

## **PLEASE READ CAREFULLY BEFORE REGISTERING TO USE E-TOP-SET ON THIS WEBSITE:**

This licence agreement (“**Licence**”) is a legal agreement between you (“**Licensee**” or “**you**”) and Kelvin Top-Set Limited having their Registered Office at Unit 2 Annickbank Innovation Campus, Annick Road, Irvine, United Kingdom, KA11 4LF (Company Number SC342121), (“**Licensor**”, “**us**” or “**we**”) for:

- access to the Licensor’s product known as E-Top-Set Root Cause Analysis E-learning Platform (“**Product**”); and
- online or electronic documents (“**Documents**”).

We licence use of the Product and Documents to you on the basis of this Licence. We do not sell the Product or Documents to you. We remain the owners of the Product and Documents at all times.

### **Important notice to all users:**

By registering to use the Product from this website ([www.e-topset.com](http://www.e-topset.com)) (“**Website**”) you agree to the terms of this licence which will bind you to the terms of this licence including, in particular, limitations on liability condition 7.

### **You should print a copy of this Licence for future reference.**

## **1 Grant and Scope of Licence**

1.1 In consideration of payment by you of the agreed licence fee (“**Licence Fee**”) and you agreeing to abide by the terms of this Licence and the instructions contained on the Website (“**Instructions**”), we hereby grant to you a perpetual, non-exclusive, non-transferable licence to use the Product and the Documents on the terms of this Licence and the Instructions.

1.2 You may

1.2.1 access and use the Product for your personal business purposes only via the username and password which you provide during the registration process

1.2.2 You may use any Documents in support of the use permitted under condition 1.2.1 and make up to only one copy of the Documents as are reasonably necessary for its lawful use.

## **2 Restrictions**

Except as expressly set out in this Licence, you undertake:

2.1 not to copy or attempt to copy the Product or Documents;

2.2 not to make or attempt to make alterations, modifications, adaptations, enhancements or translations of the whole or any part of the Product, nor supplement or attempt to supplement the Product or change its specifications nor permit the Product or any part of it to be combined with, or become incorporated in, any other programs;

- 2.3 not to or attempt to disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the Product;
- 2.4 not attempt in any way to remove or circumvent any technical or logical protection measures or anti-copy devices utilised by us to protect the Product;
- 2.5 to keep your username and password details secure and confidential and not to share or allow your username and password details to be used by any third party whatsoever;
- 2.6 not to license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Products and/or Documents available to any third party without the prior written consent of the Licensor;
- 2.7 attempt to obtain, or assist third parties in obtaining, access to the Product and/or Documents otherwise than via the Licensor; and
- 2.8 to use all reasonable endeavours to prevent any unauthorised access to, or use of, the Product and/or the Documents and, in the event of any such unauthorised access or use, promptly notify us.
- 2.9 promptly notify the Licensor of any breach of this clause of which you become aware.

### **3 Licensee data**

- 3.1 You shall own the rights in and to all data inputted by you for the purpose of using the Product (“**Licensee Data**”).
- 3.2 In the event of any loss or damage to Licensee Data, your sole and exclusive remedy shall be for the Licensor to use reasonable commercial endeavours to restore the lost or damaged Licensee Data from the latest back-up of such Licensee Data maintained by the Licensor. We shall not be responsible for any loss, destruction, alteration or disclosure of Licensee Data.
- 3.3 If we process any personal data on your behalf when performing our obligations under this Licence, the parties record their intention that the you shall be the data controller and we shall be a data processor and in any such case:
  - 3.3.1 you acknowledge and agree that the personal data may be transferred or stored outside the European Economic Area or the country where you are located;
  - 3.3.2 you shall ensure that you are entitled to transfer the relevant personal data to us so that we may lawfully use, process and transfer the personal data in accordance with this licence on your behalf;
  - 3.3.3 each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

### **4 Intellectual property rights**

- 4.1 You acknowledge that all intellectual property rights in the Product and the Documents anywhere in the world belong to us, that rights in the Product are licensed (not sold) to you, and that you have no rights in, or to, the Product or the Documents other than the right to use them in accordance with the terms of this Licence.

4.2 You acknowledge that you have no right to have access to the Product in source code form or in unlocked coding or with comments.

## **5 Confidentiality**

5.1 Each party shall keep confidential any information obtained from the other pursuant to this Licence which is designated as confidential by either party or which is clearly confidential by its nature, provided that this clause shall not extend to any information which was rightfully in the possession of either party prior to this Licence or which is already in the public knowledge or becomes so at a future date otherwise than through a breach of this clause.

5.2 Each party further agrees that any such confidential information shall not be disclosed to any third party without the other party's prior written consent. Each party shall ensure that its servants, agents, collaborators and sub-contractors are bound by the provisions of this clause. The foregoing obligations shall survive any termination of this Licence.

## **6 Limited warranty**

6.1 We warrant that:

6.1.1 the Product will, when properly used and on an operating system for which it was designed, perform substantially in accordance with the functions described in the Documents; and

6.1.2 that the Documents correctly describe the operation of the Product in all material respects.

6.2 The warranty does not apply:

6.2.1 if the defect or fault in the Product results from you having amended or attempted to amend the Product; and

6.2.2 if the defect or fault in the Product results from you having used the Product in contravention of the terms of this Licence or the Instructions.

6.3 We shall use our reasonable endeavours to ensure that the Product is reliable however we make no warranty that the Product is error free and no guarantee that the Licensee will be able to operate the Product without any interruption.

6.4 Except as set in clause 6.1, we do not make any express or implied warranty with respect to the Product, including without limitation any implied warranty of merchantability or fitness for a particular purpose.

6.5 We do not warrant the results of the use of the Product or warrant that any or all failures, defects, or errors will be corrected, or warrant that the functions contained in the Product will meet your requirements.

## **7 Limitation of liability**

7.1 You acknowledge that the Product has not been developed to meet your individual requirements, and that it is therefore your responsibility to ensure that the facilities and functions of the Product as described in the Documents meet your requirements.

- 7.2 We only supply access to the Product and Documents for your private use within your business, and you agree not to use the Product or Documents for any other purposes.
- 7.3 We shall not under any circumstances whatever be liable to you, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Licence for:
- 7.3.1 loss of profits, sales, business, or revenue;
  - 7.3.2 business interruption;
  - 7.3.3 loss of anticipated savings;
  - 7.3.4 loss or corruption of data or information;
  - 7.3.5 loss of business opportunity, goodwill or reputation; or
  - 7.3.6 any indirect or consequential loss or damage.
- 7.4 Other than the losses set out in condition 7.3 (for which we are not liable), our maximum aggregate liability under or in connection with this Licence whether in contract, or otherwise, shall in all circumstances be limited to a sum equal to the Licence Fee. This maximum cap does not apply to condition 7.5.
- 7.5 Nothing in this Licence shall limit or exclude our liability for:
- 7.5.1 death or personal injury resulting from our negligence;
  - 7.5.2 fraud or fraudulent misrepresentation;
  - 7.5.3 any other liability that cannot be excluded or limited by the law of Scotland.
- 7.6 This Licence sets out the full extent of our obligations and liabilities in respect of the supply of access to the Product and Documents. Except as expressly stated in this Licence, there are no conditions, warranties, representations or other terms, express or implied, that are binding on us. Any condition, warranty, representation or other term concerning the supply of access to the Product and Documents which might otherwise be implied into, or incorporated in, this Licence whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

## **8 Duration and Termination**

- 8.1 This Licence shall commence on the date of registration by you and shall continue for a minimum period of 12 months. Thereafter, the Licence shall renew annually for further periods of 12 months until terminated by either party in accordance with the terms of this agreement
- 8.2 We may terminate this Licence immediately by written notice to you if you commit a material or persistent breach of this Licence which you fail to remedy (if remediable) within 7 days after the service of written notice requiring you to do so.
- 8.3 We may, at our sole discretion, terminate this Licence on provision to you of 3 months written notice of such termination.

8.4 You may terminate this Licence at any time by written notice to us

8.5 Upon termination for any reason:

8.5.1 all rights granted to you under this Licence shall cease; and

8.5.2 you must immediately cease to use the Product and Documents.

## **9 Communications between us**

9.1 If any condition in this Licence requires you to give us notice in writing, you can send this to us by e-mail or by pre-paid post to Kelvin Top-Set Ltd at 55 Main Road, Fairlie, Largs, Ayrshire KA29 OAA. We will confirm receipt of this by contacting you in writing, normally by e-mail.

9.2 If we have to contact you or give you notice in writing, we will do so by e-mail to the email address you provide to us in registering for access to the Product.

9.3 any notice given by you to us, or by us to you, will be deemed received and properly served immediately when posted on our website, 24 hours after an e-mail is sent, or three days after the date of posting of any letter. 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.

## **10 Events outside our control**

10.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this Licence that is caused by an Event Outside Our Control. An Event Outside Our Control is defined below in condition 10.2.

10.2 An Event Outside Our Control means any act or event beyond our reasonable control, including without limitation failure of public or private telecommunications networks.

10.3 If an Event Outside Our Control takes place that affects the performance of our obligations under this Licence:

10.3.1 our obligations under this Licence will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control; and

10.3.2 we will use our reasonable endeavours to find a solution by which our obligations under this Licence may be performed despite the Event Outside Our Control.

## **11 Other important terms**

11.1 We may transfer our rights and obligations under this Licence to another organisation, but this will not affect your rights or our obligations under this Licence.

11.2 You may only transfer your rights or your obligations under this Licence to another person if we agree in writing.

11.3 This Licence and Instructions and any document expressly referred to in it constitutes

the entire agreement between you and us. You acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of us which is not set out in this Licence or any document expressly referred to in it.

- 11.4 If we fail to insist that you perform any of your obligations under this Licence, 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.
- 11.5 Each of the conditions of this Licence operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.
- 11.6 This Licence, its subject matter and its formation (and any non-contractual disputes or claims) are governed by the law of Scotland. We both agree to the exclusive jurisdiction of the Scottish courts.