

## **AGREEMENT REGARDING PRODUCTS AND SERVICES**

Kiona Holding AS, Reg. No. 983190510, Leirfossvegen 27, N-7038 Trondheim, Norge, ("**Kiona**") is the owner, developer and provider of the Product and thereto related services under the Agreement.

Kiona and the Customer are collectively referred to as the "**Parties**" and each of them separately as a "**Party**".

If this Agreement or any other document is translated into a language other than English, and if the translated version is different from the English language version, the English language version will take precedence.

### **1 BACKGROUND**

1.1 Kiona uses its subsidiaries (the "**Service Provider**") to market, sell, install and support the Product to customers in various markets.

1.2 The Customer has by placing an order for products and services entered into a binding agreement with Kiona and accepted Kiona's General Terms and Conditions attached hereto.

1.3 The Product consists of the following:

- a) infrastructure (hardware, communication service and installation) provided by the Service Provider under the Agreement (the "**Infrastructure**");  
and
- b) the cloud service and software Kiona Edge, provided as Software-as-a-Service ("**Kiona Edge**").

1.4 The purpose of this agreement regarding products and services is to define the Parties overall contractual relationship connected to the Product as stated below.

1.5 In consideration of the above, Kiona and the Customer have now agreed on delivery and installation of the Product as well as subscription to Kiona Edge on the terms and conditions set out in the Quotation and Purchase Order and in accordance with the terms and conditions set forth herein.

### **2 PROCEDURE**

2.1 By placing an order for Kiona's products and services, each agreement which is marked in Section 3.1 enters into force in accordance with the terms and conditions set forth in such appendix. Unless otherwise stated, the terms and conditions set out herein under Section 4- 9 shall apply in full for each of the contractual documents forming this Agreement.

2.2 Initial orders are signed by the Parties per relevant delivery part.

2.3 Any additional order is based on the relevant partial service according to Appendix 1-2. A new order is signed separately for each service purchased by Customer with reference to this Agreement regarding products and services, meaning that the terms and conditions herein shall apply to such additional order.

### **3 CONTRACTUAL DOCUMENTS AND ORDER OF PRECEDENCE**

3.1 The following contractual documents shall apply between the Parties and constitute the entire agreement (the “**Agreement**”) between the Parties with respect to the Product and shall be in substitution for any ongoing arrangement made between the Parties and shall prevail over any correspondence or document issued by the Parties, or implied by law, trade custom, practice or course of dealing.

1. Quotation and Purchase Order
2. This Agreement regarding products and services
3. GTC Hardware, Appendix 1
4. GTC Kiona Edge, Appendix 2

3.2 In case of any discrepancy or conflict between the contractual documents, this agreement regarding products and services shall prevail and thereafter the contractual documents listed above and any sub-appendices for the relevant service in numerical order, unless the circumstances clearly requires otherwise, as the case may be.

### **4 ASSIGNMENT**

The Customer may not without the prior written consent of Kiona assign or transfer any part of its rights or obligations under the Agreement. Kiona shall have the right to assign or transfer any part of its rights or obligations under the Agreement.

### **5 CONFIDENTIALITY**

5.1 During the term of the Agreement and for a period of 5 years thereafter, the receiving Party undertakes not to disclose or reveal any information (regardless of whether it is in oral, written, electronic or other form), without the disclosing Party’s prior written consent, regarding the disclosing Party’s business which may be considered a trade or professional secret, or otherwise use such information for any purpose other than for the receiving Party’s performance of its obligations under this Agreement. Information that the disclosing Party has declared to be confidential shall at all times be considered a trade or professional secret.

5.2 This confidentiality undertaking shall not apply to information the receiving Party can prove it learned of in a manner other than through this Agreement or which is public knowledge. Nor does this confidentiality undertaking apply when the receiving Party is required to disclose information in accordance with any law, enactment, stock market regulation or decision by governmental authorities.

## **6 FORCE MAJEURE**

- 6.1 A Party shall be discharged from liability for a failure to perform an obligation under this Agreement due to a circumstance beyond the Party's control. Circumstances giving rise to such discharge are war or warlike acts, restrictions by public authorities, fire, strike, blockade, prohibition, defects or other similar events, provided that the affected Party immediately gives written notice to the other Party of such event ("**Force Majeure Event**").
- 6.2 If performance of significant parts of the Agreement is prevented for more than three months due to a Force Majeure Event, the other Party shall be entitled to terminate the Agreement with immediate effect. Neither Party shall have any liability to the other Party as a consequence of termination of the Agreement due to a Force Majeure Event.

## **7 NOTICES**

- 7.1 Any notice which is required under the Agreement to be in writing, or for which a Party otherwise considers confirmation of the other Party's receipt to be necessary, shall be sent to the Parties' addresses, as specified on the purchase order.
- 7.2 Notice shall be deemed to have been received by a Party: (i) if delivered by courier: upon delivery, (ii) if sent by registered letter: two business days after posting and (iii) if sent by e-mail: at the time of transmission, if receipt is confirmed by the recipient Party or if the transmitting Party also sent the notice by registered letter the same day.
- 7.3 Written confirmation showing that a notice has been delivered by courier or sent by registered letter shall constitute proof of receipt. Any change of address shall be communicated to the other Party as prescribed in this Section 7.

## **8 TERM**

- 8.1 The Agreement shall enter into force when a signed purchase order has been submitted and shall remain in force for a period of three (3) years. If no written notice of termination has been given no less than (3) months prior to the contract end date, the term of the Agreement shall automatically be extended for an additional three (3) year period until terminated by either Party – subject to the notice period stipulated herein – effective at the end of the current term of extension.
- 8.2 The Service Provider may terminate this Agreement for cause (i) upon 30 days written notice of a Customer material breach if such breach remains uncured at the expiration of such period, or (ii) if the Customer becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

## **9 GOVERNING LAW AND DISPUTE RESOLUTION**

- 9.1 The Agreement shall be governed by the substantive law of Sweden.

- 9.2 Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce (the “**SCC**”). The seat of arbitration shall be Gothenburg. The language to be used in the arbitral proceedings shall be English (unless otherwise decided by the Parties).
- 9.3 The Rules for Expedited Arbitrations shall apply, unless the SCC in its discretion determines, taking into account the complexity of the case, the amount in dispute and other circumstances, that the Arbitration Rules shall apply. In the latter case, the SCC shall also decide whether the Arbitral Tribunal shall be composed of one or three arbitrators.
- 9.4 The Parties undertake, without any limitations in time, not to disclose the existence and content of an award arising out of or in connection with this contract, nor to disclose information about negotiations, arbitral proceedings or mediation arising out of or in connection with this contract. The aforementioned shall apply unless otherwise is provided by law, other regulations, decisions by an authority, stock exchange rules or good practices in the stock market or if it is necessary for the execution of an award.

## **10 MODIFICATION OF THE CONDITIONS**

The conditions of this Agreement may be amended by the Product Owner at any time during the term of the Agreement. If the Product Owner makes changes, the Product Owner will post the revised Agreement at [www.kiona.com](http://www.kiona.com). Any material changes to this Agreement, as well as any price adjustment according to paragraph 11.2 in Appendix 2, will be notified to the Customer by e-mail not later than thirty (30) days prior to the entry into force thereof. Such material changes shall in all events be deemed to entry into force thirty (30) days after the Customer’s receipt of the notification e-mail.

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## **APPENDIX 1 GTC HARDWARE**

### **1 GENERAL**

These general terms and conditions for hardware (the “**GTC Hardware**”) shall apply in full on all deliveries of hardware provided by Kiona to the Customer unless otherwise explicitly agreed in writing by the Parties.

### **2 PRODUCT INFORMATION**

Product information and information in quotations, purchase orders and price lists shall be binding only to the extent it is expressly referred to in the Agreement.

### **3 DELIVERY**

3.1 If a delivery clause has been agreed, it shall be interpreted in accordance with current INCOTERMS. If no delivery clause is agreed, the delivery shall be “Ex Works” (EXW, Kiona’s production facilities, Incoterms 2010). The hardware shall be deemed delivered and the risk will pass according to the applicable trade term.

3.2 All installations of hardware must be done by approved installers and in accordance with guidelines as provided by Kiona to the Customer from time to time.

### **4 DELIVERY TIME, DELAY ETC.**

4.1 Kiona shall, if Kiona finds that it cannot deliver on time, or if delay appears likely on its part, without delay notify the Customer of this and state the cause of the delay and, in so far as possible, the time when it is estimated that delivery can be effected.

4.2 If the delivery is delayed because of a circumstance constituting ground for relief according to these GTC Hardware or because of a circumstance for which the Customer is responsible, the delivery time shall be extended to such extent as is reasonable with regard to the circumstances of the individual case. The same shall apply if the delay has occurred because of delay or error in a sub-contractor’s delivery, fire, accident, power failure or other such event unexpected by Kiona even if the circumstance is not to be regarded as Force Majeure.

4.3 If the Agreement involves successive deliveries, each delivery shall be regarded as an independent transaction. Hence, in case of delay of a partial delivery, the Customer may not terminate the Agreement, or make other claims regarding other partial deliveries.

4.4 If Kiona finds or can foresee that it will have an insufficient amount of the hardware to be able to fulfil its delivery obligations, and this is caused by a circumstance mentioned above under this Section 4, Kiona shall have the right to make a reasonable distribution of

obtainable hardware to its customers after having considered its own, and associated companies, needs.

- 4.5 If a delivery is delayed (having, if applicable, considered the extended delivery time according to Section 4.2 above) and this is not due to a circumstance for which the Customer is responsible, the Customer shall be entitled to terminate the purchase with regard to the part subject to delay, if the delay is of essential importance for the Customer and Kiona realised or should have realised this. If Kiona fails to deliver the hardware in time the Customer may in writing demand delivery within a final reasonable period which shall not be shorter than one (1) week. If Kiona fails to deliver within such final period and this is not due to any circumstance for which the Customer is responsible, the Customer may by written notice to Kiona, cancel the delivery in respect of the part of the hardware which cannot be taken in use due to the delay.
- 4.6 Should the Customer terminate the purchase, the Customer is entitled to compensation for damages, unless Kiona can show that the delay is caused by a circumstance beyond Kiona's control and which Kiona cannot have reasonably avoided or overcome. The total amount of damages shall in no case exceed 10 percent of the agreed price for the part of the delivery cancelled.
- 4.7 Except for the right of termination stipulated in Section 4.5 above and the limited right of compensation for damages stipulated in this Section 4, all other claims in respect of Kiona's delay shall be excluded. This limitation of Kiona's liability shall not apply however, where Kiona has been guilty of gross negligence.
- 4.8 If the Customer finds that it will be unable to accept delivery of the hardware on the agreed date, or if delay on its part seems likely, the Customer shall without undue delay notify Kiona thereof in writing stating the reason for the delay and, if possible, the time when the Customer will be able to accept delivery.
- 4.9 If the Customer fails to accept delivery on the agreed date, the Customer shall nevertheless make any payment which is dependent on delivery as if the hardware in questions had been delivered. Kiona shall arrange storage of the hardware at the Customer's risk and expense. If the Customer so requires, Kiona shall insure the hardware at the Customer's expense.

## **5 PAYMENT, PRICE, RECEPTION OF HARDWARE ETC.**

- 5.1 Unless otherwise agreed, Kiona will invoice when the hardware is delivered to the Customer pursuant to Section 3 above. Invoices shall be payable within thirty (30) days after the date of issue of such invoice.
- 5.2 Any undisputed amount not paid when due will be subject the European central bank reference rate + 8 % annual interest rate. The Customer will also reimburse any costs or expenses (including, but not limited to, reasonable attorneys' fees) incurred by Kiona to collect any amount that is not paid when due. Kiona is also entitled to terminate the purchase and to take back the hardware.

- 5.3 Electronic invoices and PDF invoices sent by email are free of charge. For paper invoices Kiona charge a climate fee of 2,5 EUR per invoice.
- 5.4 All prices are excluding VAT.
- 5.5 The Customer shall arrange for the hardware to be received in an appropriate and secure manner. If the hardware are or are suspected to be faulty, the Customer shall – for the avoidance of consequential loss – consult Kiona before unloading or storing. If the Customer does not consult Kiona before the hardware are unloaded or stored and this leads to loss to either of the Parties, the Customer shall be liable for such loss.
- 5.6 If the Customer does not pay the agreed price within two weeks from due date Kiona is entitled to terminate the purchase. In such case Kiona is entitled to compensation for damages. The same shall apply if the Customer does not participate in the purchase to an extent that can reasonably be expected in order to allow Kiona to complete the sale or if the Customer does not pick up or accept the hardware.

## **6 WARRANTY**

- 6.1 Kiona undertakes to repair at no cost and without undue delay all such defects and errors in the hardware reported in writing by the Customer to Kiona during the warrant period, which are attributable to material, construction or manufacturing or Kiona's or manufacturer's instructions concerning the use, maintenance or cleaning of the hardware. The repair may also be done by providing the Customer with substitute equipment. The warranty period is two (2) years from the date of delivery of the hardware.
- 6.2 To enable the repair of the defect or error, the Customer shall place the hardware to be repaired at Kiona's disposal for the time required during Kiona's normal working hours.
- 6.3 The warranty does not cover normal wear and tear of the hardware or the repair of a defect or error attributable to (a) external factors, e.g. accident, fluctuation of electricity or air conditioning, damage caused by thunder, fire or water; b) misuse of the hardware or negligence or failure to follow the instructions for use, maintenance or cleaning of the hardware; c) alterations or repairs made by the Customer or a third party (d) failure to comply with the operating environment specifications for the hardware (e) the damage has been caused during delivery and (f) the deficiency is due to that expired, outdated hardware has not been replaced based on Kiona's recommendation.
- 6.4 If it is established that the defect or error reported by the Customer is not covered by the warranty, Kiona shall be entitled to charge 100 EUR per hour for diagnosis and location of the defect. In addition, Kiona shall be entitled to charge the Customer for such agreed corrections of defects or errors as are not covered by the warranty.
- 6.5 Kiona's liability for the defects and errors of the hardware shall be limited to fulfilment of the warranty obligations under this Section 7. Following expiration of the warranty period, Kiona's liability for the defects and errors of the hardware shall be limited to the obligations as otherwise set forth herein.

6.6 Kiona does not provide any warranty for defects or errors related to third-party hardware provided by the Customer as part of the Infrastructure. If the Customer reports a fault and that fault is related to third-party hardware, the Service Provider has the right to invoice the cost for fault detection and analysis at 100 EUR per hour.

## **7 LIABILITY FOR DEFECTS AND DEFICIENCIES, DELIVERY INSPECTION, COMPLAINT, ETC.**

7.1 Kiona is not liable for defects caused by material received from the Customer or because of specifications stipulated by the Customer. The liability of Kiona does not cover defects or deficiencies caused by circumstances which occur after the risk has passed to the Customer. Kiona shall not be liable for defects or deficiencies manifesting themselves more than two (2) years after the delivery date.

7.2 The Customer may not invoke defect or deficiency in the hardware unless, within the below stated periods, he informs Kiona as to the defect or deficiency.

7.3 When hardware are delivered, the Customer shall immediately check kind, quality and quantity and check that any packing is undamaged and any seals unbroken. Defects or deficiencies discovered, or which should have been discovered on delivery of the hardware shall be notified in writing to Kiona within one (1) week after delivery. If the defect or deficiency can be assumed to have occurred during transport of the hardware both Kiona and the forwarder shall immediately be informed to this effect.

7.4 In other respects, a complaint with regard to defect or deficiency shall be notified to Kiona in writing within reasonable time after the defect or deficiency was or should have been discovered or otherwise made known to the Customer by complaint notified by some other party, however never later than within the time period stipulated in Section 7.1 above. The Customer shall in the notice state how the defect or deficiency manifests itself.

7.5 If the Customer fails to give notice within the time-limits set out above in this Section 7, Customer shall lose the right to claim in respect of the defect or deficiency.

7.6 Kiona shall on receipt of notification of error be entitled itself immediately to arrange inspection and analysis (below inspection) of hardware delivered. If such inspection cannot be carried out for the reason that the Customer does not permit the taking of this measure, the hardware shall be deemed to be of the quality and quantity stipulated in the Agreement. After having received written notification Kiona is entitled to, by replacement of hardware, remedy any defect resulting from faulty manufacturing, with the speediness allowed by the current circumstances.

7.7 The Customer shall take appropriate measures to care for the defect hardware and is responsible for any work or costs in connection with replacement.

7.8 If Kiona does not replace defect or deficient hardware within the time period stipulated in Section 7.6 above the Customer may demand a reduction of the purchase price corresponding to the defect or deficient hardware or may terminate the purchase in writing.

Termination may only take place if the defect or deficiency is material, the breach of contract is fundamental and Kiona knew or ought to have known this. Upon termination the Customer is entitled to compensation for damages unless a circumstance mentioned in Section 4.2 above is at hand, hindering a deliverance of non-defect hardware. In no case shall the compensation for damages amount to more than ten (10) percent of the agreed price for the hardware concerned by the termination.

- 7.9 Kiona shall have no further liability for defects or deficiencies other than what is stipulated above. This shall apply to all loss that the defect or deficiency may cause including direct and indirect loss. This limitation of Kiona's liability shall, however not apply, where Kiona has been guilty of gross negligence.

## **8 DAMAGE TO PROPERTY CAUSED BY THE HARDWARE ETC.**

- 8.1 The Customer shall indemnify and hold Kiona harmless to the extent that Kiona incurs liability towards any third party in respect of loss or damage for which Kiona is not liable towards the Customer according to Sections 6-7.
- 8.2 Kiona shall only be responsible for the hardware meeting the agreed specification and quality and makes no representations as to the suitability of the hardware for certain purposes unless otherwise stated herein.
- 8.3 Kiona shall not be liable to the Customer in respect of loss that the hardware cause the Customer or third parties. Kiona shall thus not be liable for damage caused by the hardware:
- i. to real or movable property while the hardware are in the Customer's possession, or
  - ii. to products produced by the Customer or to products in which the Customer's products are included, or for damage to real or movable property caused by these products because of the hardware.

## **9 INTELLECTUAL PROPERTY**

- 9.1 Kiona has not verified the possible existence of third-party intellectual property rights which might be infringed as a consequence of the sale and/delivery of the hardware and cannot be held liable for any loss or damages in that respect.
- 9.2 The sale of hardware shall not, by implication or otherwise, convey any license under any intellectual property right relating to the compositions and/or applications of the hardware, and Customer expressly assumes all risks.
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## APPENDIX 2 GTC KIONA EDGE (SAAS)

### 1 GENERAL

These general terms and conditions for the Cloud Service Kiona Edge (the “**GTC Kiona Edge**”) shall apply in full on all deliveries of services provided by Kiona to the Customer unless otherwise explicitly agreed in writing by the Parties.

### 2 DEFINITIONS

2.1 In these GTC Kiona Edge the following terms shall have the meaning given below.

**“Customer Data”**

shall mean information that belongs to the Customer and that is entered into and stored in the Software by the Customer or the Service Provider via the Service (including Customer Personal Data).

**“Customer Personal Data”**

shall mean any Customer Data that qualifies as personal data under the at any time applicable Data Privacy Laws.

**“Data Privacy Laws”**

shall mean any law or regulation in force concerning the processing of Customer Personal Data, including but not limited to the General Data Protection Regulation, other European Union legislation relating to the processing of personal data and at any given time, given decisions, advice, recommendations and opinions by a supervisory authority with the power to conduct supervision of processing of personal data under the Data Privacy Laws.

**“GTC Kiona Edge”**

shall mean these General Terms and Conditions for the Cloud Service Kiona Edge.

**“Intellectual Property Right”**

shall mean, including but not limited to, any patent, registered design, copyright, trademark, trade secrets and any other intellectual or industrial property right as well as the right to apply to register any of the mentioned rights.

**“Product Owner”**

shall mean Kiona Holding AS.

**“SaaS”**

shall mean Software-as-a-Service, meaning a software licensing and delivery model in which software is licensed on a subscription basis and is centrally hosted.

**“Service”**

shall mean the SaaS in relation to the cloud based software Kiona Edge, which the Service Provider will provide the Customer access to in accordance with the Agreement.

**“Service Provider”**

shall mean Kiona’s subsidiary.

**“Software”**

shall mean Kiona’s software (Kiona Edge and other cloud services provided by Kiona under this Agreement).

**”Start Date”**

shall, unless otherwise agreed, mean the day when the delivery of the Service shall begin. The Start Date occurs when the Service Provider has made the necessary authorization information and other instructions for accessing the Service available to the Customer (thus, no special acceptance is required from the Customer for the Start Date to occur).

**“Third Party Systems”**

shall mean any infrastructure, hardware (including, without limitation, sensors), APIs, software and/or service (including, without limitation, telecommunication or Internet access services) which the Customer has implemented and uses in connection with the Services or otherwise irrespective of if approved by the Service Provider or not, other than the Infrastructure and the Software.

**“Users”**

shall mean those of the Customer’s users who are duly authorized by the Customer to use the Service and who have been provided with user identifications and passwords by the Service Provider.

**3 RIGHT OF USE**

- 3.1 The Product Owner, or any third party from whom the Product Owner derives its right, owns and shall retain all rights, title and interest, including any Intellectual Property Rights, in and to the Software and the Service. Nothing in the Agreement shall be construed as granting or conferring, fully or partly, any such rights to the Customer. The Customer’s rights to the Service are strictly limited to the right to use the Service in accordance with the terms of the Agreement.
- 3.2 Provided that the Customer pays the agreed fees, the Customer is granted a non-exclusive, non-transferable and non-sub licensable right of use for the term of the Agreement solely for the Customer’s internal business purposes, entitling the Customer to access the Service via telecommunication and to, via suitable Customer software (e.g. emulation software or browser), use the Service according to the terms of the Agreement.
- 3.3 The Customer is not entitled to use the Service beyond or exceeding the extent of use as provided for in the Agreement or to make the Service available to third parties or let third parties use the Service. Third parties (such as Customer’s consultants and other contractors) may only use the Service with the Service Provider’s prior written consent (such consent not to be unreasonably withheld). The Customer recognizes the need for such consent and

undertakes to request and receive the Service Provider's written consent for any third party use.

- 3.4 Should the Customer wish to use the Service for other purposes than the purposes set out in the Agreement and herein, or to use other services than the Service set out in the Agreement, a separate agreement shall be entered into by the Parties.
- 3.5 The Customer hereby assigns to Kiona the full utilization and disposal right - unlimited in time and regardless of whether the Agreement has ceased to apply, to the data / information that the Service generates and which is linked to the Customer.
- 3.6 Kiona's full utilization and disposal rights must thus also remain in the period after the Customer has ceased to be a customer of Kiona. Customer admits that Kiona treats and processes the information, e.g. with the purpose of creating value adding services for the customers, obtaining statistics and for analysis purposes. Kiona, however, undertakes not to supply third parties, without the Customer's consent, information derived from the Customer, unless the information in question has previously been unidentified. In the case of a transfer of Kiona's service, Kiona has the unlimited right to have an acquirer take over the information.
- 3.7 Kiona fully owns all refined data stored in Kiona's platform unless other agreements exist with parties from which the data has been retrieved.
- 3.8 When the Customer purchases the addon service API Connect, i.e. when a customer wants to retrieve sensor data from Kiona's solution via Kiona's API – the Customer obtains utilization and disposal rights over the data collected by sensors in the Customer's properties (unless agreements with third party sensor providers prevents this) such as temperature, humidity and measured outdoor temperature. In this case, Kiona at the same time owns full utilization and disposal rights as described under clause 3.5 to this data, to be able to deliver the service.
- 3.9 When there are affected parties who do not have a direct customer relationship with Kiona, such as a customer of the Customer or a tenant in a Customer owned property in cold-rent markets, the Customer is responsible for making sure that an agreement exists between the Customer and the affected party which ensures that Kiona is allowed to install sensors in the party's properties/apartments and that Kiona has full utilization and disposal rights to collected sensor data according to clause 3.5.
- 3.10 The Customer cannot use data collected from Kiona's platform to build competing solutions, forward or sell the data to third parties.
- 3.11 Once the data has left the Kiona's platform as regulated by clause 3.8 it is up to the Customer to take full responsibility for the data being handled according to GDPR. Data in Kiona's platform is treated according to Kiona's GDPR policy.

#### **4 DUTIES AND RESPONSIBILITIES OF SERVICE PROVIDER**

- 4.1 The Service Provider shall provide the Service to the Customer from the Start Date.

4.2 The Service Provider is entitled to engage sub-suppliers for the fulfillment of the Service and other obligations under this Agreement. The Service Provider is fully responsible towards the Customer for the due performance of such sub-supplier.

4.3 The Service Provider shall make backup copies of Customer Data.

## **5 DUTIES AND RESPONSIBILITIES OF CUSTOMER**

5.1 The Customer shall:

(i) ensure access to Customer software (e.g. emulation software or browser), equipment and proper telecommunication services according to Service Provider's instructions and/or as needed to access the Service;

(ii) make sure that Customer Data is in the agreed format and virus-free, and not in any other way capable of damaging or negatively affecting the Software or the Service;

(iii) follow the Service Provider's instructions for the use of the Service; and

(iv) assist the Service Provider and in other respects take any necessary actions that are reasonably required for the Service Provider to fulfill its obligations in relation to the Service.

5.2 The Customer shall see to that the maximum number of named Users of the Service does not at any time exceed the number of named Users.

5.3 The Customer shall keep authorization information and other instructions provided by the Service Provider in a secure manner, protected from third party access. Any such information shall only be distributed to Users.

5.4 The Customer undertakes not to use or permit use of the Service, including by uploading, e-mailing, posting, publishing or otherwise transmitting any material for any purpose that may (i) menace or harass any person or cause damage or injury to any person or property, (ii) involve the publication of any material that is false, defamatory, harassing or obscene, (iii) violate privacy rights or promote bigotry, racism, hatred or harm, (iv) constitute unsolicited bulk e-mail, "junk mail", "spam" or chain letters, (v) constitute an infringement of Intellectual Property Rights or any other proprietary rights, or (vi) otherwise violate applicable laws, or regulations.

5.5 The Customer is responsible for all activities that occur under Customer's usernames, passwords and accounts or as a result of User's access to the Service. The Customer shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all Customer Data. The Customer shall use the Service only for legal purposes and in accordance with the terms of the Agreement. The Customer undertakes to defend and indemnify the Product Owner against any claim towards the Product Owner arising out of a violation of the Customer's obligations under Section 3 and 5.

## **6 INTERNET SERVICE PROVIDER**

In no event and regardless of what otherwise might be set forth in the Agreement, the Service Provider shall not be liable to the Customer or a third party for any incidental, indirect or consequential damages, including but not limited to loss of profit, revenue or goodwill, due to any failure of the internet service provider causing interruptions or similar disturbance affecting the Customer's access to the Service.

## **7 THIRD PARTY SERVICES**

The Service Provider's provision of Software may be supported by third party services and thus subject to the terms and conditions governing the use of such third party services. Any terms and conditions applicable for the use of third party services for the provision of Software shall also apply between the Service Provider and the Customer as part of this Agreement. It is the responsibility of the Service Provider to inform the Customer of the third party services used and all terms and conditions applicable from time to time for such third party services shall be made available to the Customer.

## **8 CONNECTION OF THE SERVICE**

8.1 The Service Provider will install the Infrastructure needed to connect the Service according to the Quotation and Purchase Order.

8.2 The Customer may also use approved third-party infrastructure (e.g. sensors) as part of the total solution to connect to the Service. In such case, the Customer is responsible to provide the Service Provider with the information needed to connect to the hardware as well as provide full access to the third-party API interface during the course of the Agreement.

8.3 The Customer is not allowed to make any changes to the hardware required to deliver the Service.

8.4 The Customer must provide the Service Provider access to the facilities for installation and service of hardware and agrees pay for the consumption of the eventual electricity needed to power the hardware.

8.5 Kiona continuously develops the Service with updates and improvements. New options and features not part of the specification at the signing of the Agreement is not automatically included in the service fee but is offered as upgrades.

## **9 CUSTOMER DATA AND DATA PROTECTION**

9.1 The Customer, or any third party from whom the Customer derives its right, owns and shall retain all rights, title and interest in and to Customer Data. The Product Owner rights to the Customer data regarding the Service is set out in paragraph 3.

9.2 Per the date of the Customer's order for Kiona's products and services, the Service provided by Service Provider to Customer does not include any processing of personal data. If the Parties at a later stage during the term of the Agreement would conclude that the Service Provider will process personal data on behalf of the Customer as a personal data processor, the Parties undertake to enter into the relevant data processing agreements, based on the Service Provider's template, required to ensure compliance with the Data Privacy Laws. In such case, the Service Provider shall be entitled to charge reasonable fees to compensate for additional measures and work required in connection with and for the fulfillment of the role as a data processor for the Customer.

9.3 In terms of the Services, Kiona collects and processes personal data from the Customer in the form of name, address, e-mail addresses and telephone numbers.

9.4 Kiona processes the Customer's personal data for:

1. provision of the Services;
2. communication with the Customer;
3. compiling statistics;
4. performing analyses;
5. direct marketing.

The legal basis for processing as set out in clauses 1 and 2 is that Kiona must be able to fulfil the Agreement that Kiona has entered into with the Customer. The legal basis for processing as set out in clauses 3 to 5 is that processing is necessary for the purposes pursuant to Kiona's legitimate interests, such as being able to contact the Customer with information or material regarding Kiona's goods and services that may be of interest to the Customer, develop Kiona's business and to produce forecasts. Kiona believes that these legitimate interests usurp the privacy infringement the Customer is exposed to as a result of the processing. This assessment has been made taking into account that Kiona believes that the processing is beneficial to the Customer.

9.5 Kiona deletes (or anonymises) the Customer's personal data once the data is no longer required to fulfil the purpose of the processing. The personal data processed for direct marketing is stored for up to three years after the agreement with the Customer has expired.

9.6 Kiona shares the Customer's personal data with: companies within the Kiona group, subcontractors, partners and authorities.

9.7 The Kiona company signing the agreement with the Customer is the personal data controller for the processing.

9.8 A Customer who is a natural person, or a natural person who is employed by the Customer, is entitled to request a copy of all personal data that Kiona processes on him or her, and is also entitled to receive the personal data in a structured, generally familiar and machine-readable format for the purpose of transferring this personal data to another personal data controller (known as data portability). This person is also entitled to request the correction or

deletion of personal data and request a restriction to the personal data processing that concerns the Customer. If any Customer who is a natural person, or a natural person who is employed by the Customer, considers that Kiona is processing personal data in an incorrect manner, they are entitled to file a complaint with the Data Inspectorate (the Swedish Data Protection Authority).

## **10 SUSPENSION OF THE SERVICE**

The Service Provider may temporarily suspend Customer's passwords, accounts, and access to or use of the Service if Customer or Users violate any provision in the Agreement, or if in the Service Provider's reasonable judgment, the Service or any component thereof are about to suffer a significant threat to security or functionality. The Service Provider will provide advance notice to the Customer of any such suspension.

## **11 FEES AND PAYMENT**

11.1 The fees for the Service as well as the conditions for payment are set out in the Quotation and Purchase Order.

11.2 The Service Provider has the right to adjust the annual price of the Service in line with the development of the Consumer Price Index (CPI).

11.3 If not agreed otherwise, the Service is paid annually upfront. Invoices shall be payable within thirty (30) days after the date of issue of such invoice.

11.4 Any undisputed amount not paid when due will be subject to the European central bank reference rate + 8% annual interest rate Client will also reimburse any costs or expenses (including, but not limited to, reasonable attorneys' fees) incurred by Kiona to collect any amount that is not paid when due.

11.5 Electronic invoices and PDF invoices sent by email are free of charge. For paper invoices Kiona charge a climate fee of 2,50 EUR per invoice.

11.6 All prices are excluding VAT.

## **12 INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT**

12.1 The Service Provider undertakes to indemnify the Customer from and against any liability to third parties arising from a claim that the Customer's use of the Service infringes upon such third party's Intellectual Property Rights. The Service Provider obligations to indemnify pursuant to this Section 12 shall only apply provided that the Service have been used in accordance with the terms and conditions of the Agreement.

12.2 The Service Provider obligations to indemnify pursuant to this Section 12 shall only apply provided that the Customer without delay notifies the Service Provider in writing regarding the asserted claim, that the Service Provider is given the sole right to determine the defense

against such action, that the Customer acts in accordance with the Service Provider instructions and that the Customer provides the Service Provider with any assistance as may be reasonably requested by the Service Provider.

12.3 Where the Service is found to infringe upon any third party's Intellectual Property Rights the Service Provider shall, in its sole discretion:

(i) procure for the Customer the right to continue to use the Service;

(ii) modify the Service to become non-infringing; or

(iii) replace the Service with a non-infringing equivalent.

12.4 The Service Provider may, if it deems necessary, adopt the measures set out in Section 12.3 also in relation to suspected infringements.

12.5 This Section 12 sets out the Service Provider's entire liability and the Customer's sole and exclusive remedy for infringement of third party's Intellectual Property Rights.

### **13 CUSTOMER REFERENCE**

The Service Provider, and any of its affiliated companies, is entitled to use the Customer's name and other public details about the Customer as well as basic facts about the work performed for the Customer as a reference in connection with the marketing and sale of the Service Provider and any of the Service Provider's affiliated companies', products and services.

### **14 EXPIRATION OF THE AGREEMENT**

Upon the expiration of the Agreement, the Customer may no longer access or use the Service. However, at Customer's request, and for a period of up to 60 days after the expiration of the Agreement, the Service Provider will make available Customer Data for the purpose of retrieval by the Customer. At the end of such 60 day period, and except as may be required by law, the Service Provider will delete or otherwise render inaccessible any Customer Data that remain in the Service environment.

### **15 LIMITATION OF LIABILITY**

15.1 The Service Provider's liability under the Agreement, whether arising from contract, tort (including negligence) or otherwise, connected with or resulting from the Service Provider provision of a service shall in no event exceed 25 % of the amount invoiced by the Service Provider for the Service at hand to the Customer during the twelve (12) months period immediately preceding the event giving rise to such claim.

15.2 In no event shall the Service Provider be liable or responsible for any damage, loss or any unavailability of, or incorrectness in, the Service to the extent caused or otherwise attributable to Third Party Systems.

15.3 In no event shall the Service Provider be liable or responsible for consequential, indirect, incidental, statutory or punitive damages, even if it has been advised of the possibility of such damages, or for the acts of third parties.