

## TERMS OF SERVICE

### 1. ACCEPTANCE OF SERVICES

Welcome to Kiite Inc. (“**Kiite**”, “**we**”, “**us**” or “**our**” as context dictates). These terms of service (these “**Terms of Service**”) in combination with any other applicable terms, including but not limited to our Privacy Policy <https://kiite.ai/privacy/>, which are incorporated by reference (these Terms of Service together with the Privacy Policy, our “**Terms**”) govern our customer’s (“**you**”, “**your**”, or “**Customer**” as context dictates) use and access of the website <https://kiite.ai> and any subdomains (collectively “**Website**”) and Services (as defined below). Please read our Terms carefully since they are legally binding and have sections which are important. By using the Services, you confirm that you accept our Terms and that you agree to abide by them. The word “**you**” in these Terms of Service refers to the person who is subscribing to our Services acting solely for the person’s own benefit or acting on behalf of others, including a corporation or other legal entity (“**Other Persons**”). If you are acting on behalf of Other Persons, you are (i) binding them to the obligations of our Terms, and (ii) warrant that you have the authority, actual or implied, to bind such Other Persons to our Terms.

### 2. SERVICES & OBLIGATIONS

2.1 SERVICES. You may subscribe for the Services at <https://kiite.ai> In the event you wish to sign up for our Enterprise Services, please contact us at [sales@kiite.ai](mailto:sales@kiite.ai).

#### 2.2 CUSTOMER OBLIGATIONS.

(a) Registration and Account Set-up. In order to obtain Services, you must subscribe for the Services at <https://kiite.ai>. In the event you wish to sign up for our Enterprise Services, please contact us at [sales@kiite.ai](mailto:sales@kiite.ai). Once you create an Account, you are responsible for managing the Account and keeping its credentials safe. You should also inform us promptly of any changes to the information provided in order to ensure effective communication with us.

(b) Usage. Services that we provide are subject to usage limits and restrictions, as applicable. It is your responsibility to ensure that you do not exceed those limits and restrictions.

(c) You acknowledge and agree that: (i) you are 18 years old or older; (ii) you have the authority to bind yourself, or such other party which you may be representing, to our Terms; and (iii) your use of the Service will (A) be solely for purposes that are permitted by these Terms of Service.

(d) Restrictions. Customer shall not (and shall not permit others to): (i) license, sub-license, sell, transfer, distribute or share the Services or make any of them available for access by third parties other than as agreed upon herein; (ii) create derivative works based on or otherwise modify the Services; (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 Services in order to develop a competing product or service; (v) use the Service to provide a service for others; (vi) remove or modify a copyright or other proprietary rights notice on or in the Services; (vii) use a computer or computer network to cause physical injury to the property of another; (viii) violate any Applicable Law; (ix) disable, hack or otherwise interfere with any security, digital signing, digital rights management, verification or authentication mechanisms implemented in or by the Services; (x) intentionally include, send, store or run software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs from the Services; (xi) intentionally cause a computer to malfunction, regardless of how long the malfunction persists; (xii) alter, disable, or erase any computer data, computer programs or computer software without authorization; or (xiii) introduce information through our Platform which places confidentiality burden that is not agreed upon between you and us.

(e) Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by subsection (d) Customer shall immediately: (i) 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 (ii) notify Kiite of any such actual or threatened activity.

#### 2.3 KIITE OBLIGATIONS

(a) Suspicious Activity. If we suspect any unauthorized access to your Account or that there is suspicious activity in relation to your Account, we retain the right, but do not have the obligation, to suspend your Account and take any other related action as we deem reasonable, and you agree to assist in executing such actions, which may involve your resetting of passwords or taking other measures as may be required.

(b) We will endeavor to provide you Services in accordance with acceptable industry standards, our Privacy Policy, and any Documentation as applicable.

**3. Fees and payment**

3.1 Subject to the Service you subscribe to, your use of Services may require payment of ongoing monthly and/or annual subscription fee (the “**Subscription Fee**” or “**Fee**”). All Fees may be changed by us at our discretion but any such change will only impact the subscription period after the expiry of the then current subscription period. Fees shall be in the legal currency of your jurisdiction or as set out on our Website depending on which jurisdiction is applicable to you and your purchase of Services. You are responsible for paying all Fees and applicable taxes using a payment method offered on the Website.

3.2 If your payment is past due, we may, at our sole discretion, (i) administer a fee for non-sufficient funds in case a payment method (e.g. credit card) fails, (ii) suspend or terminate the Service, and (iii) pursue all remedies otherwise available to us. You agree to reimburse us for any reasonable costs and expenses incurred in the course of collecting payment past due. Any amount not paid when due shall be subject to late fees at a rate of two per-cent (2%) per month (or the maximum amount allowable by applicable law, whichever is less).

**4. PROPRIETARY RIGHTS**

4.1 **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 pursuant to these Terms of Service, 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.

4.2 **OWNERSHIP OF CUSTOMER DATA.** As between Kiite and Customer, Customer owns Customer Data.

4.3 **GRANT OF RIGHTS.**

(a) By Kiite. Subject to your Subscription requirements and the Terms, Kiite hereby grants you a non-exclusive, non-transferable, non-sublicensable, worldwide right to use the Service solely during the Term and only for your internal business purposes.

(b) By CUSTOMER.

i. Customer hereby grants Kiite a non-exclusive, transferable, sublicensable, royalty-free, worldwide right to handle Customer Data to (A) provide Customer Service set out in these Terms of Service, and (B) generate Aggregate Information (defined below).

ii. You agree that all such data may be, without further required consent by you, handled by a third-party for either (A) the third party’s own legitimate business purposes, (B) purposes which serve our business purposes, including transaction processing and data monitoring or storage, or (C) for regulatory or other reasons which are imposed on us in Canada, United States of America, or in any other jurisdiction we provide services or may otherwise decide to store or process such data.

iii. Aggregated Information. We’ll own all Aggregated Information for any purpose we see fit, including but not limited to publication of, and creation of derivative works from the Aggregated Information, provided that such usage will not reveal to a third party any Confidential Information or the identity of an Authorized User.

iv. Your Input. We shall have a royalty-free, worldwide, transferrable, sublicensable, irrevocable, perpetual license to use or incorporate into Services any Customer Input. You shall have no obligation to provide Customer Input. Although we do not seek to monitor or control the submission of Customer Input, we reserves the right to delete, move and edit any Customer Input submitted where, in our sole and absolute discretion, it is considered prudent or necessary to do so.

**5. Disclaimers**

IN ADDITION TO ANY OTHER DISCLAIMERS SET OUT IN OUR TERMS, THE SERVICES PROVIDED, INCLUDING ALL CONTENT AND FUNCTIONS, ARE “AS IS” WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND MADE BY US. WE EXPRESSLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, RELIABILITY OR ACCURACY, OR INTEGRATION WITH ANY SYSTEM.

WE ASSUME NO LIABILITY IN RESPECT OF YOUR USE OF THE SERVICES OR INTEGRATION OF THE SERVICES WITH ANY THIRD PARTY SYSTEM OR ANY OF YOUR SYSTEMS AND SOFTWARE.

WE DO NOT WARRANT THAT THE SERVICES OR THE FUNCTIONS THEREIN WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT THE SERVICES OR ANY ITEM CONNECTED WITH SERVICES IS FREE OF VIRUSES OR ANY HARMFUL COMPONENTS, OR THAT ANY TRANSMISSION TO AND FROM US OR COMMUNICATION BY YOU IS CONFIDENTIAL. YOU AGREE THAT YOUR USE OF THE SERVICES CREATES NO OBLIGATION UPON US AND THERE IS NO RELATIONSHIP (WHETHER CONTRACTUAL, FIDUCIARY OR OTHERWISE) CREATED BETWEEN YOU AND US OTHER THAN PURSUANT TO THESE TERMS OF SERVICE.

ALL THIRD PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY CONCERNING ANY THIRD PARTY MATERIALS IS STRICTLY BETWEEN YOU AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD PARTY MATERIALS.

TO THE FULLEST EXTENT OF THE LAW, WE DO NOT REPRESENT THAT ANY INFORMATION EXCHANGED BETWEEN A PARTY IN THE PROVISION OF SERVICES IS SECURE, EVEN IF WE BECOME AWARE OF ANY, OR ARE TOLD ABOUT, A POTENTIAL BREACH.

## 6. INDEMNIFICATION

6.1 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; (iii) Customer's use of the Services in violation of the Terms; (vi) violations of Customer's obligations of privacy to any Person; and (vii) Customer's use or alleged use of the Services.

6.2 POSSIBLE INFRINGEMENT. If we believe the Services infringe or may be alleged to infringe a third party's intellectual property rights, then we shall inform you in a timely manner and your sole recourse and remedy shall be to discontinue your use of Services and terminate your Subscription.

6.3 We may, at our sole discretion and expense, choose to assume the exclusive defense and control of any matter otherwise subject to indemnification by you and you shall not in any event settle any matter without our written consent.

## 7. LIMITATIONS OF LIABILITY AND DAMAGES

7.1 Under no circumstances will we, our representatives, affiliates, suppliers, or other third parties with whom we do business (our "**Business Partners**") be liable for any damages, including direct, indirect, incidental, special, consequential or exemplary damages arising from or relating to your use of the Services. This includes, but is not limited to, any loss of profit, earnings, anticipated earnings, interruption or loss of business, or any consequential losses, problems, or fault howsoever arising out of your use of the Services.

7.2 Without limiting the foregoing in this section, the limit on our (including our representatives, affiliates, suppliers or Business Partners) total cumulative liability to you or any person for any claims arising from or relating to the Services will be limited to a maximum of ten (10) Canadian dollars.

7.3 Should a jurisdiction that does not allow the exclusion of incidental, special or consequential damages apply to these Terms of Service, the total liability to you or any person in connection with any incidental, special or consequential damages will be limited by Section 7.2.

## 8. TERM AND TERMINATION

8.1 TERM. Your subscription shall commence on the date you subscribe for the Services and shall remain in effect until you cancel your Subscription or we terminate your Subscription for any reason.

8.2 TERMINATION. You may terminate your Subscription upon 30 days' notice by use of the self-help function on our Platform. We may cancel your Subscription immediately for any reason without any liability to you.

8.3 EFFECT OF TERMINATION. Upon expiration or other termination of the Service for any reason, all rights granted herein to you shall terminate and you shall no longer be able to use the Services. 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 have the right to 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.

8.4 SURVIVAL. Upon termination of your Subscription for any reason, the applicable clauses of the Terms continue to apply.

**9. GENERAL PROVISIONS**

9.1 DEFINITIONS. Capitalized terms used in these Terms of Service, and not otherwise defined in these Terms of Service, shall have the following meanings:

- (a) "Account" means the user account, which includes a username and password, associated with a Customer on our Platform to access and use the Service;
- (b) "Aggregated Information" means all information which is anonymized after being derived from your use of Services and including without limitation, usage information, performance metrics, data and other content, provided however, such information will not be able to reveal User or your identity.
- (c) "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;
- (d) "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;
- (e) "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 personal information, login credentials, and other information that relates to such parties' use of the Service;
- (f) "Documentation" means documentation relating to the operation and use of the Services that are provided by Kiite to Customer under these Terms of Service, as updated by Kiite from time to time;
- (g) "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.
- (h) "Intellectual Property Rights" means any rights pertaining to Intellectual Property.
- (i) "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;
- (j) "Platform" means the software, code, technology and servers used in the operation and provision of the Services and includes the Documentation and Software;
- (k) "Service" means the non-enterprise version of a product and solution as offered by us over our Platform and any associated Content, and "Services" means more than one Service.
- (l) "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;
- (m) "Users" means Persons 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;
- (n) "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.

9.2 **PERMISSION FOR COMMUNICATION.** We use email and other electronic means to stay in touch with you. You agree that when you provide us your e-mail address or personally identifying information (e.g. name, address) during or prior to access of the Services, you: (i) consent to receive communications from us, our Affiliates, and applicable Users in electronic formats, including via the email address you have submitted, SMS messages to your telephone, or other agreed upon contact methods; (ii) can opt-out from receiving communication from any such party at any time by completing the formalities on our Website, but we do not take on any liability for any communication of another party to you, particularly if you have provided your contact information to them independently rather than using the communication functions of the Website; and (iii) agree that our Terms, agreements, notices, disclosures and other communications that we provide you electronically satisfy any legal requirement that such communications would satisfy if they were in writing and physically presented to you.

9.3 **MODIFICATION OF OUR TERMS.** We reserve the right, at our sole discretion, to amend these Terms of Service at any time. We will ensure the Terms, which are available on our Website, show the date of last amendment. Your continued use of our Services shall constitute your (i) affirmative acknowledgement of our most current Terms, and (ii) agreement to abide and be bound by our Terms, as amended. If at any time you choose not to accept our revised Terms, then please do not use the Services and as applicable, terminate your subscription and Account in accordance with the Terms.

9.4 **GOVERNING LAW.** Our Terms and any access to or use of the Services shall be governed by, and construed in accordance with the internal laws of the Province of Ontario and the federal laws of Canada, without giving effect to any choice or conflict of law provision or rule (whether of the Province of Ontario or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the province of Ontario.

9.5 **ARBITRATION.** Any controversy, dispute, disagreement or claim arising out of, relating to or in connection with our Services or any breach thereof, including any question regarding its existence, validity or termination, shall be finally and conclusively resolved by arbitration under *International Commercial Arbitration Act, 2017, SO 2017, c 2 (Ontario)* (the "**Rules**"). There shall be one arbitrator selected in accordance with the Rules. The parties to the arbitration shall equally share the fees of the arbitrator and the facility fees and the parties shall each bear their own legal costs and expenses of the arbitration; provided, that the arbitrator shall have the authority to award such fees, costs and expenses in the decision of the arbitrator. The arbitration shall be conducted in English. Any decision of the arbitrator shall be final and binding on the parties and their respective successors and assigns and there shall be no right to appeal such decision, whether on a question of law, a question of fact, or a mixed question of fact and law. Notwithstanding the foregoing, each party shall have the right to seek injunctive or other equitable relief that may be related to the breach of confidentiality obligations or violation of the Intellectual Property Rights set forth in these Terms of Service.

9.6 **WAIVER OF CLASS PROCEEDINGS.** You hereby waive any right you may have to commence or participate in any class action lawsuit against us related to any claim, dispute or controversy and, where applicable, you and any Users hereby agree to opt out of any class proceeding against us otherwise commenced.

9.7 **SEVERABILITY.** If any portion or provision of our Terms shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of our Terms, or the application of such portion of provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of our Terms shall be valid and enforceable to the fullest extent permitted by law.

9.8 **HEADINGS AND SUMMARIES.** The headings, captions and summaries in these Terms of Service are for convenience only and in no way define or describe the scope or content of any provision of these Terms of Service.

9.9 **NOTICES.** Except as otherwise stated in our Terms or as expressly required by law, any notice to us, including for purposes of termination, shall be given in writing by certified postal mail to 14 Erb St. West, Waterloo, ON, N2L 1S7. Any notice to you shall be given to the most current email address in your Account.

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

9.11 **OTHER RULES OF INTERPRETATION.** Any reference to gender includes all genders; words importing the singular number only shall include the plural and vice versa; the word "or" is not exclusive; the words "including", "includes" and "include" mean "including without limitation"; and "shall" means "will" and "must", all three of which can be changed interchangeably and shall not mean "may".

9.12 **NO WAIVER OF COVENANTS.** Failure by us to insist upon the strict performance of any of the covenants, agreements, terms, provisions or conditions contained in the Terms or to exercise any election shall not be construed as a waiver or relinquishment of such covenant, agreement, term, provision or condition but the same shall continue and remain in full force. No waiver by us shall be deemed to have been made unless expressed in writing.

9.13 **ENTIRE AGREEMENT AND PRIORITY.** These Terms of Service, in combination with any subscription order form terms and conditions and our Privacy Policy, incorporated by reference, constitute the entire agreement between Kiite and you and supersede all prior communications, agreements and understandings, written or oral, with respect to the subject matter of our Terms. In the event of any conflict between the Terms and an order form, the terms and conditions set out in the Terms shall govern.