KYRO Software as a Service (SaaS) Agreement

This KYRO Software as a Service (SaaS) Agreement (the "**Agreement**") is between KYRO Technologies, Inc., a Delaware corporation ("KYRO"), and [INSERT COMPLETE LEGAL NAME OF CUSTOMER] ("**Customer**") effective as of [DATE]. This Agreement governs access to and use of the KYRO client software ("**Software**") and related services (together, the "**Services**") as more specifically described in one or more Order Forms issued pursuant to this Agreement and agreed by KYRO and Customer.

- **Services.**
    - **Provision of Services.** Customer and users of Customer's Services account ("**End Users**") may access and use the Services in accordance with this Agreement.
    - **Facilities and Data Processing**. KYRO will use, at a minimum, industry standard technical and organizational security measures to transfer, store, and process Customer Data. These measures are designed to protect the integrity of Customer Data and guard against the unauthorized or unlawful access to, use, disclosure, alteration, deletion, and processing of Customer Data. "**Customer Data**" means Stored Data, Account Data, and End User Data. "**Stored Data**" means the files and structured data submitted to the Services by Customer or End Users. "**Account Data**" means the account and contact information submitted to the Services by Customer or End Users. "**End User Data**" means any data other than Stored Data submitted by or collected from End Users in connection with the Services or data relating to the End User's use of the Services.
    - **Modifications to the Services.** KYRO may update the Services from time to time. If KYRO changes the Services in a manner that materially reduces their functionality, KYRO will inform Customer via an email sent to the email address associated with the account.
    - **Software.** Some Services allow Customer to download KYRO Software which may update automatically. KYRO software maybe a combination of or solely be several third-party licensed software that run the KYRO services. Customer may use the Software only to access the Services. If any component of the Software is offered under an open-source license, KYRO will make the license available to Customer and the provisions of that license may expressly override some of the terms of this Agreement. Customer is solely responsible for ensuring its and its End Users' compliance with such licenses.
    - **Changes to Features or Functionality.** KYRO reserves the right to modify, change, or discontinue any features or functionality of the Services at any time, without prior notice to Customer. Customer acknowledges and agrees that KYRO shall not be liable to Customer or any third party for any modifications, adjustments, or changes to features made to the Services. **It is Customer's responsibility to regularly review the terms and conditions of the Services for any updates or changes, which can be found at** https://kyro.ai/legal/terms-of-service **and which are fully incorporated as if set forth in full herein.**
- **Customer Obligations.**
    - **Access to Customer Data.** Customer is responsible to provide Customer Data as necessary to enable KYRO to provide the Services to Customer. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data.

- **Compliance.** Customer is responsible for use of the Services by End Users and for all activities that occur under End User accounts. Customer and its End Users shall comply with all applicable laws and regulations in using the Services and must use the Services in compliance with the "**Acceptable Use Policy**" located at https://kyro.ai/legal/acceptable-use-policy, which policy may be updated from time to time. Customer will obtain from End Users any consents necessary to allow Administrators to engage in the activities described in this Agreement and to allow KYRO to provide the Services. To the extent Customer Data includes any "personal data" or "personal information" as those terms are defined in applicable privacy and/or data protection laws, Customer is responsible for ensuring it provides any required notices and obtains any required consents before processing such information in connection with the Services. To the extent Customer uses any recording functionality in the Software, Customer is responsible for ensuring it provides any required notice and obtains any required consent to such recording in accordance with applicable law. To the extent Customer uses any artificial intelligence ("**AI**") feature in the Software, Customer is responsible for ensuring that such use does not violate applicable law or infringe upon any third party's intellectual property rights, right of publicity, moral rights, or privacy rights, and that Customer has provided all required notices and obtained all required consents in connection with the use of such AI.
- **Customer Administration of the Services.** Customer may specify End Users as "**Administrators**". Administrators may have the ability to work directly with KYRO and access, disclose, restrict or remove Customer Data in or from the Services and Customer's accounts. Administrators may also have the ability to work with KYRO and monitor, restrict, or terminate access to Customer's accounts. KYRO is not responsible for Customer's internal management or administration of the Services or End Users' access to the Services. Customer is responsible for: (i) maintaining the confidentiality of passwords and Administrator accounts; (ii) managing access to Administrator accounts; and (iii) ensuring that Administrators' and End Users' use of the Services complies with this Agreement and with applicable law.
- **Unauthorized Use & Access**. Customer will prevent unauthorized use of the Services by its End Users and terminate any unauthorized use of or access to the Services. Customer will notify KYRO within twenty-four (24) hours of any unauthorized use of or access to the Services by End Users or otherwise through Customer's accounts or systems.
- **Multiple Accounts and Billing for Unpaid Users**. Customer acknowledges and agrees that using the "Free" tier to sign up for multiple accounts with KYRO beyond the allowed number of "Free" accounts is prohibited. In the event that Customer or its End Users are found to have created multiple accounts for the purpose of accessing additional free users beyond the entitlements specified in the "Free" tier, KYRO reserves the right to bill Customer for any unpaid users exceeding the then-applicable number of free users included in the "Free" tier. By entering into this Agreement, Customer expressly consents to such billing for any unauthorized additional users and agrees to promptly pay any associated fees as invoiced by KYRO.
- **Third Party Requests.**
    - "**Third Party Request**" means a request from a third party for records relating to Customer's or an End User's use of the Services including information regarding

or from an End User. Third Party Requests include valid search warrants, formal requests from governmental regulators, court orders, or subpoenas.

- Customer is responsible for responding to Third Party Requests it receives. Customer will obtain information necessary to respond to Third Party Requests on its own and from information in its possession or accessible to it, and will contact KYRO only if, despite Customer's diligent efforts, Customer is unable to obtain information responsive to the Third Party Request and reasonably believes that KYRO would be able to assist Customer in obtaining necessary information.
- If KYRO receives a Third Party Request that involves Customer Data, KYRO will make commercially reasonable efforts, to the extent allowed by law and by the terms of the Third Party Request, to: (A) promptly notify Customer of KYRO's receipt of a Third Party Request; and (B) comply with Customer's commercially reasonable requests regarding Customer's efforts, if any, to oppose the Third Party Request. Nothing in this Agreement shall be interpreted to preclude KYRO from complying with a Third Party Request it receives.

- **Use of Services**

  - **Users**. Customer may grant access to the Services to only the number and type of End Users specified on the Order Form.
  - **Use Restrictions.** Customer shall not and shall ensure End Users do not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Services available to any third party; (ii) send spam or otherwise duplicative or unsolicited messages via the Service; (iii) use the Services to send or store infringing, obscene, threatening, libellous, or otherwise unlawful or tortious material, including material harmful to children or violative of third-party privacy rights or third-party intellectual property rights; (iv) send or store material while using the Services that contains software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (v) interfere with or disrupt the integrity or performance of the Services or the data contained therein; (vi) attempt to gain unauthorized access to the Services or its related systems or networks; (vii) use the Services to provide construction oversight or evaluation of damages from storm or natural disasters to the electric utility or broadband industry; (ix) share Services accounts, share login credentials with others, or assist unauthorized users to access Services; or (x) reverse engineer the Services, attempt to reverse engineer the Services, nor assist anyone else to do so.

- **Third-Party Services.** Certain third-party service providers, some of which may be listed on KYRO's website or other materials, offer products and services related to the Services that work in conjunction with the Services, such as by exchanging data with the Services or by offering additional functionality within the user interface of the Services through use of application programming interfaces. KYRO does not warrant any such third-party provider or any of their products or services, regardless of whether or not such products or services are designated by KYRO as "certified," "validated," "supported" or otherwise. KYRO may terminate the links between any third-party service provider and the Services at any time for any reason, including but not limited to changes in interoperability requirements, policies or fees charged by such third-party providers to KYRO or its customers or users. Any exchange of data or other interaction between Customer (or a User) and a third-party provider, and any purchase or use by

Customer (or an End User) of any product or service offered by such third-party provider, is solely between Customer (or such End User) and such third-party provider, and KYRO will have no liability or obligation with respect to such exchange or interaction and shall not be responsible for any act or omission of the third party, including the third party's access to or use of Customer Data.

- **Suspension.**
    - **Of End User Accounts by KYRO.** If an End User (i) violates this Agreement or the Acceptable Use Policy in effect at the time or (ii) uses the Services in a manner that KYRO reasonably believes may result in liability for KYRO, then KYRO may request that Customer suspend or terminate the applicable End User account. If Customer fails to suspend or terminate the End User account within twenty-four (24) hours, then KYRO may do so.
    - **Security Emergencies.** Notwithstanding anything in this Agreement, if there is a Security Emergency then KYRO may automatically suspend use of the Services by Customer and all End Users. KYRO will make commercially reasonable efforts to narrowly tailor the suspension as needed to prevent or terminate the Security Emergency. "**Security Emergency**" means: (i) use of the Services that do or could disrupt the Services, other customers' use of the Services, or the infrastructure used to provide the Services; and/or (ii) any unauthorized third-party access to the Services including but not limited to any customer or user data stored or accessible via the Services.
- **Proprietary Rights.**
    - **KYRO Technology.** The Services include (i) the KYRO name, the KYRO logo, the KYRO domains (https://app.kyro.ai/ and https://kyro.ai) and all subdomains, the product and service names associated with the Services and other trademarks and service marks; (ii) audio and visual information, documents, software, computer code, and other works of authorship, including training materials and user guides; and (iii) other technology, including graphical user interfaces, workflows, products, processes, algorithms, know-how and other trade secrets, techniques, designs, inventions and other tangible or intangible technical material or information (collectively, "**KYRO Technology**"). Other than as expressly set forth in below, no license or other rights in or to the KYRO Technology or related Intellectual Property Rights are granted to Customer or End Users, and all such licenses and rights are hereby expressly reserved to KYRO or, as applicable, its licensors. "**Intellectual Property Rights**" means and includes any current and future rights under patent law, copyright law, trade secret law, trademark law, moral rights, and other similar rights.
    - **Grant of Limited License.** Subject to and in accordance with the terms of this Agreement and conditioned upon payment of all applicable fees, KYRO grants Customer a revocable, worldwide, non-exclusive, non-transferable (except in connection with a permitted assignment of this Agreement), non-sublicensable right: (i) to access and use the Services during the term for which applicable fees, if any, are fully paid; and (ii) to permit the number and type of End Users specified on an Order Form the right to access and use the Services during the terms of the applicable End User subscriptions.
    - **License Restrictions.** Customer shall not (i) modify, copy or create derivative works based on the Services or KYRO Technology; (ii) create Internet "links" to or from the

Services, or "frame" or "mirror" any content forming part of the Services, other than on Customer's own intranet; or (iii) disassemble, reverse engineer, or decompile the Services or KYRO Technology; (iv) access or use the Services in order to (A) build a competitive product or service, (B) build a product or service using similar ideas, features, functions or graphics as those used in the Services, or (C) copy any ideas, features, functions or graphics of the Services; (v) harvest, scrape, or collect information from the Services using an automated software tool or manually on a mass basis; or (vi) flood the Services with requests, data, or otherwise overburdening, disrupting, or harming the Services.

- **Customer Data.** KYRO may access, reproduce, and use Customer's User accounts, including Customer Data and End User Data associated therewith, to respond to service or technical problems, at Customer's or the applicable End User's request, or for other purposes in connection with the Services. Customer and/or KYRO shall delete or destroy and cease all use of End User Data as required by applicable law. KYRO may anonymize or de-identify Customer Data ("**Anonymized Data**") such that the Customer Data is not personal data or personal information as those terms are defined under privacy laws and data protections laws and the Customer Data is not able to be associated with Customer or End Users. KYRO may aggregate the Anonymized Data with other data ("**Aggregated Data**"). Customer shall have no right, title, or interest in any Anonymized Data or Aggregated Data. KYRO may use Anonymized and/or Aggregated Data for its own commercial, research, or development purposes.
- **Suggestions and Feedback.** KYRO may, at its discretion and for any purpose, use, modify, and incorporate into its products and services any suggestions, ideas, enhancement requests, feedback, recommendations provided or posted by Customer or End Users ("**User Feedback**"). Customer hereby grants to KYRO a royalty-free, worldwide, irrevocable, perpetual, sublicensable, transferable license to use or incorporate into the Services any User Feedback.
- **Customer List.** KYRO may include Customer's name in a list of KYRO customers on the KYRO website or in promotional materials.

- **Confidentiality.**

  - **Definition of Confidential Information.** The term "**Confidential Information**" means all confidential and proprietary information of a party ("**Disclosing Party**") disclosed to the other party ("**Receiving Party**"), whether orally, in writing, or electronically, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms and conditions of this Agreement (including pricing and other terms reflected in the Order Form), the Customer Data, the Services, the KYRO Technology, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information shall not include any information that: (i) is or becomes publicly available without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.

- The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission. Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event with less than reasonable care. If the Receiving Party is compelled by law or a government authority to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent practicable and legally permitted) within forty-eight (48) hours of being so compelled and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.
- If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this , the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the Parties that such unauthorized disclosure or use may cause irreparable harm to the Disclosing Party for which any other available remedies are inadequate.

- **Fees and Payment**

  - **Subscription Fees.** Customer will pay, and authorizes KYRO to charge Customer's selected payment method, applicable subscription fees. Subscription fees are charged on a monthly or annual basis, as elected by Customer and will be charged on the first day of the subscription period. Subscription fees are non-refundable except as required by applicable law. Customer is responsible for providing complete and accurate billing and contact information to KYRO. KYRO may suspend or terminate the Services without notice if Customer's payment method does not process the charge or subscription fees are otherwise past due. KYRO may change its subscription fees at any time by providing Customer at least 30 calendar days' notice before the next subscription fee charge.
  - **Auto-Renewals.IF CUSTOMER'S ACCOUNT IS SET TO AUTO-RENEW, KYRO WILL AUTOMATICALLY CHARGE FOR THE RENEWAL, UNLESS CUSTOMER NOTIFIES KYRO THAT CUSTOMER WANTS TO CANCEL OR DISABLE AUTO-RENEWAL AT LEAST TEN (10) BUSINESS DAYS BEFORE THE SUBSCRIPTION IS SET TO RENEW. NOTICE OF NON-RENEWALS TO KYRO MUST BE SENT TO AUTORENEWALS@KYRO.US.**
  - **Fees for Other Services.** KYRO and Customer may agree for KYRO to provide other services to Customer in connection with the KYRO Technology including, for example, professional services for customizations or integrations. All other services shall be documented in an Order Form. Customer shall pay applicable fees as set forth in the applicable Order Form.
  - **Late Payments** In addition and without limitation to other legal remedies, whether or not set forth herein, KYRO may assess a late payment charge equal to 18% APR (or the maximum permissible rate if lower) each month on all amounts past due more than 30 days until such amount are paid.
  - **Taxes.** Subscription fees and fees for other services do not include tax. Customer is responsible for all applicable sales taxes, use taxes, and other similar taxes on the Services and all other services and products. KYRO will charge and remit tax to the appropriate taxing authority when required to do so.

- **Purchase Orders.** If Customer requires the use of a purchase order or purchase order number, Customer (i) must provide the purchase order number at the time of purchase and (ii) agrees that any terms and conditions on a Customer purchase order will not apply to this Agreement and are null and void.
- **Payment Cards.** If Customer pays by credit or debit card, Customer shall: (a) provide KYRO or its third-party payment processor with valid payment card information; and (b) authorize KYRO or its third-party payment processor to charge such payment card for all fees stated in the applicable Order Form and invoice(s) in accordance with these Terms plus any applicable taxes. Customer hereby authorizes KYRO and its payment processor to store and continue billing the payment method Customer has on file to pay for Services Customer agrees to purchase. If Customer purchases a subscription, Customer authorizes KYRO and its payment processor to automatically charge Customer's payment method on file at the start of each Subscription Term for the applicable fees and taxes. Customer's authorization will remain in full force and effect until KYRO receives written notice of Customer's revocation of such authorization or termination of the subscription provided that all of Customer's payment obligations are satisfied.

- **Term and Termination**

  - **Term.** This Agreement will remain in effect until Customer's subscription to the Services expires or terminates, or until the Agreement is terminated in accordance with this Section.
  - **Termination for Breach.** Either KYRO or Customer may terminate this Agreement if: (i) the other party is in material breach of the Agreement and fails to cure that breach within 30 calendar days after receipt of written notice or (ii) the other party ceases its business operations or becomes subject to insolvency proceedings, bankruptcy proceedings, or receivership and the proceedings are not dismissed within 90 days of being initiated.
  - **Effects of Termination.** Upon termination of the Agreement: (i) the rights granted by KYRO to Customer will cease immediately (except as set forth in this section); (ii) KYRO may provide Customer access to its account at then-current fees solely so that Customer may export its Stored Data; and (iii) after a commercially reasonable period of time not to exceed thirty (30) days, KYRO may delete any Stored Data relating to Customer's account. The following sections will survive expiration or termination of this Agreement: 2.f (Third Party Requests), 6 (Proprietary Rights), 8 (Fees & Payment), 9.c (Effects of Termination), 10 (Indemnification), 11 (Disclaimers), 12 (Limitation of Liability), 13 (Disputes), and 14 (Miscellaneous).

- **INDEMNIFICATION.**

  - **BY CUSTOMER.** Customer will indemnify, defend, and hold harmless KYRO, and its affiliates, officers, directors, and employees, from and against all liabilities, damages, judgments, and costs (including settlement costs and reasonable attorneys' fees) related to any third-party claim that arises from or relates to: (i) customer data; (ii) Customer's or any End User's use of the Services in violation of this agreement, KYRO's acceptable use policy, or applicable law; or (iii) Customer's or any End User's use of the Services in a manner not intended or combination of the Services with any third-party technology or property without KYRO's express written authorization.

- **BY KYRO.** KYRO will indemnify, defend, and hold harmless Customer and End users from and against all liabilities, damages, judgments, and costs (including settlement costs and reasonable attorneys' fees) related to any third-party claim to the extent based on an allegation that the KYRO technology used to provide the Services infringes or misappropriates the third party's intellectual property In no event will KYRO have any obligations or liability under this section arising from: (i) use of any Services in a modified form or in combination with materials not furnished by KYRO; or (ii) any content, information, or data provided by Customer, End Users, or other third parties.
- **Possible Infringement.** If KYRO believes the Services infringe or may be alleged to infringe a third party's Intellectual Property Rights, then KYRO may: (i) obtain the right for Customer, at KYRO's expense, to continue using the Services; (ii) provide a non-infringing functionally equivalent replacement; or (iii) modify the Services so that they no longer infringe. If KYRO does not believe the options described in this section are commercially reasonable then KYRO may suspend or terminate Customer's use of the affected Services.
- **General.** 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 shall have financial responsibility for and full control and authority over the defense, except that: (i) any settlement requiring the party seeking indemnification to admit liability or fault requires prior written consent, and (ii) the other party may join in the defense with its own counsel at its own expense. THE INDEMNITIES ABOVE ARE KYRO AND CUSTOMER'S ONLY REMEDY UNDER THIS AGREEMENT FOR VIOLATION BY THE OTHER PARTY OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

- **Disclaimers.** THE SERVICES ARE PROVIDED "AS IS." TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, KYRO AND ITS AFFILIATES, SUPPLIERS, AND DISTRIBUTORS MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, OR NON-INFRINGEMENT. CUSTOMER IS RESPONSIBLE FOR MAINTAINING AND BACKING UP ANY STORED DATA. KYRO SHALL NOT BE RESPONSIBLE FOR ANY LOSS OF DATA OR LOSS OF ACCESS TO DATA. KYRO DISCLAIMS ANY AND ALL RESPONSIBILITY OR LIABILITY FOR: (1) THE ACCURACY, COMPLETENESS, LEGALITY, RELIABILITY, OR OPERABILITY OR AVAILABILITY OF ANY CONTENT OR INFORMATION OR MATERIAL PROVIDED BY OR ACCESSIBLE THROUGH THE SERVICES; (2) THE USE OF OR INABILITY TO USE THE SERVICES; (3) THE DELETION, FAILURE TO STORE, MISDELIVERY, OR UNTIMELY DELIVERY OF ANY INFORMATION OR MATERIAL; (4) BREACHES OF SECURITY; (5) INFORMATION COMMUNICATED THROUGH MESSAGE BOARDS, BLOGS, OR OTHER FORUMS; AND (6) DAMAGE, INJURY, OR LOSS OF LIFE OR DAMAGE TO PROPERTY.

- **Limitation of Liability**

  - **Limitation on Indirect Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER CUSTOMER NOR KYRO AND ITS AFFILIATES, SUPPLIERS, AND DISTRIBUTORS WILL BE LIABLE IN CONNECTION WITH THE SERVICES FOR (I) INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, OR (II) LOSS OF USE, DATA, BUSINESS, REVENUES, OR LOST PROFITS (IN EACH CASE WHETHER DIRECT OR INDIRECT), EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING LIMITATION

SHALL NOT APPLY TO: KYRO OR CUSTOMER'S INDEMNIFICATION OBLIGATIONS; A PARTY'S BREACH OF ; OR CUSTOMER'S BREACH OF .SECTION 7SECTIONS 3.c, 6.a, 6.b, AND 6.c

- **Limitation on Amount of Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, KYRO'S AGGREGATE LIABILITY IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES WILL NOT EXCEED THE LESSER OF $100,000 OR THE AMOUNT PAID BY CUSTOMER TO KYRO HEREUNDER DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

- **NON-SOLICITATION AND NON-CIRCUMVENTION.**

  - **Resource Database Definition.** As used herein, "Resource Database" means the proprietary database of storm-response resources maintained by KYRO, including any names, contact information, or other identifying information relating to individuals or entities who provide, or are available to provide, storm-response services for or on behalf of KYRO.
  - **Prohibited Acts.** During the term of this Agreement and for a period of two (2) years following its termination or expiration (the "Non-Solicitation/Non-Circumvention Period"), Customer shall not, directly or indirectly, for any reason whether for its own account or for the account or benefit of any other individual or entity, and whether or not compensated, engage in the following conduct:
    i. Solicit or Induce Personnel. Solicit, induce, enter into any agreement with, or attempt to influence any individual or entity who is an employee, independent contractor, consultant, representative, or a listed resource within the Resource Database, to:1
  - Terminate or reduce his/her/its employment, consulting, representative or resource relationship with KYRO; or
  - Accept employment or enter into any consulting, representative, partnership or resource relationship with Customer, any affiliate of Customer, or any other individual or entity that competes with, provides or replaces KYRO's services.

ii. Non-Circumvention of Resource Database.

  - Terminate or reduce his/her/its employment, consulting, representative or resource relationship with KYRO; or
  - Accept employment or enter into any consulting, representative, partnership or resource relationship with Customer, any affiliate of Customer, or any other individual or entity that competes with, provides or replaces KYRO's services.

c. **Remedies for Breach.** Customer acknowledges and agrees that any breach of this Section 13 will cause irreparable harm to KYRO for which monetary damages would be an inadequate remedy. In the event of any breach or threatened breach, the Customer agrees that KYRO shall be entitled to injunctive relief (including a temporary restraining order) and any other legal or equitable remedies available without the necessity of posting a bond.

d. **Reasonableness; Severability.** Customer agrees that the restrictions contained in this Section 13 are reasonable in scope and duration and are necessary to protect KYRO's legitimate business interests, including its proprietary Resource Database. If any provision of this Section 13 is held unenforceable by a court of competent jurisdiction, such provision shall be judicially modified

only to the minimum extent necessary to make it enforceable, and all other provisions shall remain in full force and effect.

- **NON-COMPETITION.**

a. **Scope and Purpose.** During the term of this Agreement and for a period of two (2) years following its termination or expiration (the "Non-Competition Period"), Customer shall not, directly or indirectly, whether as principal, agent, partner, officer, director, employee, consultant, advisor, shareholder (other than a passive investment of less than five percent (5%) of a publicly traded company), or in any other capacity:

  - Competing Services. Develop, provide, or offer any products or services that are substantially similar to, or directly competitive with, the Services offered by KYRO; or
  - Assistance to Competitors. Assist, further or perpetuate any individual or entity in engaging in activities that would be prohibited by this Section if undertaken directly by Customer.

b. The parties agree that the restrictions in this Section 14 are reasonable and necessary to protect KYRO's legitimate business interests, including KYRO's confidential information, proprietary technology, Resource Database, and customer relationships.

c. **Breach and Remedies.** Customer acknowledges and agrees that any breach or threatened breach of this Section 14 will cause irreparable harm to KYRO, for which monetary damages would be an inadequate remedy. In the event of any such breach or threatened breach, Customer agrees that KYRO shall be entitled to an injunction, restraining order, or other equitable relief, without the necessity of posting a bond, in addition to all other remedies available at law or equity.

d. If any provision of this Section 14 is found to be unenforceable by a court of competent jurisdiction, then such provision shall be deemed modified only to the limited extent necessary to make it enforceable, and the remaining provisions of this Section shall remain in full force and effect.

- **Disputes**

  - **Informal Resolution.** KYRO wants to address your concerns without the necessity of legal proceedings. Before filing a claim, each party agrees to try to resolve the dispute by contacting the other party through the notice procedures in section 16.e. If a dispute is not resolved within 30 days of notice, Customer or KYRO may bring a formal proceeding as described in this Section.
  - **Agreement to Arbitrate.** Customer and KYRO agree to resolve any claims relating to or arising from this Agreement or the Services through final and binding arbitration, except as set forth below. The American Arbitration Association(AAA) will administer the arbitration under its Commercial Arbitration Rules. The arbitration will be held in Plano (TX), or any other location both Parties agree to in writing.
  - **Exception to Agreement to Arbitrate.** Either party may bring a lawsuit in the federal or state courts of Collin County, Texas solely for injunctive relief to stop unauthorized use or abuse of the Services or infringement of Intellectual Property Rights without first

engaging in the informal dispute notice process described above. Both Customer and KYRO consent and agree to mandatory venue and personal jurisdiction in Collin County, Texas.

- **CLASS ACTION.** TO THE FULLEST EXTENT PERMITTED BY LAW, CUSTOMER AND KYRO EACH AGREE THAT ANY CLAIMS, CAUSES OF ACTION, OR DISPUTES BETWEEN THE PARTIES SHALL NOT BE CONDUCTED AS, OR CONSOLIDATED WITH, A CLASS ACTION, COLLECTIVE ACTION, OR OTHER REPRESENTATIVE ACTION WHETHER SUCH PROCEEDING IS IN COURT, IN AN ARBITRATION, OR IN ANY OTHER FORUM. THE PARTIES EXPRESSLY WAIVE THEIR RIGHT TO FILE A CLASS ACTION, SEEK RELIEF ON A CLASS BASIS, OR PARTICIPATE AS A MEMBER OF A CLASS IN ANY PROCEEDING AGAINST THE OTHER PARTY.
- **WAIVER OF JURY TRIAL.CUSTOMER AND KYRO WAIVE ANY RIGHT THEY HAVE TO A TRIAL BY JURY FOR CLAIMS ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES.**

- **Miscellaneous**

  - **Modification or Amendment.** Neither this Agreement nor any Order Form may be modified or amended except in writing signed by an authorized representative of each Party. All prices and discounts shall be reflected on an Order Form signed by both Parties. No letter agreements or side deals concerning pricing or discounts shall be valid or enforceable and are strictly prohibited. Notwithstanding the foregoing, KYRO may modify its subscription fees in accordance with Section 8.a.
  - **Entire Agreement.** This Agreement including all exhibits and attachments hereto, all Order Forms issued pursuant to the Agreement, and any policies referenced in the Agreement constitute the entire agreement between Customer and KYRO with respect to the subject matter of this Agreement and supersede and replace any prior or contemporaneous understandings and agreements, whether written or oral, with respect to the subject matter of this Agreement. If there is a conflict between the Agreement and the Order Form, this Agreement shall control.
  - **Governing Law.** THE AGREEMENT AND ANY DISPUTE ARISING UNDER OR RELATING TO IT WILL BE GOVERNED BY DELAWARE LAW WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.
  - **Severability.** Unenforceable provisions will be modified to reflect the Parties' intention and only to the extent necessary to make them enforceable, and the remaining provisions of the Agreement will remain in full effect.
  - **Notice.** Notices must be sent via first class, airmail, or overnight courier and are deemed given when received. Notices to Customer may also be sent to the applicable account email address and are deemed given when sent. Notices to KYRO must be sent to KYRO Technologies, Inc., ATTN: Legal Notice, 9720 Coit Road, Suite 220-345, Plano, TX 75025, with a copy to the Legal Department.
  - **Waiver.** A waiver of any breach or default is not a waiver of any subsequent breach or default.
  - **Assignment.** Customer may not assign or transfer this Agreement or any rights or obligations under this Agreement without the written consent of KYRO. KYRO may not assign this Agreement without providing notice to Customer, except KYRO may assign this Agreement or any rights or obligations under this Agreement to an affiliate or in

connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets without providing notice. Any other attempt to transfer or assign is void.

- **Relationship of the Parties.** Nothing in this Agreement shall be construed to create a partnership, joint venture, or agency relationship between KYRO and Customer. KYRO and Customer are independent contractors with respect to each other.
- **Force Majeure.** Except for payment obligations, neither KYRO nor Customer will be liable for inadequate performance to the extent caused by a condition or event that was beyond the party's reasonable control (for example, natural disaster, fire, act of war or terrorism, riot, labor condition, governmental action, epidemic, pandemic, materials shortages, and Internet disturbance).
- **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement. Without limiting this Section, a Customer's End Users are not third-party beneficiaries to Customer's rights under this Agreement.
- **Export Restrictions.** The export and re-export of Customer Data via the Services may be controlled by the United States Export Administration Regulations or other applicable export restrictions or embargo. The Services may not be used in Cuba; Iran; North Korea; Sudan; or Syria or any country that is subject to an embargo by the United States and Customer must not use the Services in violation of any export restriction or embargo by the United States or any other applicable jurisdiction. In addition, Customer must ensure that the Services are not provided to persons on the United States Table of Denial Orders, the Entity List, or the List of Specially Designated Nationals.

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