed period of supply without stated reason.

KeeResources reserves the right to withdraw supply in the event of any breach of terms and conditions during the currency of any agreed supply period, without right of the Client to return of any prepaid sums in the event of, but not limited to, the following:

Any unauthorised publication of, or passing of, any confidential material held within any KWIK system or passed to the Client by KeeResources or other Clients.

Any attempt to subvert the integrity of the amalgamated data by proffering data which has knowledgeably been amended in any fashion from factual data held within the Client's company or its systems.

Any persistent failure to pay due charges levied by KeeResources.

KeeResources will electronically cease access to those sections of amalgamated data to which the Client persistently fails to produce data for inclusion without prejudice to any other right.

KeeResources reserves the right to cease supply of any KWIK product or data supply if usage could, in KeeResources' reasonable opinion, be deemed to infringe any copyright, be unlawful, defamatory, affect the rights of any user, or be anti-competitive in any way.

Any use of the system or the data within is for the exclusive purposes of the Client in relation to its own business activities. This will be deemed to include any professional advisers to the business for legal,

taxation or accounting purposes. This will also allow use by parent companies within the UK, always subject to appropriate user count licensing. Multi-site licencing costs may apply.

Sub licensing of the product is specifically prohibited by KeeResources and all the current data suppliers who supply data for amalgamation. Copyright for each external dataset belongs to the dataset originator and KeeResources will not be held responsible for any infringement of the originator's rights. The Client must seek the originators permission for any external use, and hereby agrees to meet all licensing terms for its use, and further agrees to indemnify KeeResources to the full extent of any liability arising as a result of any misuse by the Client.

In the event of any supplier of industry data to any KWIK system reporting a failure of the Client to meet their licence conditions, including but not restricted to payment, then; in instances of multiple external data suppliers being incorporated for use by the Client, those suppliers reporting failure will be excluded electronically from the Client's monthly or periodic output. Where more than one supplier reports failure, KeeResources reserves the right to cease all supply until the data suppliers reporting failure confirm they are willing for supply to recommence. Where failure is reported on multiple occasions, KeeResources reserves the right to permanently cease supply, giving seven days notice to follow the termination procedures detailed in this agreement.

Should the Client be made bankrupt or enter into liquidation or any arrangement is made with its creditors, has a receiver or administrative receiver appointed, the supply arrangement will immediately cease, without prejudice to any claim KeeResources may have for any of the following: damages, outstanding fees or subscriptions, or other rights due under this agreement. This will include any other form of supply agreed between the parties.

The Client may not make any copy of data for back up purposes other than as part of an industry accepted tape or hard disc arrangement, or allow others to copy the data for any reason. In the instance of the "Historic" module being supplied as part of a networked product for multiple users, it is permissible for normal backups to be made of the system, as part of the routine backup regime being carried out for the network host computer. These back ups must only be for the sole purpose of restoring the system to its last state prior to any hardware or software failure which caused the host computer to fail.

The Client, using the importing regime module any KWIK system, agrees to forward to KeeResources each database version carrying any additional datasets, on readable CD ROM, to act as full backup in the event of the Client upgrading to later versions, or versions with greater functionality. These databases will be audited periodically to ensure their standards meet upgrade requirements and will be stored appropriately.

Networked products are deemed to include, but not be restricted to, access on any of the following formats: Local area networks – single site, Wide area networks – multiple sites, Intranet access – company specific, Internet based access, Direct dial telephone - modem to modem, or any other emerging technology capable of giving access to the system or any part of the system. The Client warrants that any access of the above nature to any KWIK system will be restricted to internal use, and that at no time will any external party be given access to their systems which could result in any compromise of security. Any supply provision for network products will be defined in the KeeResources Quotation for supply.

KeeResources specifically excludes any form of publication of any data supplied solely by, and copyright of, KeeResources without permission in writing. Permission to publish KeeResources non commercially sensitive industry data for marketing or client information purposes will not be unreasonably withheld. This may be attributed to the Client, subject to prior written agreement from KeeResources. The Client may not remove, hide or omit any trademarks, logos or copyright notices on any visible computer screen layouts, or any printed matter, whether those of KeeResources or other data suppliers.

KeeResources will apply electronic security devices for time and/or misuse as it sees fit over time to comply with this agreement and those of the external data suppliers. These functions will specifically preclude use in the event of time sensitive data becoming out of date. These processes may also include auditing features to ensure compliance and KeeResources reserves the right to audit or appoint agents to audit the system at any stage during currency of the supply arrangement and up to 12 months after termination whatever the reason for termination.

In the event of termination of supply, for whatever reason, the Client will destroy all electronically held material forming part of any KWIK system or any data produced by, or in relation to the system. All media shall be returned within seven working days to KeeResources and/or its agents, and KeeResources reserves the right to appoint an independent auditor to confirm the removal, and the Client undertakes to cooperate in full with any appointed agent or auditor in relation to this task. In this instance, the client shall no longer have rights to use the pooled data supplied from the user group.

The initial period of supply will be 24 months or a longer period as stated on the quotation for supply, and will expire automatically at that time. KeeResources will forward a quotation for re-supply prior to expiry, detailing any changes to the supply terms or additional services added through the previous period, and the amended costs to be borne by the Client.

On termination of ongoing supply at the end of an agreed period without any breach of terms condition or licensing, the Client may retain and use the last copy of the software supplied by KeeResources. The annual maintenance arrangements can be continued at a fee to be specified at the time by KeeResources, and all other contractual terms remain in force if the product remains in use.

The annual software maintenance charges will be 15% of any initial fees, payable at each anniversary of original supply. Amendments to initial costs of any sort will not reduce the Maintenance fee from a sum equivalent to 15% of the list cost of total initial fees including those for upgrades, additional modules or services.

KeeResources will not be liable for any outcome resulting from the use of any product or data or service by the Client and the Client agrees to indemnify KeeResources without limit of time against any losses and liabilities, costs, claims and damages arising out of use of any product, data or service supplied.

## **1.5 KeeResources Warranties**

KeeResources undertakes to provide each monthly update as soon as available each month during the currency of the agreement after submission of data by the Client, in a form which the Client is capable of reading into their computer. The Client will be responsible for loading the media appropriately within 2 working days of arrival to ensure accuracy of usage.

KeeResources undertakes to supply replacement media for any damaged prior to arrival at the Client, this being the full extent of its liability in this event.

Online services for uploading or downloading will be supplied on the basis of intended 95% uptime, but KeeResources shall use all reasonable endeavours to supply a continuous service. KeeResources reserves the right to temporarily suspend service for a period not exceeding 4 working days without recompense to undertake necessary maintenance, limit damage from external virus sources, & effect security enhancements and repair of the system. Notice will be issued 24 hours in advance of any known intended timings as a minimum. KeeResources will not be held responsible for any inability to access the available systems as a result of any overloading of the Internet, or restrictions applied by the Client's Internet service provider, or other external and unforeseeable circumstances, outwith the control of KeeResources.

Whilst every care is taken in the preparation of data, KeeResources will not be held liable for any outcome resulting from any errors or omissions in any or all data output supplied to the Client, irrespective of source. No warranty of any description, express or implied, exists in relation to supply of the products, data or services.

All reasonable precautions are taken to attempt to ensure any media updates or software version updates are free of any computer virus. KeeResources will not be held responsible for any virus introduced on any media supplied, the responsibility for checking for viruses remaining the responsibility of the Client from the stage of initial evaluation, throughout the contract currency and for a period of 12 months after the agreement period.

Every opportunity to evaluate the product will be given, and the Client must ensure that they have chosen the supply of any product, data or service freely and that it meets their operational needs. KeeResources will not be held liable for any insufficiency in relation to expectations after supply of evaluation media, and no resultant claim, costs or damages will be considered.

Maximum liability in the event of proven loss is a sum equal to the total of any initial fees paid for the supply of the product, data or service, only in so far as such loss is not excluded by this agreement or otherwise, whether the loss arises in contract, tort or other reason.

KeeResources warrants that it will keep and maintain all required licences in relation to the supply of the product, data or service for the currency of any period of supply.

This agreement will not in any way invalidate:

A Any liability in respect of death or personal injury resulting from negligence of KeeResources, its employees or agents whilst carrying out their duties.

B Any statutory rights in the event of this agreement being defined as a consumer transaction (under the Consumer Transaction [Restriction on Statements] Order 1976, amended).

C The terms of this agreement replace and are in lieu of any and all other warranties, obligations, statute, common law, course of dealing, terms and conditions, trade usage, undertakings or other reliance which could be perceived to define its fitness for purpose of any description. The Client agrees that a thorough evaluation has been performed and that it is happy with any product, data or service to which this agreement refers.

## 1.6 General

This agreement precludes a partnership, or principal and agent relationship between the parties and neither may make any representation to this effect or in any way bind the other to any arrangement in any way, or offer any warranty, implied or otherwise with any other party.

The accepted quotation from KeeResources forms a part of the supply arrangement defined in this agreement, and both parties agree that any changes to this agreement must be exchanged and agreed by both in writing to have any effect.

Should any section of this agreement become invalid for any reason, only that section may be deleted, replaced or amended as appropriate, and all other parts of the agreement remain, without diminution or other effect on any other section in full force.

Any instance of agreement where multiple legal entities form a group as a Client, any liability will be joint and several on all parties. The entities confirm that the user is authorised to act on behalf of their own and the other entities and confirmation of the user being an authorised individual for all entities will be required prior to supply.

Any delay in enforcement of any part of this agreement does not construe forbearance or any form of waiver of any provision on any individual occasion or subsequent or multiple occasions.

No transfer of rights or obligations of the Client, whether permanent or temporary, may occur without the express permission of KeeResources.

All financial arrangements between the parties are subject to the provisions within Section A – Confidentiality and Intellectual Rights.

The agreement will be deemed to be ongoing in nature upon confirmation from the Client of their wish to continue the supply arrangement beyond its initial period, and acceptance of the same by KeeResources.

Notices under this Agreement shall be in writing and shall be deemed validly given if delivered by hand, fax (supported by positive transmission report) or post (recorded delivery, with proof of posting) and shall be deemed served on the date of dispatch.

## 2 Copyright KeeResources Limited, 2000 - 2007

### 2.1 Copyrights and Licencing

**All use of the product is governed by international copyright law, and applies equally in all territories in the world.**

LRD – 20070904

**KeeResources Ltd**

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**Registered in England and Wales - 4437124**