



Client's access to and use of the SNOW Services (as defined below) via the K2 ServiceNow Platform is subject to these ServiceNow Subscription Terms ("**Terms of Use**") and the terms of the Agreement between the parties, including the DPA.

1. Definitions.

Any capitalized term not otherwise defined herein shall have the meaning ascribed to it in the Order.

1.1 "**Client**" means the person or entity accessing or using ServiceNow Products and Services via the K2 ServiceNow Platform under the Order.

1.2 "**Client Data**" means electronic data created or uploaded by or for Client (in Client's Domain) and processed in the Subscription Service, excluding the ServiceNow Core Technology, the K2 Technology, and Domain Technology.

1.3 "**Documentation**" means any and all manuals, instructions and other documents and materials that ServiceNow provides or makes available to K2 and Client in any form or medium which describe the functionality, components, features or requirements of the Software, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof.

1.4 "**Customization**" means any enhancement or modification of the Software or Subscription Service (excluding Client Data) made by K2 in the K2 ServiceNow Platform, including but not limited to, templates, workflows, business processes, business rules, scripts, UI policies, custom tables, custom fields, and custom applications. Only K2 shall be permitted to generate Customizations.

1.5 "**Development Tools**" means source code, executable software and tools made available by ServiceNow for the implementation, customization, configuration and use of the ServiceNow Core Technology, such as scripts, code snippets, sample code and development tools, but excluding APIs.

1.6 "**Domain**" means an independent and logically separated zone of the K2 ServiceNow Platform created for each Client that contains Client Data and any Customization made specifically for Client, and to which Client Users of the K2 ServiceNow Platform will be restricted.

1.7 "**Domain Technology**" means any Customization made and originating within Client's Domain of the K2 ServiceNow Platform, excluding the ServiceNow Core Technology and the K2 Technology.

1.8 "**Enhancement**" means any of K2's releases of the K2 Technology for repairs, enhancements, or new features made from time to time at K2's sole discretion.



1.9 “**Intellectual Property Rights**” means all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

1.10 “**K2 ServiceNow Platform**” means the MSP instance of ServiceNow licensed by K2 through which the SNOW Services are delivered, and for which the system-wide maintenance and patching shall be managed by K2.

1.11 “**K2 Technology**” means any Customization of the K2 ServiceNow Platform made and originating outside of Client’s Domain (whether applied to Client’s Domain), including other material authored, invented, or otherwise created or licensed (other than by or from ServiceNow) by K2 in its use or for Client’s use with the Software and Subscription Service, excluding the ServiceNow Core Technology.

1.12 “**Losses**” means any and all claims, losses, damages, demands, liabilities, penalties, judgments, costs and/or expenses (including but not limited to attorneys’ fees and disbursements).

1.13 “**Order**” means the SNOW Order into which these Terms of Use are incorporated.

1.14 “**Professional Services**” means optional professional services of K2 which are exclusive of the SNOW Services, as further described in an applicable Statement of Work between Client and K2.

1.15 “**ServiceNow Core Technology**” means: (a) the Subscription Service; Software; Development Tools, Documentation; and ServiceNow technology and methodologies (including, without limitation, products, software tools, hardware designs, algorithms, templates, software (in source and object forms), architecture, class libraries, objects and documentation) existing as of the Effective Date or otherwise arising outside of work under a Professional Service; (b) updates, upgrades, improvements, configurations, extensions, and derivative works of the foregoing and related technical or Client documentation or manuals; and (c) intellectual property anywhere in the world relating to the foregoing.

1.16 “**ServiceNow**” means ServiceNow, Inc., the owner and developer of the Software, including the Documentation and all ServiceNow Core Technology. ServiceNow is a Subprocessor of K2.

1.17 “**Software**” means the ServiceNow software provided to Client by K2 that operates on Client-provided machines solely to facilitate the use of the Subscription Service.

1.18 “**SNOW Services**” means the software-as-a-service licensing accessed via the K2 ServiceNow Platform (purchased by Client from K2 pursuant to the Order) comprised of the



ServiceNow Core Technology, ServiceNow Subscription Service, ServiceNow Software, K2 Technology, and any Domain Technology which may be generated through Client's request for Professional Services.

1.19 "**Subscription Service**" means ServiceNow's software as a service (SaaS) offering comprising the SNOW Services ordered by Client under the Order.

1.20 "**Subscription Term**" means the term of authorized use of the SNOW Services as set forth in the Order.

1.21 "**Upgrade**" means any of ServiceNow's releases of the Subscription Service for repairs, enhancements, or new features applied by ServiceNow to the Software during the Term of the Subscription Service. Such Upgrade(s) to the software shall be made at the discretion of K2 or ServiceNow.

1.22 "**User**" means Client and any employee, agent, contractor, or representative of Client who accesses or uses the SNOW Services on Client's behalf, including HBR Consulting LLC.

2. License.

2.1 Software License Grant. K2 grants Client a limited, personal, worldwide, non-sublicensable, non-transferable, non-exclusive license during the Subscription Term to the Software, solely to facilitate Client's authorized access to and use of the SNOW Services for its internal business purposes (and not for further distribution to any third party). The Software may include code that is licensed under third-party license agreements, including open source made available or provided with the Software. Software is licensed and not sold even if for convenience ServiceNow or K2 refer to words such as sale or purchase.

2.2 SNOW Services. Subject to the terms contained herein, K2 authorizes Client to access and use the purchased SNOW Services in the K2 ServiceNow Platform during the Subscription Term as set forth in an applicable Order for its internal business purposes (and not for further distribution to any third party) in accordance with the Documentation. Client shall not use or otherwise access the SNOW Services in a manner that exceeds the Client's authorized use as set forth herein and the applicable Order. K2 shall retain sole operational and managerial control over the SNOW Services during the Term without resale, distribution, sublicense, or transfer to Client or any other third party.

2.3 Client's Users. Client understands that its Users will have access to view and modify Client Data as stored or processed in the K2 ServiceNow Platform, and K2 shall have no responsibility for the action or inaction of any Client User of the SNOW Services.

3. Use Restrictions. With respect to the ServiceNow Core Technology, Client will not (and will not permit Users to): (a) use it in excess of contractual usage limits (including as set forth in the Order), or in a manner that circumvents usage limits or technological access control measures; (b)



license, sub-license, sell, re-sell, rent, lease, transfer, distribute, time share, or otherwise make any of it available for access by third-parties; (c) access it for the purpose of developing or operating products or services for third-parties in competition with the ServiceNow Core Technology; (d) disassemble, reverse engineer, or decompile it; (e) copy, create derivative works based on, or otherwise modify it, except as may be otherwise expressly stated in these Terms; (f) remove or modify a copyright or other proprietary rights notice in it; (g) use it to reproduce, distribute, display, transmit, or use material protected by copyright or other Intellectual Property Right (including the rights of publicity) without first obtaining permission of the owner; (h) use it to create, use, send, store, or run viruses or other harmful computer code, files, scripts, agents, or other programs, or otherwise engage in a malicious act or disrupt its security, integrity, or operation; or (i) access or disable any ServiceNow or third-party data, software, or network. Before Client engages in any of the foregoing acts that it believes it may be entitled to, it will provide ServiceNow with 30-days' prior notice to legalnotices@servicenow.com, and reasonably requested information to allow ServiceNow to assess Client's claim. ServiceNow may, in its discretion, provide alternatives that reduce adverse impacts on ServiceNow's Intellectual Property Rights or other rights.

4. High Risk Activities. Client shall use the ServiceNow Core Technology within the intended business purposes described in the Documentation, and not for any purpose that requires fail-safe performance including, but not limited to, stock trading, financial transaction processing, management of hazardous facilities or applications for which failure could result in death, personal injury, or severe physical or environmental damage ("**High Risk Activity**"). ServiceNow, its licensors and suppliers, and K2, expressly disclaim all warranties of fitness for any such use and Client shall release and hold ServiceNow, its licensors and suppliers, and K2 harmless from liability arising out of the use of the ServiceNow Core Technology for High-Risk Activity.

5. Use Verification. K2 may review Client's use of the SNOW Service, and upon written request, Client will provide reasonable assistance to verify its compliance with these Terms of Use. If K2 determines that Client has exceeded its permitted access and use rights as set forth in the Order, K2 will notify Client and within 30 days thereafter Client shall either: (a) disable any unpermitted use, or (b) purchase additional subscriptions commensurate with Client's actual use.

6. Term and Termination.

6.1 Term. Client's license for the Software and its authorized access to the SNOW Services shall continue only for the Subscription Term.

6.2 Termination. K2 may terminate the Order and Client's access to the SNOW Services at any time if Client fails to comply with these Terms of Use, or if it fails to pay, when due, any of the fees for the SNOW Services set forth in the Order and does not cure such breach within a thirty (30) day notice period. K2 may also terminate the Order upon written notice to Client if its authorization to distribute the SNOW Services is terminated by ServiceNow.

6.3 Effect of Termination or Expiration. Upon the expiration or earlier termination of the



Subscription Order (unless otherwise expressly stated in the Order):

(i) Client shall immediately stop using, and K2 shall stop providing, the SNOW Services and all rights, licenses, and authorizations granted to Client herein shall terminate.

(ii) Client shall promptly remove and destroy all copies of the Software, including all backup copies from all devices it owns, possesses or controls and on which the Software is installed.

(iii) Client shall pay to K2 within thirty (30) days any remaining amounts payable for the remainder of the current Subscription Term of the relevant Order.

(iv) K2 reserves the right to permanently delete, or disable access to, all Client Data and Domain Technology from the K2 ServiceNow Platform without liability for such deletion; provided however, that Client may request in writing at least fifteen (15) days prior to any termination, and K2 shall then provide (subject to prior payment of all outstanding amounts owed to K2 under the Order), an export of available Client Data or Domain Technology in the format facilitated by ServiceNow (excluding the ServiceNow Core Technology and the K2 Technology). Any K2 services related to the export of Client Data or Domain Technology from the K2 ServiceNow Platform, or any other services to facilitate Client's termination or transition ("**Transition Assistance**") shall be subject to additional Professional Services fees payable by Client to K2. **K2 MAKES NO WARRANTY WHATSOEVER AS TO THE FUNCTION OR UTILITY OF SUCH CLIENT DATA OR DOMAIN TECHNOLOGY ONCE EXPORTED FROM THE K2 SERVICENOW PLATFORM.**

6.4 Surviving Terms. The provisions set forth in the following sections of these Terms of Use, and any other right, obligation or provision contained herein, that, by its nature, should survive termination or expiration of the Order, will survive any expiration or termination of the Order: Section 6.3 (Effects of Termination), Section 1 (Definitions), Section 7 (Intellectual Property Rights), and Section 11 (General Provisions).

7. Intellectual Property Rights.

7.1 ServiceNow Ownership. All Intellectual Property Rights in the ServiceNow Core Technology are owned exclusively by ServiceNow, notwithstanding any other provision herein. Except as expressly provided herein, ServiceNow reserves all rights in the ServiceNow Core Technology and does not grant Client any rights, express or implied or by estoppel.

7.2 K2 Ownership.

7.2.1 With Respect to K2 Technology. All Intellectual Property Rights in the K2 Technology are owned exclusively by K2, notwithstanding any other provision herein. Client's right to access or use the K2 Technology shall terminate upon termination of the Subscription Term.

7.2.2 With Respect to Domain Technology. All Intellectual Property Rights in any Domain

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Technology are owned exclusively by K2, notwithstanding any other provision herein. Client's right to access the Domain Technology in the K2 ServiceNow Platform shall terminate upon termination of the Subscription Term. To the extent Professional Services result in the creation of Domain Technology for Client and Client receives an export of such Domain Technology pursuant to Section 5.3, then subject to Client's payment in full for Professional Services under which such Domain Technology was created, K2 hereby grants to Client a perpetual, worldwide, non-exclusive, royalty-free, revocable, non-transferable license to use and modify Domain Technology for its own internal use.

7.3 Client Ownership. Client shall retain ownership of all Intellectual Property Rights in the Client Data. Client hereby grants to ServiceNow and K2 a royalty-free, fully paid, non-exclusive, nontransferable, sub-licensable, worldwide right to use Client Data solely for the purpose of providing the Subscription Service.

8. Cooperation. Client agrees to provide all reasonable cooperation necessary or appropriate for K2 to fulfill its obligations under these Terms of Use, including (if necessary) providing access to properly equipped facilities and obtaining all Required Consents necessary for K2 to provide the SNOW Services. "Required Consents" are any consents or approvals required to give K2 the right or license to access, use, and/or modify any third-party software, hardware or other products or information used by Client without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such items. When K2's performance hereunder requires or is contingent upon Client's performance of an obligation (including providing Required Consents, approval or notification or taking a recommended corrective action) hereunder or a relevant Order, and Client delays or withholds its performance beyond the agreed time period (or beyond five (5) business days, if a time period is not specified), K2 will be relieved of its obligation to perform its obligations entirely or, if it is reasonable for K2 to perform once Client performs, until a reasonable period following performance of Client's obligation.

9. Copy Protection. The Software may contain technological copy protection or other security features designed to prevent unauthorized use of the Software, including features to protect against any use of the Software that is prohibited under Sections 3 and 4. Client shall not, and shall not attempt to, remove, disable, circumvent, or otherwise create or implement any workaround to, any such copy protection or security features.

10. Export Compliance. Each party shall comply with United States and foreign export control laws and regulations. Client acknowledges that the Subscription Service, Software, Documentation, Development Tools, and Deliverables are subject to the U.S. Export Administration Regulations (the "EAR") and that Client shall comply with the EAR. Without limiting the foregoing, Client represents and warrants that: (i) Client is not located in, and shall not use the Subscription Service, Software, Documentation, Development Tools and Deliverables from, any country that is subject to U.S. export restrictions (currently including, but not necessarily limited to, Cuba, Iran, North Korea, Russia, Sudan and Syria); (ii) Client shall not use the Subscription Service, Software, Documentation, Development Tools and Deliverables in the design,



development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, sounding rockets or unmanned air vehicle systems; and (iii) Client is not prohibited from participating in U.S. export transactions by any federal agency of the U.S. government. In addition, Client is responsible for complying with any local laws which may impact Client's right to import, export or use the Subscription Service, Software, Documentation, Development Tools and Deliverables.

11. General Provisions.

11.1 Upgrades and Enhancements. K2 may apply Upgrades or Enhancements to the K2 ServiceNow Platform from time to time in its sole discretion. K2 shall use reasonable efforts to give Client seven (7) days prior notice of any Upgrade or Enhancement which in its reasonable judgement (or that of ServiceNow) may have a materially adverse impact Client's use of the Software. ServiceNow and K2 will use commercially reasonable efforts to limit the period during which the Subscription Service is unavailable due to the application of Upgrades or Enhancements to no more than three (3) hours per month. However, K2 shall not be responsible for (i) any unavailability of the Software due to the application of Upgrades, (ii) any incompatibility or corruption of Domain Technology due to the application of an Upgrade or Enhancement, or (iii) Client's inability to use features or functionality of Upgrades or Enhancements to its purchased SNOW Services to the extent such use is restricted or caused by the presence of Domain Technology.

11.2 Warranty; Warranty Disclaimers. K2 represents and warrants that: (a) it is authorized to provide the SNOW Services on the terms set forth in these Terms of Use; (b) it shall provide the Professional Services in a professional and workmanlike manner in accordance with industry standards; and (c) the K2 Technology will not infringe the Intellectual Property Rights of any third party. Client understands that K2 is not the owner of the Subscription Service, Software, or ServiceNow Core Technology. ACCORDINGLY, K2 HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES EITHER EXPRESSED OR IMPLIED, RELATED TO SERVICENOW PRODUCTS, SERVICES, SOFTWARE AND MATERIALS, AND K2 SERVICENOW SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF TITLE, ACCURACY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR WARRANTY OF NONINFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE FOREGOING, K2 MAKES NO WARRANTY OF ANY KIND THAT THE K2 SERVICENOW SERVICES WILL PERFORM WITHOUT ERROR OR RUN WITHOUT INTERRUPTION.

11.3 Limitation of Liability with Respect to ServiceNow Core Technology. K2'S LIABILITY FOR ANY CLAIM ARISING FROM OR RELATING TO ITS BREACH OF IT OBLIGATIONS UNDER THE ORDER OR THESE TERMS, OR THE PERFORMANCE OR NON-PERFORMANCE OF THE SNOW SERVICES SHALL NOT EXCEED, IN THE AGGREGATE, AN AMOUNT IN EXCESS OF THE FEES PAID OR PAYABLE BY CLIENT TO K2 UNDER THE ORDER IN THE TWELVE (12) MONTH PERIOD BEFORE THE CLAIM AROSE. K2 SHALL NOT BE RESPONSIBLE FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST REVENUES OR LOST PROFITS, DAMAGES RESULTING FROM LOST DATA, FAILURE TO ACHIEVE ANTICIPATED

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SAVINGS, OR BUSINESS INTERRUPTION, REPUTATIONAL DAMAGE OR LOST OPPORTUNITY COSTS. THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION SHALL APPLY TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW AND REGARDLESS OF THE FORM OF ACTION, (WHETHER FOR BREACH OF CONTRACT, STATUTE, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OF ANY KIND), STRICT LIABILITY, MISREPRESENTATIONS, CLAIMS FOR FAILURE TO EXERCISE DUE CARE IN THE PERFORMANCE OF SERVICES HEREUNDER OR OTHERWISE), AND EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THE REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. NOTWITHSTANDING THE FOREGOING, THE SERVICENOW CORE TECHNOLOGY, INCLUDING BUT NOT LIMITED TO THE SOFTWARE AND SUBSCRIPTION SERVICES, TO BE PROVIDED PURSUANT TO THESE TERMS OF USE ARE THE SOLE RESPONSIBILITY OF SERVICENOW, AND THEREFORE, NOTWITHSTANDING THE LIMITATION OF LIABILITY PROVISIONS SET FORTH ABOVE, IN NO EVENT AND UNDER NO LEGAL THEORY SHALL K2 BE LIABLE TO CLIENT OR ANY OTHER THIRD PARTY FOR ANY GENERAL, DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY CHARACTER ARISING OUT OF THE SERVICENOW CORE TECHNOLOGY, INCLUDING BUT NOT LIMITED TO SERVICENOW PRODUCTS, SERVICES, SOFTWARE, OR MATERIALS PROVIDED TO CLIENT, OR THE USE OF OR INABILITY TO USE THE SERVICENOW CORE TECHNOLOGY, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, LOSS OF DATA, LOSS OF PROFITS, LOSS OF OUTPUT, FAILURE OF THE SERVICE TO OPERATE WITH ANY OTHER PROGRAMS, SERVER DOWN TIME, DAMAGES FOR LOSS OF GOODWILL, BUSINESS INTERRUPTION, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER DAMAGES OR LOSSES OF WHATEVER NATURE, EVEN IF CLIENT HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

11.4 Indemnification. Client shall defend, indemnify, and hold K2 and the officers, directors, employees, agents, and representatives of K2 (“**K2 Indemnitees**”) harmless from and against all Losses incurred or suffered by such K2 Indemnitees arising out of, or in connection with, any third-party claim, demand, or cause of action (each, a “**Claim**”) to the extent such Claim is based upon or arises out of the use of the SNOW Services by Client or its Users and is not attributable to the actions or omissions of K2.

11.5 Third-Party Beneficiary. The Parties acknowledge that ServiceNow, as the entire legal and beneficial owner of the ServiceNow Core Technology, shall be a third-party beneficiary under these Terms of Use.