

TERMS OF SERVICE

1. GENERAL

1.1 **TERMS OF SERVICE.** These Terms of Service (“**Terms of Service**”) govern your access to and use of Kiite Inc. (“**Company**”, “**Kiite**,” “**us**,” “**we**,” and “**our**”) services including the Kiite Chat Agent and Reporting Platform (“**Platform**”) and any other services, this site, plans, features, products, content, applications, software, maintenance and training offered by us from time to time (collectively, the “**Service**”) identified in one or more of Kiite’s sales order documents (“**Sales Order**” or “**Sales Orders**”).

1.2 **ACCEPTANCE.** By using the Service, you accept and agree to be bound by (i) these Terms of Service, (ii) all Sales Orders which are incorporated herein by reference and (3) our Privacy Policy, found at <https://kiite.ai/privacy> (the “**Privacy Policy**”) which is incorporated herein by reference (collectively referred to as the “**Agreement**”). This Agreement constitutes a binding agreement between the customer (“**Customer**,” “**you**,” and “**your**”) and Kiite. This Agreement represents the parties’ entire understanding regarding the Services and shall govern over any prior oral or written agreement or discussions or different or additional terms or conditions of any purchase order, invoice or other non-Kiite ordering document. No other terms or conditions of any purchase order, invoice or other non-Kiite ordering document shall apply to the Services, unless agreed to in writing by both parties. In the event of conflict or inconsistency between the terms and conditions of these Terms of Service and the terms of the Privacy Policy, the terms and conditions of these terms and conditions of these Terms of Service will prevail. In the event of conflict between the terms and conditions of these Terms of Service and the terms and conditions of a Sales Order, the terms and conditions of the Sales Order shall prevail but only to the extent of such conflict or inconsistency.

2. SERVICES & OBLIGATIONS

2.1 **SERVICES.** Unless otherwise provided in a Sales Order, Services are purchased by Customer on a subscription basis (“**Subscription Service**”). Customer can also purchase add-ons to the Subscription Service (“**Optional Services**”). Subject to your compliance with this Agreement, Kiite grants you a non-transferable, non-exclusive, worldwide right to access and use the Services during the term set out in the applicable Sales Order (“**Subscription Term**”).

2.2 **STANDARD INTEGRATION SERVICES.** Unless otherwise specified in a Sales Order, Kiite shall provide at no additional cost, upon an initial deployment of Subscription Service, the following:

- (a) activation of the Platform with one (1) of the Customer’s communication systems;
- (b) connect the Platform to two (2) data sources and importation of data from that source for training purposes; and
- (c) one (1) launch session delivered through video conferencing.

2.3 **KIITE OBLIGATIONS.**

(a) **PROVISION OF SERVICES.** Kiite will at all times: (i) provide the Service according to the terms and conditions set out in this Agreement; (ii) in accordance with all specifications applicable to the Service in an applicable Sale Order; and perform each Service in a manner that meets or exceeds all applicable service levels set out in such Sales Order.

(b) **MAINTAIN THE SERVICES AND BE RESPONSIVE TO CUSTOMER CONCERNS.** Kiite will maintain the availability and performance of the Service, provide support and respond to your requests as set forth in [Appendix “A”](#) (Support Services).

(c) **KIITE ACCOUNTS.** In order to use the Service, an Account will need to be created us and Customer will provide information including but not limited to, one or more names, email addresses, login usernames and passwords (each a “**Kiite ID**”). You are responsible for maintaining the confidentiality of your Kiite IDs. You agree not to use the Kiite IDs, usernames or passwords of any third party or disclose your Kiite IDs, usernames or passwords to any third party. You are responsible for any and all activity that occurs on your Account except as otherwise set out in the Agreement and except for any activity resulting from Kiite’s breach of the Agreement or negligence. If you suspect any unauthorized use with your Account, you must notify us immediately. You agree to provide us with correct and complete Account information at all times and inform us of any changes to the information you have provided. We will, in accordance with our Privacy Policy, keep your usernames and passwords confidential.

2.4 **CUSTOMER OBLIGATIONS.**

(a) **USE OF SERVICE.** Customer will utilize the Service in accordance with the applicable terms set out in this Agreement and any associated Sales Order.

(b) **ADMINISTRATOR.** Customer shall assign at minimum one individual who will act as Customer’s point of contact (the “**Administrator**”) for the purpose of providing data and communicating with Kiite as to the Service. Except as to the parties’ respective obligations under the Agreement, Customer shall be solely responsible for the use by the Administrator and its Users of the Service.

(c) **ACKNOWLEDGMENT.** Customer acknowledges Kiite is retained on a non-exclusive basis and Kiite may provide any services, including without limitation, services similar to the Services for its other customers provided that Kiite may not use Customer Data to do so.

(d) **NECESSARY EQUIPMENT TO USE THE SERVICES.** You are responsible for obtaining and maintaining all telecommunications, broadband, computer hardware, software, equipment and services needed to connect to, access and use the Services. Except as specifically set forth in a Sales Order, Kiite shall not be responsible for supplying any hardware, software or other equipment to you under this Agreement.

2.5 **USER LIMITS.** Services that we provide are subject to user limits and restrictions, as applicable. Each Sales Order defines specific user limits which may include, without limitation, the locations at or through which you can use the Services, the number of allowable users and the number of allowable files. You agree to use the Services within the user limits set out in the Sales Order. It is your responsibility to ensure that you do not exceed those limits and restrictions. Extra charges will apply quarterly if you exceed any user limits at our then-current user fees.

3. FEES AND PAYMENT

3.1 **FEES.** You agree to pay all fees set out in your Sales Order. Unless otherwise set forth in the relevant Sales Order, you will be billed in advance on an annual basis for any Subscription Services. In addition, the annual invoice will include charges related to any previous years' or quarters' volume related overages or other adjustments as set forth in our Sales Order. All fees are non-cancellable and non-refundable, other than as set out herein, and are based on Services subscriptions purchased and not actual usage. For the avoidance of doubt, you shall not be entitled to any refund in the event of unused Services. Unless otherwise agreed between you and us, charges may be paid by electronic funds transfer, wire payments, cheque or credit card. Credit card payments will be subject to an additional 3% service fee. Please advise upfront and it will be added to your invoice.

3.2 **ADDITIONAL FEES.** You agree to pay any additional fees, including any pre-approved out-of-pocket expense that may be incurred beyond the Standard Integration Services as agreed to in a Sales Order.

3.3 **PAYMENT TERMS.** Unless otherwise set out in the Sales Order, Service fees are payable annually in advance within thirty (30) days after the date of invoice. All fees are exclusive of taxes, levies or duties imposed by taxing authorities, and Customer shall be responsible for payment of all such taxes, levies or duties (excluding taxes based on Kiite's income), even if such amounts are not listed on a Sales Order. All fees are payable in U.S. Dollars or in such other currency as agreed to in writing by the parties without set-off or deduction.

3.4 **OVERDUE CHARGES.** Unpaid invoices that are not the subject of a written good faith dispute are subject to interest at a rate of 1.5% per month on the outstanding balance, or the legal maximum interest rate, whichever is lower, plus all reasonable expenses of collection, in addition to any other remedies we may have.

3.5 **SUSPENSION RIGHTS.** We reserve the right to suspend the Services on prior written notice to you if you fail to make any payment within thirty (30) days after it becomes due. Any suspension of the Services by us under this section shall not relieve you of your payment obligations under this Agreement. We will not be liable to you nor to any third party for any suspension of the Services resulting from your non-payment of fees. Any suspension will continue until all past due invoices have been paid in full.

4. KIITE CONTENT AND LICENSE

4.1 **KIITE CONTENT.** The Services contain Content, Documentation, and Software owned by Kiite, its suppliers or licensors ("**Kiite Content**"). For greater certainty and the avoidance of doubt, Kiite Content expressly excludes any Customer Data. Kiite, its suppliers and licensors own and retain all rights, including all intellectual property rights, in and to the Services and the Kiite Content. The Services and Kiite Content are protected by copyright, trademark, patent, trade secret and other laws.

4.2 **OWNERSHIP AND LICENSE.** The Services and Kiite Content are licensed and not sold to you. All rights not expressly granted to you in this Agreement are reserved and retained by us. You may not copy, modify, translate, publish, broadcast, transmit, distribute, perform, display, use or sell any Kiite Content or other Content (other than Customer Content) appearing on or through the Services. You must not modify, build upon or block any portion or functionality of the Services. We grant you a limited, revocable, non-sublicensable license to reproduce and display the Kiite Content (excluding software code) in connection with using the Services during the Subscription Term. No Service, nor any part of any Service, may be reproduced, duplicated, copied, sold, resold, visited, or otherwise exploited for any commercial purpose without our express written consent. You may not misuse the Services. You may use the Services only as permitted by law. The licenses granted by us terminate if you do not comply with this Agreement.

4.3 **RESTRICTIONS.** Customer shall not (and shall not permit others to): (i) license, sub-license, sell, transfer, distribute or share the Services or Kiite Content or make any of them available for access by third parties; (ii) create derivative works based on or otherwise modify the Services or Kiite Content; (iii) disassemble, reverse engineer or decompile the Services or Software or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Services or any software, documentation or data related to or provided with the Services; (iv) access the Service or Kiite Content in order to develop a competing product or service; (v) use the Service or

Kiite Content to provide a service for others; (vi) use the Kiite Platform to operate more or different types of applications than permitted under the applicable Sales Order; (vii) remove or modify a copyright or other proprietary rights notice on or in the Services or Kiite Content; (viii) use a computer or computer network to cause physical injury to the property of another; (ix) violate any Applicable Law; (x) disable, hack or otherwise interfere with any security, digital signing, digital rights management, verification or authentication mechanisms implemented in or by the Services; (xi) intentionally include, send, store or run software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs from the Services; (xii) intentionally cause a computer to malfunction, regardless of how long the malfunction persists; or (xiii) alter, disable, or erase any computer data, computer programs or computer software without authorization.

4.4 **FEEDBACK.** Except for any Customer Data or Customer Confidential Information contained therein, Customer grants to Kiite a worldwide, perpetual, irrevocable, royalty-free permission to use and incorporate into the Services any suggestion, enhancement request, recommendation, correction, or other feedback provided by Customer.

4.5 **MODIFICATIONS.** We are entitled to modify or update the Services from time to time in order to adapt it technically, to change menu guidance's or layouts or to expand or limit functionality in a way that does not materially alter the Services.

5. PROPRIETARY RIGHTS

5.1 **OWNERSHIP AND RESERVATION OF RIGHTS TO KIITE INTELLECTUAL PROPERTY.** Kiite and its licensors own all rights, titles and interests in and to the Service and all Intellectual Property Rights therein. Subject to the limited rights expressly granted to you in this Agreement, Kiite reserves all rights, titles and interest in and to the Service, including all Intellectual Property Rights. For the avoidance of doubt, Customer has no ownership interest in the Service.

5.2 **OWNERSHIP OF CUSTOMER DATA and CUSTOMER CONTENT.** Customer Data and Customer Content shall at all times remain the exclusive property of Customer. Customer will retain all right, title and interest in and to such Customer Data and Customer Content. Except for the limited rights expressly granted hereunder for Kiite to use Customer Data and Customer Content solely to provide the Services during the Subscription Term, no additional right to Customer Data or Customer Content is granted to Kiite hereunder and Customer reserves all rights in Customer Data and Customer Content. To the extent that Kiite or its Permitted Subprocessors, access, use, collect, store or otherwise process Customer Data (directly or via the provision of the Services) Kiite will comply with Section 6.

5.3 **GRANT OF RIGHTS.**

(a) **BY KIITE.** Kiite hereby grants you, and your wholly-owned subsidiaries, a non-exclusive, non-transferable, non-sublicensable, royalty-free, worldwide right to use the Service solely during the Subscription Term and only for the internal business purposes of Customer and its wholly-owned subsidiaries subject to the terms and conditions of this Agreement and in accordance with the applicable Sales Order (the "**Enterprise License**").

(b) **BY CUSTOMER.** During the Subscription Term, Customer hereby grants Kiite a non-exclusive, non-transferable, sublicensable, royalty-free, worldwide right to handle Customer Data and Customer Content solely to (i) provide Customer the Service set out in this Agreement and applicable Sales Order; (i) subject to the terms of the Agreement, sublicense the right referred to in subsection (i) to any Subcontractors (defined below) solely to the extent necessary to enable such Subcontractors to fulfill Kiite's obligations under the applicable Sales Order. Where any portion of the Services are performed by Subcontractors, Company shall be responsible and liable for: (i) the performance by Subcontractors of Company's obligations under this Agreement; (ii) coordinating the Subcontractors in the provision of the Services without additional charge to Customer; and (iii) the acts, omissions or defaults of its Subcontractors in the performance of Company's obligations under this Agreement as if they were Company's own acts, omissions or defaults.

5.4 **AGGREGATED INFORMATION.** Customer grants Kiite the right to anonymize the Customer Data so that it does not identify Users or specific transactions carried out by Users, nor contains any Customer Confidential Information (defined below), ("**Anonymous Information**"). Customer agrees that Kiite (i) will own the Anonymous Information, (ii) may create derivative works from the extract information from the Anonymous Information and combine Anonymous Information (hereafter "**Aggregate Data**", to use the Aggregate Data on an Aggregate Basis to any party through any means. For greater certainty, Kiite is prohibited from (and such rights and license specifically excludes) combining parts of information collected or processed from Customer (that does not contain any personal identification information of the user or Customer) with other information from any or all other customers and users that use its software or in a manner that discloses any individually identifiable information about the Customer or any specific transactions the Customers have engaged in.

5.5 **RESTRICTIONS.** Customer will not (i) modify, translate or copy the Service or create any derivative works based on the Service; (ii) reverse engineer, de-compile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms in the Service; (iii) rent, lease, distribute, license, sublicense, sell, resell, assign, transfer, timeshare, offer in a service bureau, or otherwise make Services available to any third party, other than to Authorized Parties as permitted herein; (iv) publish or disclose to third parties any evaluation of Service without Kiite's prior written consent; (v) create any link to Service or frame or mirror any content contained or accessible from, Service; (vi) access

Service in order to build a commercially available product or service which competes with Service; (vii) copy any features, functions, integrations, interfaces or graphics which are part of Service; (viii) violate any Laws; (ix) willfully tamper with the security of the System or tamper with other Kiite Customer accounts (x) access data on the System not intended for the Customer, (xi) log into a server or account on the System that the Customer is not authorized to access, (xii) attempt to probe, scan or test the vulnerability of any part of the System or to breach the security or authentication measures without Kiite authorization; or (xiii) willfully render any part of the System unusable.

5.6 **CORRECTIVE ACTION AND NOTICE.** If Customer becomes aware of any actual or threatened activity prohibited by Section 5.5, Customer shall immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Service and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Kiite of any such actual or threatened activity.

5.7 **STATISTICAL INFORMATION.** Kiite may monitor Customer and User' use of the Services and the Kiite Platform ("User Data") and anonymizes such User Data so that it does not identify Users, Customer, Customer's business and its clients, or specific transactions carried out by Users, nor contains any Customer Confidential Information (defined below). Kiite shall ensure that the process of anonymization cannot be reverse engineered ("**Anonymous Information**"). Such Anonymous Information may be compiled with other data in an aggregate and anonymous manner to derive statistical and performance information related to the provision and operation of the Services and may make such information publicly available. Kiite retains all rights, title and interest in such Anonymous Information.

6. DATA PRIVACY AND SECURITY

6.1 **PRIVACY POLICY.** Our collection and use of your information and information regarding Users is governed by our Privacy Policy. You understand that through your use of the Services, you consent to the collection and use of this information, including the transfer of this information to Canada and/or other countries for storage, processing and use by us provided such processing complies with the terms of the Agreement and applicable privacy laws. As part of providing you the Services, we may need to provide you with certain communications, such as service announcements and administrative messages. These communications are considered part of the Services and your Account.

6.2 **SECURITY.** Company will take and implement appropriate and industry standard technical and organizational measures to protect the Customer Data against accidental, unauthorized or unlawful destruction, loss, alteration, use, deletion, disclosure or access, or other unauthorized or unlawful processing (the "**Security Measures**"). Company will take appropriate steps to ensure compliance with the Security Measures by its employees and contractors to the extent applicable to their scope of performance. Company will ensure that access to Customer Data is limited to only those of its employees and contractors, and the employees and contractors of its Permitted Subprocessors, who have a legitimate reason to access the Customer Data for the purposes of providing the Services to Customer pursuant to the terms of the Agreement.

- I. Kiite shall establish, maintain and enforce during the term of this Agreement reasonable physical, organizational and technological measures in accordance with industry standards designed to: (a) protect the security and confidentiality of the Customer Data; (b) protect against anticipated threats or hazards to the security or integrity of the Customer Data; (c) protect against unauthorized access to or use of the Customer Data; and (d) require that all subcontractors of Kiite who will be accessing the Customer Data, if any, comply with the foregoing.
- II. Kiite will use reasonable efforts to establish and maintain information security practices for its facilities and operations to remain compliant with ISO/IEC 27001.
- III. If you become aware of any Data Incident in the Services, you agree to promptly notify us. If Company becomes aware of the occurrence of any event that has resulted in, or is reasonably likely to result in, a Data Incident, Company will promptly notify Customer in writing, and take all reasonable steps to stop and remediate unauthorized processing, to minimize harm and secure the Customer Data. Company shall provide Customer with the known facts and details concerning any such Data Incident, promptly respond to Customer inquiries and questions, and cooperate with Customer as needed in taking all reasonable and appropriate remedial steps. Company shall not respond to governmental authorities (including any data protection authority) or any other third party or individual concerning such event as it relates to Customer or the Personal Information contained in any Customer Data unless so authorized or requested by Customer, or as otherwise required by applicable law.
- IV. Within 12 months after the commencement of the agreement, at least once in every calendar year during the Term, Kiite will retain, at its sole expense, a highly qualified firm to produce a SOC2 audit report, or any successor or equivalent report, covering the Services being performed hereunder, and will provide Customer with a copy of such SOC2 audit report promptly upon such report becoming available. Kiite will promptly, at no cost to Customer, remedy any deficiency identified in any SOC2 audit report relating to Kiite's security or privacy policies, procedures or practices.
- V. The Services are provided by us from data center facilities to which Users have remote access via the internet in conjunction with certain offline components provided by us under this Agreement. We implement security procedures to help protect your Customer Data from security attacks. However, you understand that use of the Services necessarily involves transmission of your Customer Data over networks that are not owned, operated or controlled by us, and we are not responsible for any of your Customer Data lost, altered, intercepted, copied or stored across such networks. Kiite will take commercially reasonable precautions to ensure the Services are secure.

- VI. **SUBPROCESSING.** Company may only permit Permitted Subprocessors to Process Customer Data, and only for the limited and specific purposes of providing Customer with the Services and for no other purpose. Company shall be responsible and liable for the acts, omissions or defaults of Permitted Subprocessors in the performance of Company's obligations under the Agreement, as if they were Company's own acts, omissions or defaults. Company represents and warrants to Customer that such Permitted Subprocessor complies with all of Company's obligations under the Agreement regarding Processing of Customer Data, including Security Measures. Upon request, Company will provide Customer with a list of all Permitted Subprocessors, and copies of the relevant provisions of Company's agreements with Permitted Subprocessors relating to Company's obligations. Company will notify Customer in writing immediately upon becoming aware of any Data Incident by a Permitted Subprocessor. Notwithstanding anything to the contrary in the Agreement, if Customer raises any privacy or data protection concerns with any Permitted Subprocessors, Customer shall have the right to either: (a) terminate the Agreement immediately upon providing written notice, or (b) prohibit the particular Permitted Subprocessor from accessing the Customer Data.
- VII. **THIRD PARTY REQUESTS.** Company shall refer to Customer all third-party requests for access to, or inquiries or complaints concerning, Customer Data (including any request concerning Personal Information from a Data Subject) and will respond to any such request only by making reference to such referral. All responses to such requests for access to Customer Data are to be handled by Customer, unless prohibited by applicable law, and Company shall provide all reasonable assistance to Customer to facilitate its handling of same. If Customer is required by any applicable law to provide Personal Information that is in Company's possession or control to an individual, at Customer's direction and provided that Customer has provided Company with reasonable prior notice, Company will provide such Personal Information to Customer and will meet any reasonable deadlines communicated to Company for such provision required to enable Customer to comply with any deadlines applicable under applicable law to the provision of such Personal Information. Company shall promptly notify Customer if it is unable to meet any deadline, in order to allow Customer to seek relief from such deadline.
- VIII. **COMPELLED DISCLOSURE.** If Company is required to disclose Customer Data in connection with any judicial proceeding or government investigation, to the extent permitted by applicable law, Company shall immediately, but in any event within 48 hours of receiving notice of the obligation to disclose, notify Customer in writing. Company will consult and cooperate with Customer (to the extent legally permitted) to obtain a protective order from the appropriate governmental authority, or other reliable assurance that confidential treatment will be accorded the Customer Data and will otherwise only disclose that portion of the Customer Data that is required to be disclosed by applicable law.

6.3 **NETWORKS.** Technical processing and transmission of the Service, including Customer Content, may involve: (i) transmissions over various networks; and/or (ii) changes to conform and adapt to technical requirements of connecting networks or devices. Use of or connection to the internet provides the opportunity for unauthorized Persons to circumvent security precautions and illegally gain access to the Service, the Customer Data, the User Data or the Customer Content. In the event of a potential breach we will notify you as soon as possible. We do not guarantee the privacy, security or authenticity of any content, data or information transmitted over or stored in any system connected to the internet but agree to make commercially reasonable efforts to ensure the Customer Data, the User Data or the Customer Content is secure.

6.4 **MAINTENANCE AND REPAIRS.** We use commercially reasonable efforts to ensure that availability of the Services will be uninterrupted and that transmissions will be error-free. However, due to the nature of the internet, this cannot be guaranteed. Also, your access to Services may be occasionally suspended or restricted to allow for repairs, maintenance or the introduction of new facilities or services. We will attempt to limit the frequency and duration of any such suspension or restriction, and we will use commercially reasonable efforts to alert or notify you in the event of any scheduled or non-scheduled suspension of Services. Due to the nature of technical outages, we cannot guarantee notice prior to unplanned outages. We will not be held responsible for any delay or failure to comply with our obligations under these conditions if the delay or failure arises from any cause which is beyond our reasonable control.

7. SUBCONTRACTORS

7.1 We may use third party subcontractors to provide limited parts of the Services from time to time, including data storage and processing and content delivery ("**Subcontractors**"). You consent to us subcontracting these services to the Subcontractors, provided that Kiite shall ensure that these Subcontractors comply with the terms of this Agreement applicable to Kiite.

8. THIRD PARTY SERVICES

8.1 **NON-KIITE SERVICES.** Customer may choose to use services not provided by Kiite ("**Non-Kiite Services**") with the Services and in doing so grants Kiite permission to interoperate with the Non-Kiite Services as directed by Customer or the Non-Kiite Services. Unless specified in a Sales Order: (a) Kiite does not warrant or support Non-Kiite Services, (b) as between Kiite and Customer, Customer assumes all responsibility for the Non-Kiite Services and any disclosure, modification or deletion of Customer Data by the Non-Kiite Services and (c) Kiite shall have no liability for, and Customer is not relieved of any obligations under the Agreement or entitled to any refund, credit, or other compensation due to any unavailability of the Non-Kiite Services or any change in the ability of Kiite to interoperate with the Non-Kiite Services.

8.2 **INTEGRATION FEES:** If applicable and unless otherwise noted on a Sales Order, any data integration fees in connection with Non-Kiite Services is the sole responsibility of the Customer.

9. REPRESENTATIONS AND WARRANTIES

9.1 **WARRANTY.** Kiite warrants that during the Subscription Term the Services will operate without a Material Failure (as defined below) of the Service to perform in accordance with the Product Overview (a **"Defect"**). Customer's exclusive remedy for breach of this warranty is for Kiite to correct or work around the Defect upon request, subject to and in accordance with Kiite's procedures and limitations regarding support. If the Defect persists in causing a material failure in the Service to conform to the Product Overview without correction or work-around forty-five (45) days after written notice to Kiite of a warranty claim under this Section 9.1, then Customer may terminate the affected Service and Kiite shall refund to Customer any prepaid subscription fees, on a pro-rata basis, covering the remainder of the Subscription Term of the affected Service after the date of termination. This Section 9.1 sets forth Customer's exclusive rights and remedies (and Kiite's sole liability) in connection with any Defect or other failure of the Service to perform in accordance with the Product Overview or any other manner.

9.2 **EXCLUSIONS.** The warranty set forth above in Section 9.1 does not cover material failure as a result of (i) misuse of the Platform or Services, (ii) any modifications to the Platform made by any person or entity other than Kiite that is not previously approved by Kiite, (iii) any use of the Subscription Services or Platform by Customer or its Users beyond the scope of the express rights licenses granted in this Agreement, (iv) any use of the Platform in combination with other software, hardware or data, or (v) Kiite's compliance with Customer's request for changes to the Platform or with Customer's designs, specifications or instructions.

9.3 **DISCLAIMER OF WARRANTIES.** Except for the warranties expressly stated in this Agreement, to the maximum extent allowed by Applicable Law, Kiite disclaims all warranties of any kind, express or implied, including warranties and conditions arising under statute, warranties of merchantability, non-infringement or fitness for a particular purpose.

10. INDEMNIFICATION

10.1 **BY KIITE.** We will indemnify, defend and hold harmless Customer from and against all liabilities, damages and costs (including settlement costs and reasonable attorneys' fees) arising out of any claim by a third party against the Customer to the extent based on an allegation that Kiite's technology used to provide the Services to the Customer infringes or misappropriates any copyright, trade secret, patent or trademark right of a third party that is issued or registered in Canada or the United States. In no event will we have any obligations or liability under this section 10.1 arising in whole or in part from any content, information or data provided by Customer, User or other third parties. Kiite shall not be required to indemnify Customer in the event of: (a) modification of the Services by Customer, its employees, or contractors in conflict with Customer's obligations or as a result of any prohibited activity as set forth herein; (b) use of the Services in a manner inconsistent with the Documentation; (c) use of the Services in combination with any other application, product, or service not provided by Kiite if such claim would not have occurred without such combination; or (d) any use of the Services not authorized under the Agreement.

10.2 **CUSTOMER INDEMNIFICATION.** Customer shall indemnify, defend and hold harmless Kiite from and against all liabilities, damages and costs (including settlement costs and reasonable attorneys' fees) arising out of any claim by a third party against Kiite or its affiliates regarding: (i) Customer Content, Customer Data or User Data; (ii) failure by the Customer to obtain any of the necessary consents required by Users under this Agreement; (iii) Customer's use of the Services in violation of this Agreement; (vi) violations of Customer's obligations of privacy to any Person and/or (vii) Customer's use or alleged use of the Services or Platform.

10.3 **POSSIBLE INFRINGEMENT.** If we believe the Services infringe or may be alleged to infringe a third party's intellectual property rights, then we may: (i) obtain the right for you (at our expense) to continue using the Service; (ii) provide a non-infringing functionally equivalent replacement; or (iii) modify the Services so that they no longer infringe. If we do not believe that the options described in this section are commercially reasonable, then we may suspend or terminate Customer's use of the affected Services (with a pro-rata refund of prepaid fees for the Services).

10.4 **PROCESS.** The party seeking indemnification will promptly notify the other party of the claim and cooperate with the other party in defending the claim. The indemnifying party will have full control and authority over the defense, except that: (i) any settlement requiring the party seeking indemnification to admit liability requires prior written consent, not to be unreasonably withheld or delayed; and (ii) the other party may join the defense with its own counsel at its expense.

10.5 **EXCLUSIVE REMEDY.** The indemnities above are Kiite's and Customer's only remedy under this Agreement for third party infringement claims and actions.

11. LIMITATIONS OF LIABILITY AND DAMAGES

11.1 **LIMITATIONS OF LIABILITY.** TO THE EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS EXPRESSLY

EXCLUDED IN THIS SECTION 11.1, THE MAXIMUM AGGREGATE LIABILITY OF EACH PARTY UNDER THIS AGREEMENT, WHETHER BASED ON CONTRACT, IN TORT OR ANY OTHER LEGAL OR EQUITABLE THEORY, SHALL BE LIMITED TO THE AMOUNTS PAID OR PAYABLE BY CUSTOMER FOR THE SERVICE GIVING RISE TO THE CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO: (I) EITHER PARTY'S INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS; (II) BREACH OF PRIVACY LAWS AND (III) CUSTOMER'S OBLIGATION TO PAY FEES.

11.2 EXCLUSION OF DAMAGES TO THE EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS EXPRESSLY EXCLUDED IN THIS SECTION 11.2, NEITHER THE CUSTOMER NOR KIITE SHALL BE LIABLE UNDER THIS AGREEMENT FOR (I) INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, OR (II) LOSS OF USE, DATA, BUSINESS, REVENUE OR PROFITS (IN EACH CASE WHETHER DIRECT OR INDIRECT), EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE FORESEEABLE. THE FOREGOING EXCLUSIONS SHALL NOT APPLY TO EITHER PARTY'S INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS.

12. CONFIDENTIAL INFORMATION

12.1 CONFIDENTIAL INFORMATION. Each party (the "**Receiving Party**") understands that the other party (the "**Disclosing Party**") has disclosed or may disclose information relating to the Disclosing Party's business (together "**Confidential Information**" of the Disclosing Party). Such information includes, without limitation, information relating to pricing of Services, Customer Data and your Kiite ID. The Receiving Party agrees: (i) to take reasonable precautions to protect such Confidential Information; and (ii) not to use (except as permitted in this Agreement) or divulge to any third person such Confidential Information. For the avoidance of doubt, Confidential Information shall not include information that: (i) is or becomes generally known to the public; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation to the Disclosing Party; (iii) is received from a third party without any obligation of confidentiality to a third party or breach of any obligation of confidentiality to the Disclosing Party; (iv) was independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information; or (v) is required by law. The Receiving Party shall promptly return to the Disclosing Party or destroy (with certification of such destruction provided by the Receiving Party upon request) all Confidential Information of the Disclosing Party in its possession or control upon request from the Disclosing Party. The confidentiality and use obligations under this Agreement shall continue indefinitely.

13. TERM AND TERMINATION

13.1 TERM. This Agreement shall commence on the date set out in the first Sales Order and shall remain in effect through the end of the Subscription Term in any current Sales Order, unless terminated earlier pursuant to the terms of this Agreement (the "**Initial Term**"). Your subscription will automatically renew at the end of the Initial Term for an additional 12-month term and shall continue to renew for successive 12-month terms thereafter (each a "**Renewal Term**") unless otherwise agreed to in the Sales Order, or unless either party provides to the other with written notice of your intent not to renew at least ninety (90) days before the expiration of the Initial Term or the Renewal Term. You must cancel the Services at least ninety (90) days prior to the expiration of the Initial Term or Renewal Term in order to avoid being billed for a (further) Renewal Term. Payment for Services for the Renewal Term is due on the first day of the Renewal Term and will automatically be charged to the account that you used for the original subscription.

13.2 TERMINATION. Either party may terminate this Agreement effective immediately upon written notice: (i) if the other party materially breaches a material obligation under this Agreement and does not cure the breach within thirty (30) days after receiving written notice thereof from the non-breaching party; or (ii) if the other party becomes the subject of a petition in bankruptcy or any proceeding related to its insolvency, receivership or liquidation, in any jurisdiction, that is not dismissed within sixty (60) days of its commencement or an assignment for the benefit of creditors.

13.3 EFFECT OF TERMINATION. Upon expiration or other termination of the Service for any reason, your right to access and use the Service shall terminate. If you terminate this Agreement or any Sales Order solely due to a material breach of this Agreement by us, we agree to refund all prepaid fees for the remaining portion of the Subscription Term for the terminated Service within thirty days after the date of termination. If we terminate this Agreement or any Sales Order for your material breach, all fees set out on such Sales Order shall be immediately due and payable.

13.4 DESTRUCTION OF CUSTOMER DATA AT END OF TERM. At the end of the Subscription Term, you will be entitled to extract Customer Content stored using the Services, Customer Data and Non-Anonymized User Data for a period of ten (10) days following termination (the "**Extraction Grace Period**"). Following the Extraction Grace Period, Kiite shall immediately permanently delete all of Customer Content, Customer Data and Non-Anonymized User Data at any time and cancel your Account with us. You acknowledge and agree that archived versions of the Services may include archived copies of Customer Content, Customer Data and Non-Anonymized User Data which may be retained by us for an archive cycle.

13.5 SURVIVAL. Upon termination of this Agreement for any reason, Customer shall pay all amounts owed hereunder. Sections 3.5, 4.1, 4.4, 5, 9, 10, 11, 12, 13 and 14 of this Agreement, together with any other provision required for their construction or enforcement, shall survive termination of this Agreement for any reason.

14. GENERAL PROVISIONS

14.1 **DEFINITIONS.** Capitalized terms used in this Agreement, and not otherwise defined in this Agreement, shall have the following meanings:

- (a) "Account" means the Kiite account, which includes a username and password, used by Customer to access and use the Service;
- (b) "Applicable Laws" means all statutes, codes, rules, regulations, by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings or awards, policies, guidelines, or any provisions of the foregoing, including general principles of common and civil law and equity, binding on or affecting the Person referred to in the context in which such word is used;
- (c) "Content" means any and all content, data and other materials including, without limitation, videos, music, sounds, images, live streams, documentation, reports, materials, files, text, images, logos, artwork, graphics, pictures, advertisements, works, works of authorship or any other intellectual property contained in any such materials;
- (d) "Customer Data" means non-anonymized electronic data pertaining to Customer, the Users and the Users that is collected and/or processed using the Service, including but not limited to, personal information, login credentials, and other information that relates to such parties' use of the Service or otherwise inputted into the Services by Customer in connection with Customer's subscription.
- (e) "Customer Content" any Content and Customer Data inputted into the Services or otherwise provided to Kiite, or inputted into the Service from Customer, or by Customer or Customer's User ("Customer Input") and any derivative work, enhancement, or output from the Service derived from or based on, learned from or otherwise related to Customer Input but not including any Anonymous Information as defined in this Agreement.
- (f) "Data Incident" means (i) any unlawful, accidental, or unauthorized access to or possession, use, alteration, loss, release, destruction, deletion or disclosure of Customer Data stored in Company's possession or control, or in the possession or control of Permitted Subprocessors; or (ii) unlawful or unauthorized access to Company's or any Permitted Subprocessors' systems, equipment or facilities that result in access to or loss, deletion, disclosure, possession, release, destruction, use or alteration of Customer data.
- (g) "Data Subject" means an identified or identifiable natural person; where an "identifiable natural person" means an individual who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier, or one or more factors specific to the individual's physical, physiological, mental, economic, cultural or social identity.
- (h) "Documentation" means documentation relating to the operation and use of the Services that are provided by Kiite to Customer under this Agreement, as updated by Kiite from time to time;
- (i) "Intellectual Property" means inventions, discoveries, or improvements (whether patented or able to be patented and whether or not reduced to practice), including patents, patent applications, certificates of invention, utility models, continuations, continuations-in-part, provisional, divisions, reissues, renewals, re-examinations and extensions thereof; trade secrets, know-how, designs, methodologies, processes, rights in data, and similar rights; semiconductor chip protection and mask work right; the protection of works of authorship or expression and copyright (whether or not registered); trademark, trade names, service marks, logos, domain names and trade dress; and similar rights under any laws or international conventions throughout the world, whether now existing or hereafter arising or developed, including the right to apply for registrations, certificates, or renewals with respect thereto, the rights to prosecute, enforce, and obtain damages.
- (j) "Intellectual Property Rights" means any rights pertaining to Intellectual Property.
- (k) "Material Failure" means if the Platform is unavailable for use by Customer less than (i) 95% of the time in the case of the collection of Customer Data by the Platform and (ii) 99% of the time in the case of the Subscription Services and Platform.
- (l) "Permitted Subprocessors" means any third party engaged by Company to provide services and that has physical or logical access to and Processes Customer Data.
- (m) "Personal Information" means any information Processed by Company pursuant to the Agreement, relating to a Data Subject.
- (n) "Person" means a natural person or any legal, commercial or governmental entity, such as, but not limited to, a corporation, general partnership, joint venture, limited partnership, limited liability company, trust, business association, group acting in concert, or any person acting in a representative capacity.
- (o) "Platform" means the software, code, technology and servers used in the operation and provision of the Services and includes

the Documentation and Software;

(p) "Process" means any operation or set of operations which s performed on Personal Information, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alternation, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

(q) "Product Overview" means the overview of the Services to be provided to a Customer set out in the Sales Order.

(r) "Software" means software products used in connection with the Service, like the dashboard and reporting center and the Kiite chat agent, and may include code that is licensed under third party license agreements, including open source, made available or provided with the Software, as applicable;

(s) "Users" means Users that use or view the Customer Content or Customer's employees, representatives, consultants, contractors or agents who are authorized to use the Services for Customer's benefit and have unique user identifications and passwords for the Services;

(t) "User Data" means the electronic data concerning the characteristics and activities of Users (including personal information of such Users) collected and analyzed by the Service relating to such Users use or viewing of the Customer Content.

14.2 **ASSIGNMENT.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Service Orders), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, sale of all or substantially all of its assets or other change of control provided that on assignment of the Agreement by a party via change of control the other party shall have the right to terminate the Agreement.

14.3 **CONFLICT.** Unless otherwise specified, in the event of any conflict between these Terms of Service and a Sales Order, the terms of the Sales Order shall govern.

14.4 **NOTICE.** Except as otherwise provided herein, all notices shall be in writing and deemed given upon: (i) personal delivery; (ii) when received by the addressee if sent by an internationally recognized overnight courier (receipt requested); (iii) the second business day after mailing; or (iv) the first business day after sending by email, except that email shall not be sufficient for notices of termination or regarding a Claim. Notices shall be sent to the parties as set forth on the signature page of the applicable Sales Order or as otherwise agreed to by the parties in writing.

14.5 **PUBLICITY.** You permit us to list you as a customer and use your standard logo for our promotional and marketing use, including public announcements, during the Subscription Term.

14.6 **NO SOLICITATION OF EMPLOYEES.** Each party agrees that, during the term of this Agreement, and for a period of one (1) year following the termination of this Agreement, it will not directly solicit for employment the employees of the other party without such other party's prior written consent.

14.7 **FORCE MAJEURE.** Except for your obligation to pay fees for the Services, neither party will be responsible for failure of performance due to causes beyond its control. Such causes include, without limitation, accidents, acts of God, labour disputes, actions of any government agency, shortage of materials, acts of terrorism or the stability or availability of the Internet or a portion of it.

14.8 **WAIVER AND AMENDMENT.** A waiver of any right is only effective if it is in writing and only against the party who signed such writing and for the circumstances given. Any modification of this Agreement must be in writing and signed by both parties.

14.9 **SEVERABILITY.** If any provision of this Agreement is held invalid or unenforceable for any reason, the remainder of the provision shall be amended to achieve as closely as possible the economic effect of the original term and all other provisions shall continue in full force and effect.

14.10 **RELATIONSHIP OF THE PARTIES.** The parties are independent contractors. Nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship.

14.11 **GOVERNING LAW; VENUE; TIME FOR BRINGING ACTION.** This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable in that Province. Any action or proceeding arising from or relating to this Agreement may only be brought in the courts located in Kitchener, Ontario and each party irrevocably submits to such exclusive jurisdiction and venue. The *United Nations Convention on Contracts for the International Sale of Goods* (also called the Vienna Convention, and which is cited in the statutes of Canada as the International Sales of Goods Contracts Convention Act) will not apply to this Agreement or the transactions contemplated by this Agreement.

No cause of action arising hereunder or relating hereto may be brought more than two (2) years after it first accrues.

14.12 EXECUTION. This Agreement may be executed and delivered electronically or by facsimile and the parties agree that such electronic or facsimile execution and delivery will have the same force and effect as delivery of an original document with original signatures, and that each party may use such electronic or facsimile signatures as evidence of the execution and delivery of this Agreement by all parties to the same extent that an original signature could be used.

APPENDIX “A”

SUPPORT SERVICES

Subject to the terms and conditions of the Agreement, Kiite shall provide the following Support Services for the Subscription Services and KIITE Platform during the applicable Subscription Term:

1. **UPDATES:** Kiite shall provide core bug fixes for the Kiite Platform which are made generally commercially available to its customers at no additional charge as part of the Standard Support Services in the next chronological minor release of the platform.
2. **TECHNICAL SUPPORT:** Kiite shall provide email support for technical issues. Kiite will respond to email requests for technical issue support within the applicable Response Time. All such requests must be submitted to Kiite at the following email address: support@kiite.ai. If a technical issue renders the Platform inoperable (a **“Critical Issue”**), Kiite shall work diligently to correct the problem or implement a workaround as soon as practicable. All other issues and problems will be corrected in the next chronological minor release of the platform as described in paragraph 1, above. Elapsed time for Response Time will only be counted during Business Days and/or Business Hours. A **“Business Day”** means any calendar day, other than Saturday, Sunday or a day on which commercial banks in Canada are authorized or required to be closed. **“Business Hours”** shall be from 8:00 AM to 8:00 PM Eastern Standard Time, on Business Days. **“Response Time”** means, (i) for Standard Support Services provided at no additional cost, twenty-four (24) Business Hours, or (ii) for Premium Support Services which Customer has purchased pursuant to an Order during the applicable Subscription Term, four (4) Business Hours.
3. **UPTIME:** As part of the Standard Support Services provided at no additional cost, Kiite will use commercially reasonable efforts to have the Platform and Subscription Services available to Customer for the Uptime Commitment, measured monthly, excluding (a) planned downtime of which Kiite shall give at least eight (8) hours’ notice via the Platform, (b) any unavailability caused by circumstances beyond Kiite’s reasonable control as set forth in Section 14.7 (Force Majeure) of the Agreement, (c) unavailability arising from acts or omissions of Customer or its employees, contractors or agents or the Customer Network or (d) outages associated with third party systems that Kiite communicates with on behalf of the Customer. **“Uptime Commitment”** means (i) 95% of the time in the case of the collection of Customer Data by the Platform and (ii) 99% of the time in the case of the Subscription Services and Platform being available for use by Customer free of any Critical Issues. In the event that the Subscription Services and Platform are not available to Customer, Customer will notify Kiite and Kiite will use commercially reasonable efforts to solve problems or issues with the Subscription Services and Platform to enable Customer to access and use the Subscription Services and Platform. If Kiite does not meet the Uptime Commitments indicated above and Customer has provided the required notification to Kiite, Customer will be eligible to receive Service Credits measured as a percentage discount off of the monthly invoice for the affected period as further described below. The foregoing shall be Kiite’s sole and exclusive obligation and Customer’s sole and exclusive remedy in the event that the Subscription Services and Platform are not available to Customer.

Collection of Customer Data	Service Credit	Platform Availability
<95% - >= 90%	10% of monthly invoice	N/A
<90% - >= 80%	30% of monthly invoice	<99% - >= 95%
<80%	100% of monthly invoice	<95%

4. **EXCLUSIONS:** Unless otherwise agreed in writing by the parties, Kiite will not be responsible for providing Support Services for, and the Uptime Commitment shall exclude, any downtime due to: (i) any modifications to the Platform made by, or for, Customer (other than by Kiite, its Affiliates or subcontractors); (ii) defects in the Customer Network or any software or equipment not supplied by Kiite; (c) defects arising in connection with use of the Platform with any software or equipment not supplied or recommended by Kiite (other than the Customer System); or (d) defects resulting from the misuse, improper use or abuse of the Subscription Services or Platform.