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Fulton, MD 20759

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Last Updated: October 25, 2021

SOFTWARE LICENSE AGREEMENT

This Software License Agreement, including the applicable Order, (the "***Agreement***") is made by and between Nor Labs Inc. DBA Kion, a Delaware corporation, with its headquarters at 8115 Maple Lawn Blvd., Suite 300, Fulton, Maryland 20759 ("***Kion***"), and the end user identified on the Order that is licensing the Software Platform and/or purchasing Professional Services (the "***Customer***"), each a party ("***Party***") and together, the parties ("***Parties***"). This Agreement is effective as of the subscription start date on the applicable Order (the "***Effective Date***"). By entering into an Order, or by accessing the Software Platform or purchasing Professional Services, Customer agrees to be bound by the terms and conditions of this Agreement.

1. DEFINITIONS

Certain capitalized terms in this Agreement have the meaning assigned to them in this Section or elsewhere in this Agreement:

- Affiliate means any entity that controls, is controlled by, or is under common control with a Party. An Affiliate is a third-party for purposes of this Agreement.
- Authorized Partner means a (i) Reseller that Kion has authorized to market and resell Kion's products, (ii) Technology Partner that Kion has authorized to make integrations to enable other software products to work with Kion's Software Platform, or (iii) Service Partner that Kion has subcontracted with to provide Professional Services to Customers who have purchased such services.
- Authorized Users mean Customer's employees, consultants and contractors who have each been assigned an individual user license (or are under an unlimited user subscription) to access and use the Software Platform solely on behalf of and for the benefit of Customer. Managing Agents are Authorized Users.
- Confidential Information means all written or oral communications disclosed by one Party ("Discloser") to the other Party ("Recipient") that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential and includes, without limitation, any material or information relating to a Party's research, development, products, plans, services, software, customer information, inventions, developments, processes, formulas, technologies, know-how, designs, drawings, plans, strategies, operations, pricing, finances, and other business information or trade secrets that the Discloser treats as proprietary or confidential. Without limiting the foregoing, Kion's Software Platform, Documentation and this Agreement are considered Confidential Information. Confidential Information does not include any information that: (i) was lawfully acquired by or previously known to the Recipient independent of the Disclosing Party; (ii) is received from a third party without restrictions on its use or disclosure and not by inadvertence or mistake; (iii) is or has become disseminated to the public through no fault of the Recipient and without violation of the terms of this Agreement or other obligation to maintain confidentiality; or (iv) is created independently by the Recipient without breach of this Agreement, including any obligation of confidentiality owed to the Discloser.
- Delivery Date is defined in Section 7.
- Derived Usage Data is defined in Section 6.
- Documentation means the then-current official user manuals, specifications, and other materials describing the functionality, features, and operating characteristics of the Software Platform that Kion makes available to Customers.
- Feedback means any comment, suggestion, idea, evaluation or other feedback (including any error reports, technical data or other materials that Customer may submit to Kion)
- Fees are defined in Sec. 10.1.

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- Intellectual Property means any and all patent, copyright, trade secret, trademark, moral rights and other intellectual property and proprietary rights, whether registered or unregistered.
- Managing Agent means a third-party service provider with which Customer enters into a contract to manage Customer's information technology or cloud resources.
- Order means any of the following:
    a. a quote, order form or other document that identifies the Kion products and services, quantities, and fees, that is signed by both Customer and Kion;
    b. in connection with a negotiated Software Platform License Agreement signed by both Parties, a purchase order or other ordering document from Customer, submitted to Kion directly or through a Reseller, and accepted by Kion (e.g., in email confirmation or by releasing product license key to Customer);
    c. any document accepted by and between a Reseller pursuant to which Customer orders products and/or services from Kion.
- Professional Services are defined in Sec. 9.
- Reference Materials are defined in Sec. 3.3;
- Software Platform means the executable, object code version(s) of Kion's proprietary software, technology, databases, libraries, applications, algorithms, workflows, cloud formation templates and other proprietary methods and systems, including any update, upgrade, release or any other modification that Kion may optionally and periodically provide to customers. For the avoidance of doubt, "Software Platform" does not include any Third-Party Software components, Reference Materials, or any new version of the Software Platform that Kion may introduce and market as a distinct licensed product that may be available to Customer at an additional cost under a separate agreement or by written amendment.
- Subscription Term: Means the start and end dates of the subscription to license to the Software Platform and related products and services specified in the Order.
- Third-Party Software is defined in Sec. 6.4;
- Warranty Period is defined in Sec. 13.1.

2. ORDERS

2.1 Orders. Kion's products and services are licensed and sold subject to this Agreement. Customer purchases a subscription for a license to the Software Platform and for related products, services and/or Professional Services under this Agreement through an Order. All Orders are incorporated into and governed by this Agreement, even if the Order does not specifically reference this Agreement. Except that, where Customer and Kion enter into a negotiated or amended Agreement, signed by both Parties, that Agreement controls. Where Customer submits a purchase order that contains any terms or conditions that conflict with, are different from or additional to the terms and conditions set forth in this Agreement, then Kion expressly rejects such conflicting, different or additional terms and conditions, and such terms are excluded from and will not become a part of the agreement between the parties notwithstanding any subsequent acknowledgement, invoice or license key that Kion may issue.

3. LICENSE AND USE OF SOFTWARE PLATFORM

3.1 Software Platform License. Subject to the terms and conditions of this Agreement including, without limitation, Customer's payment of fees, Kion hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable license to install, use and operate the Software Platform during the Subscription Term, solely for Customer's internal business purposes and solely in accordance with the Documentation. Use of the Software Platform shall be limited to the number and type of instances, user licenses, and usage units purchased and paid for by Customer as set forth in the Order.

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3.2 Documentation License. Subject to the terms of this Agreement, including, without limitation, Customer's payment of fees to Kion, Kion hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable license during the Subscription Term to access and copy the Documentation solely for use by Authorized Users to support internal business use of the Software Platform. Customer acknowledges that no right is granted to modify, adapt, translate, publicly display, publish, create derivative works of or otherwise distribute the Documentation. Kion's Documentation is Confidential Information.

3.3 Reference Materials. As a separate product included in the Subscription, at no cost or fee, Customer will be able to access and download a library of sample policies, cloud formation templates, cloud rules, and other reference materials (collectively, "Reference Materials") for use in connection with the Software Platform. REFERENCE MATERIALS ARE PROVIDED "AS IS" AND "WITH ALL FAULTS" AND WITHOUT ANY WARRANTIES OF ANY KIND. NEITHER KION NOR ITS LICENSORS MAKE ANY WARRANTIES, CONDITIONS, UNDERTAKINGS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (INCLUDING BUT NOT LIMITED TO REGULATORY COMPLIANCE), OR NONINFRINGEMENT.

3.4 Authorized Users.

a. *Customer's Authorized Users.* Customer, through its Authorized Users, may use the Software Platform and Documentation in accordance with the terms of this Agreement provided that Authorized Users use and/or access the Software Platform solely on behalf of and for the benefit of Customer. Customer shall be responsible for all acts and omissions of its Authorized Users and any act or omission by an Authorized User which, if undertaken by the Customer would constitute a breach of this Agreement, will be deemed a breach of this Agreement by Customer. Customer will make all Authorized Users aware of the provisions of this Agreement as applicable to their use of the Software Platform and will cause all Authorized Users to comply with those provisions.

b. *Customer's Managing Agent.* Customer may permit its Managing Agent(s) to use the Software Platform and Documentation, if: (i) the Managing Agent only uses the Software Platform on Customer's behalf, for Customer's internal operations, and not for the benefit of any other third party or itself; (ii) the Managing Agent agrees to comply with the terms and conditions of this Agreement; and (iii) Customer provides Kion with written notice that a Managing Agent will be using the Software Platform on Customer's behalf. Customer will be responsible and fully liable for the Managing Agent's compliance with or breach of this Agreement. Managing Agent's authorized users are considered Customer's Authorized Users.

3.5 No Third-Party Users- Affiliates. Third-party users, including Customer's Affiliates, are not permitted to access or use the Software Platform or its Documentation.

4. LICENSE RESTRICTIONS

4.1 Restrictions on Use of the Software Platform and Documentation. Customer will not use the Software Platform or Documentation for any purposes outside of the scope of the licenses granted in this Agreement. Without limiting the generality of the foregoing, and except as expressly permitted in this Agreement, Customer will not, and will not permit any third party to:

- reproduce or copy the Software Platform, in whole or in part;
- modify, adapt, translate or create derivative works of the Software Platform, or of any component of it;
- lease, rent, loan, sell, transfer, sublicense, assign, commercially exploit, distribute or otherwise make available the Software Platform for the benefit of, or to provide services to, any third party in any manner, including but not limited to, any timesharing, service bureau, software as a service, or similar technology or service.
- reverse engineer, decompile, or disassemble any aspect of the Software Platform or otherwise attempt to derive or gain access to any portion of the Software Platform's source code or underlying algorithms, methods or techniques.
- attempt to disable, gain unauthorized access to, breach or circumvent any security measures, license key or other technological mechanisms intended to prevent, limit or control use or copying of, or access to any part of the Software Platform to which Customer does not possess

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access rights. If any unauthorized access occurs, Customer shall promptly notify Kion of the incident and shall reasonably cooperate in resolving the issue;

- knowingly interfere with or disrupt the integrity or performance of the Software Platform;
- use the Software Platform in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property rights or any applicable law;
- remove, alter or obscure any copyright, trademark or other proprietary notices, symbols or legends from the Software Platform or Documentation;
- publish or provide to any third party the results of any performance or benchmark tests or other evaluation of the Software Platform without Kion's prior written permission; or
- use the Software Platform or Documentation as part of any effort to develop software, technologies or services similar to or designed to compete with Kion's Software Platform or for any other purpose that is to Kion's commercial disadvantage.

4.2 Self-Audit Function Disclosure. Customer acknowledges that the Software Platform may be configured to display warnings, reduce available functionality, and/or cease functioning if unauthorized use is detected, including, without limitation, if the Subscription Term expires or the usage credit amount is reached or exceeded. Kion may use these features and other lawful measures to verify Customer's compliance and to enforce Kion's rights under this Agreement. Customer agrees if at any time, it receives electronic notice within its Software Platform account or email notice that Customer has exceeded the usage credit amount specified in the Order, then Customer shall pay all amounts due for excess use and will order and pay for additional usage credits to cover additional usage within thirty (30) days of such notice.

5. CUSTOMER RESPONSIBILITIES

5.1 Minimum Technical Requirements. Customer will bear sole responsibility for providing and maintaining any computer systems, networks, telecommunications systems, Internet access, third party services, equipment, hardware, or any other materials or conditions required to meet the minimum technical requirements specified by Kion in order to operate the Software Platform.

5.2 Cloud Services Provider Account. Customer acknowledges that in order for the Software Platform to perform as intended, Customer must have a current subscription to a cloud services provider that is compatible with the Software Platform and must maintain cloud service for the Subscription Term. Customer acknowledges that it has discussed compatibility with Kion and has confirmed that its cloud service solution is compatible with the Software Platform. Customer acknowledges that the Software Platform is deployed into Customer's cloud services provider's account, and the Software Platform provides native access to the cloud service provider's consoles and APIs. Customer is solely responsible for obtaining all necessary rights and consents from its cloud service provider to operate and use the Software Platform within its cloud environment. Customer is responsible for all cloud usage and infrastructure charges including the cost of running the Software Platform within its cloud environment.

5.3 Customer Account and Credentials. To access the Software Platform, the Customer must register for a customer account, providing accurate and complete information that Customer will promptly update as necessary. The Customer agrees that Kion may send notices, statements and other communications to Customer through its account or by email. Customer shall be responsible for managing user access and account log-in credentials.

- The log-in credentials and private keys generated by the Software Platform are for Customer's internal use only by its Authorized Users. Customer agrees that it will not sell, transfer or sublicense the credentials or private keys to any other entity or person. Customer shall ensure that multiple users do not share a password or username or account.
- Customer agrees that it shall be solely responsible for all activities that occur under its account by any user using an Authorized User's credentials, regardless of whether the activities are authorized by Customer or undertaken by Customer, and solely liable for any damages resulting from any such account compromise, breach or unauthorized activity. Kion is not responsible for any unauthorized access to Customer's account.
- The Customer agrees to notify Kion immediately if it becomes aware that its account credentials have been accessed or used without authorization and will immediately suspend the account credentials.

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5.4 Third Party Agreements. Customer shall ensure that it's use of the Software Platform and Documentation complies with its contractual obligations to any third party. Customer will not enter into any contractual relationship with any third party which will have the purpose or effect of encumbering the use of the Software Platform or Documentation.

5.5 Export Control Laws. Customer will comply fully with all relevant export laws and regulations of the United States and any other country where Customer uses the Software Platform. Without limiting the generality of the foregoing, Customer will not export, re-export, ship, transfer or otherwise use the Software Platform or related technology in any country subject to a United States embargo or other sanction by the United States including Cuba, Iran, North Korea, Sudan and Syria.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 Ownership. Customer acknowledges and agrees that:

(i) The Software Platform and Documentation are licensed, not sold.
(ii) Kion (or its licensors) owns all worldwide right, title and interest in and to the Software Platform and Documentation, including all related Intellectual Property rights.
(iii) Except for the licenses expressly granted to Customer in this Agreement, Customer will not acquire or claim any right, title or interest in or to the Software Platform, Documentation, whether by implication, operation of law or otherwise.
(iv) Kion reserves all rights not expressly granted to Customer in this Agreement.
(v) Customer will take no action inconsistent with Kion's Intellectual Property rights.
(vi) Certain of the names, logos, and other materials displayed in the Software Platform and Documentation constitute trademarks, trade names, service marks or logos of Kion or other entities. Ownership of all such marks and the goodwill associated therewith remains with Kion or those other entities. The Customer is not authorized to use any such marks.

6.2 Derived Usage Data. To work as intended, the Software Platform is designed to exchange usage data through an interface with Customer's Cloud Service Provider and such use analytics are essential to the functionality of the Software Platform. The Software Platform monitors, collects, records, stores and analyzes use metrics, system statistics, technical data and metadata related to Customer's and its Authorized User's access to and use of the Software Platform, including Customer's tracking information (e.g., machine image used, number of nodes provisioned, instance types, install regions, customer partition, pre-commands, post-commands, etc.), raw information related to the Customer's account activity (e.g., API audit logs, cloud usage and billing data, host and network logs, etc.), and related derived data (collectively, the "Derived Usage Data"). Kion owns all right title and interest in and to any and all Derived Usage Data. Derived Usage Data does not include any data that identifies a specific Customer. Kion may use Derived Usage Data for any purpose whatsoever. However, when Kion collects and uses Derived Usage Data in combination with data that directly identifies to a customer (customer identifiable data), Kion will limit use of that combined data to only the following purposes: (i) providing, maintaining, operating, supporting, improving and protecting the Software Platform, (ii) for research and development, and (iii) to fulfill its rights and obligations under the Agreement.

6.3 Feedback. In the event that Customer provides Kion with any Feedback with respect to the Software Platform, Documentation, Support Services or Professional Services, the Customer agrees that Kion may use the Feedback for any purpose, including, without limitation, to modify its products and services or to create new products or services, and that the Customer will not be due any compensation, including any royalty related to the product or service that incorporates the Customer's Feedback. The Customer hereby irrevocably transfers and assigns to Kion all right, title and interest in and to any Intellectual Property rights that it may have, now or in the future, with respect to such Feedback. Upon Kion's reasonable request, Customer agrees to execute such additional documents as Kion deems necessary or convenient for perfecting or recording Kion's ownership interest, provided that preparation of such additional documents shall be at the expense of Kion. Any Feedback shall be considered Kion's Confidential information.

6.4 Third-Party Software. The Software Platform may include certain components which are licensed from third parties ("Third-Party Software"). Such Third-Party Software is free and distributed to Customer solely under the terms set forth in their respective license agreements, and Customer acknowledges and agrees that this Agreement in no way supplements or detracts from any term or condition therein. By accepting this Agreement, Customer is also accepting the respective license agreements, if any, set forth therein and

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Customer shall undertake all measures necessary to ensure that its use of such Third- Party Software complies in all respects with any contractual or other legally binding obligations to the third party provider of such Third- Party Software. Kion will pass any Third- Party Software warranties or indemnities through to Customer to the extent that Kion is authorized to do so. Customer may access a list of such Third-Party Software at this link: https://support.kion.io/hc/en-us/articles/360042972331

7. DELIVERY

7.1 Delivery Date. As soon as commercially practicable after accepting Customer's purchase order, Kion will electronically deliver to Customer a software license key which Customer may use to access the Software Platform via electronic download. Notwithstanding any provision under a Professional Services Addendum which may require Kion or its Authorized Partner to perform certain installation or configuration services, delivery of the Software Platform shall be deemed complete upon the delivery of the software license key to the Customer ("Delivery Date").

8. MAINTENANCE AND SUPPORT SERVICES

8.1 Maintenance. Kion may, at its sole option and discretion, provide Customer with updates, upgrades or modifications to the Software Platform or Documentation that Kion generally releases or makes available to customers at no additional cost during the Subscription Term. All such maintenance releases are considered part of the Software Platform and are subject to the terms of this Agreement. Customer agrees to install all maintenance releases as soon as practicable after receipt.

8.2 Support Services. As part of the subscription to the Software Platform, Kion will provide Customer with standard support services including email help desk technical assistance and access to an online support portal for instructional materials and Documentation, as more fully described in the Order. Customer may purchase premium support services which includes phone support, and an assigned technical account manager, as more fully described in the Order. Kion has no obligation to install or configure the Software Platform unless the Customer separately purchases such Professional Services.

9. PROFESSIONAL SERVICES

9.1 Separately Purchased Professional Services. Customer may separately purchase certain services including, without limitation, installation and configuration of the Software Platform, on-boarding, training, technology integrations, on-site services or other pre-defined professional services packages or service units identified in the Order or where customized, in a Statement of Work signed by both Parties (the "Professional Services"). Where an Order reflects that Customer has purchased Professional Services in connection with the Software Platform, then the terms and conditions set forth in the attached Professional Services Addendum shall apply to the Parties. The Professional Services Addendum is incorporated into and governed by this Agreement.

9.2 Use of Subcontractors. Unless otherwise restricted in the Order, Kion may provide Professional Services either directly to Customer or through its authorized subcontractor Service Partners. Kion will require and cause its Service Partners to comply with all relevant terms and conditions in this Agreement. Kion will serve as Customer's sole point of contact regarding the Professional Services provided by Service Partners, including with respect to payment. Nothing in this Agreement creates any contractual relationship between Customer and any Service Partner, or any obligation on the part of Customer to pay or to ensure the payment of any money due any Service Partner.

10. FEES AND PAYMENTS

10.1 Fees. Customer shall pay to Kion, without setoff or deduction, the amounts set forth in the Order (the "Fees"). Fees for the Software Platform and related products (including but not limited to usage credits) and any premium support services shall be invoiced after the Delivery Date and payable up-front and in full. Professional Service Fees shall be invoiced on a monthly-in-arrears basis for amounts due under the Order or where applicable, Statement of Work. Fees or other payment obligations are non-cancelable and non-refundable.

10.2 Taxes. All Fees payable under this Agreement will exclude all sales, use, service and other taxes and similar charges. Customer will be solely responsible for paying all taxes, duties, penalties, interest and charges of

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any kind imposed by any governmental or regulatory authority on any amounts payable by Customer. Kion shall be solely responsible for its own income tax. If any tax is required to be paid by Kion, the full amount of such tax will be billed to Customer separately, whether or not the Agreement is then in effect and promptly paid by Customer.

10.3 Payment Terms. Unless otherwise provided in the Order, Customer will pay all Fees or other charges within thirty (30) calendar days from the date of Kion's invoice, in U.S. dollars and by electronic transfer to Kion's designated bank account.

10.4 Late Payment. If any payment to Kion is delinquent, then in addition to all other remedies available to Kion:

a. Kion may charge Customer interest on the past due amount at a rate equal to one and one-half percent (1.5%) per month, and Customer agrees to pay this late payment charge;

b. Customer must reimburse Kion for all reasonable costs incurred to collect any and all late payment and associated interest amounts, including, but not limited to, any attorneys' fee, court costs, and collection agency fees; and

c. If payment delinquency continues for ten (10) days following written notice or demand for payment, Kion may exercise any or all of the following remedies: (1) withhold, suspend, or revoke the license grants in this Agreement; and/or (2) terminate this Agreement pursuant to Section 11.2 (Termination).

11. TERM; TERMINATION

11.1 Term. This Agreement, and the license grants herein, begins on the subscription start date specified in the Order (the "Effective Date") and will remain in full force and effect through the Subscription Term, unless terminated earlier in accordance with the Agreement. The Subscription Term shall not automatically renew.

a. Where this Agreement has been accepted without modifications, and Customer purchases a subsequent subscription in a renewal Order, then the Agreement then in effect on the subscription start date, as indicated by the Last Updated Date on the first page, available at https://assets.kion.io/resources/Kion-Software-License-Agreement.pdf (or a successor location), will come into effect and govern the renewal Subscription Term.

b. Alternatively, where Customer and Kion have entered into a negotiated or amended Agreement signed by both Parties, that Agreement shall continue in effect for the renewal Subscription Term set forth in the renewal Order.

11.2 Termination. This Agreement may be terminated as follows:

a. by Kion if Customer's failure to pay an overdue amount continues for ten (10) days following written notice or demand for payment;

b. by either Party for the other Party's material breach of this Agreement that is not subject to cure or is uncured by the breaching party for thirty (30) days after being served with written notice of breach and demand for cure, effective on written termination notice to the breaching party;

c. by Kion, effective immediately, upon written notice to Customer if Customer breaches Sec. 3 (License Grant) or Sec. 4 (License Restrictions);

d. by Kion, effective immediately and irrespective of written notice to Customer, if Customer becomes insolvent or is generally unable to pay its debts as they become due; becomes the subject of any bankruptcy proceedings, voluntary or involuntary, under any bankruptcy or insolvency law; is dissolved or liquidated or takes any corporate action for such purpose; makes or seeks to make a general assignment for the benefit of its creditors; or applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property;

e. by both Parties upon mutual written Agreement; or

f. as provided for elsewhere in this Agreement.

11.3 Obligations upon Termination or Expiration. Upon early termination or the natural expiration of this Agreement:

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a. all licenses, rights and authorizations granted to Customer herein will immediately terminate and Customer will (i) immediately cease all use of the Software Platform and Documentation; (ii) delete and permanently erase from all of Customer's systems and equipment, the Software Platform and Documentation; and (iii) if requested by Kion, certify in writing that Customer has complied with these termination requirements; and

b. all amounts payable of any kind under this Agreement are immediately due and payable effective on the early termination date or expiration date.

11.4 Survival. Neither termination or expiration of the Agreement will terminate those obligations and rights of the parties pursuant to provisions of the Agreement which by their express terms are intended to survive and such provisions will survive the expiration or termination of the Agreement. Without limiting the foregoing, the following sections, together with any other provisions necessary for interpreting or enforcing this Agreement, will survive any expiration or termination of the Agreement: Sec. 1 (*Definitions*), Sec. 4 (*License Restrictions*), Sec. 6 (*Intellectual Property*), Sec. 12 (Confidentiality), Sec. 13.3 (Warranty Disclaimers), Sec. 14 (Limitation of Liability), Sec. 15 (Indemnification), Sec. 16.4 (*Disclaimer of Warranties for Evaluation Software*), Sec.__ (*Disclaimer of Warranties for All NFR Software*), Sec. 17.2 (*Governing Law; Jurisdiction*); and Sec. 11.4 (*Survival*). Any obligation to pay fees or taxes that Customer incurred before termination or expiration of this Agreement shall survive.

12. CONFIDENTIALITY

12.1 Mutual Confidentiality Obligations. Each Recipient of Confidential Information under this Agreement must:

a. protect and safeguard the confidentiality of the Discloser's Confidential Information with at least the same degree of care as the Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;

b. not use or disclose the Discloser's Confidential Information except to perform its duties, exercise its rights, or as is otherwise authorized under this Agreement;

c. restrict access to the Discloser's Confidential information to only those employees, contractors or agents who have a need to know, who have been advised of the confidentiality obligation, and who have agreed to treat such Confidential Information in accordance with the terms of this Agreement; and

d. immediately, and at least within seventy-two (72) hours, notify the Discloser in writing of any actual misuse, misappropriation or unauthorized access to the Discloser's Confidential Information that Recipient may discover.

12.2 Required Disclosures. Notwithstanding the foregoing, a Recipient may disclose Discloser's Confidential Information to the limited extent required in order to comply with the order of a court or other governmental body, provided that the Recipient making the disclosure pursuant to the order shall first have given notice to the Discloser, if legally permitted to do so, so that the Discloser may seek a protective order or other appropriate remedy. The Recipient shall furnish only the minimum amount the Confidential Information required to satisfy the legal obligations and shall reasonably cooperate with the Discloser in seeking assurances that confidential treatment will be accorded such Confidential Information.

12.3 Effect of Termination. Upon termination of this Agreement, if the Discloser requests in writing, each Party will return, destroy or delete permanently the other Party's Confidential Information. Otherwise, each Party must continue to keep the other Party's Confidential Information confidential for five (5) years from the termination date in accordance with this Section.

13. LIMITED WARRANTY AND DISCLAIMER

13.1 Limited Warranty. Kion warrants that, for a period of thirty (30) days from the Delivery Date (the "Warranty Period"), the Software Platform will conform in all material respects to the Documentation (the "Limited Warranty"). Customer's exclusive remedy and Kion's entire obligation and liability for any breach of the Limited Warranty is to: (i) repair or replace the Software Platform or (ii) terminate the Agreement and refund to Customer the Fee Customer paid for the Software Platform if a repair or replacement of the Software Platform would, in Kion's opinion, be unreasonable. The Limited Warranty is conditioned upon Customer

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providing Kion with prompt written notice, during the Warranty Period, of the Software Platform's failure to perform substantially in accordance with the Documentation.

13.2 Exclusion of Warranty. The Limited Warranty will not apply if: (i) the Software Platform is not used in accordance with this Agreement or the Documentation; (ii) the Software Platform or any part of it has been modified by an entity other than Kion or Kion's Service Partner; or (iii) a malfunction in the Software Platform has been caused by any equipment or software not supplied by Kion.

13.3 Warranty Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SOFTWARE PLATFORM, DOCUMENTATION, SUPPORT SERVICES AND PROFESSIONAL SERVICES ARE PROVIDED BY KION "AS IS" AND "WITH ALL FAULTS" AND WITHOUT WARRANTY OF ANY KIND, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED, STATUTORY, OR ARISING FROM ANY COURSE OF DEALING, USAGE OR TRADE PRACTICE. KION SPECIFICALLY AND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE, ACHIEVEMENT OF CUSTOMER'S REQUIREMENTS OR INTENDED RESULTS, OR COMPATIBILITY WITH ANY OTHER SOFTWARE, SERVICE, TECHNOLOGY OR MATERIALS EXCEPT AS EXPRESSLY SET FORTH IN THE DOCUMENTATION. FURTHERMORE, AND WITHOUT LIMITING THE FOREGOING, KION MAKES NO WARRANTY OF ANY KIND THAT THE SOFTWARE PLATFORM OR DOCUMENTATION WILL BE SECURE, ACCURATE, COMPLETE, ERROR-FREE, FAIL-SAFE, FREE OF HARMFUL CODE OR UNINTERRUPTED OR THAT ALL DEFECTS WILL BE CORRECTED. THIRD-PARTY SOFTWARE, OPEN-SOURCE COMPNENTS AND ANY OTHER THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND.

14. LIMITATION OF LIABILITY

14.1 No Indirect Damages. EXCEPT FOR THE EXCLUSIONS IN SEC. 14.3, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, CONSEQUENTIAL OR EXEMPLARY DAMAGES REGARDLESS OF THE NATURE OF THE CLAIM. THIS PROHIBITION ON INDIRECT DAMAGES SHALL INCLUDE, BUT NOT BE LIMITED TO, CLAIMS BASED ON LOST PROFITS, COST OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COST OF LOST, STOLEN OR DAMAGED DATA AND OF RESTORING SUCH DATA, COMPUTER OR SYSTEM FAILURE OR DISRUPTION, COSTS OF COVER, LOSS OF BUSINESS, LOSS OF USE, LOSS OF GOODWILL OR LIABILITIES TO ANY THIRD PARTIES EVEN IF SUCH PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14.2 Cap on Direct Damages. EXCEPT FOR THE EXCLUSIONS IN SEC. 14.3, EACH PARTY'S TOTAL CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATING THIS AGREEMENT (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), SHALL BE LIMITED TO PROVEN DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE TOTAL AMOUNT OF SUBSCRIPTION FEES THEN PAID OR PAYABLE BY CUSTOMER TO KION PURSUANT TO THIS AGREEMENT FOR THE SUBSCRIPTION TERM DURING WHICH THE EVENT, ACT OR OMISSION GIVING RISE TO SUCH LIABILITY OCCURRED. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR PROVEN INEFFECTIVE.

14.3 Exclusions. The liability limits set forth in Sections 14.1 and 14.2 shall not apply to damages resulting from: (i) damage to real or personal property; (ii) personal injury or death; (iii) fraud or willful misconduct; (iv) Customer's breach of Sec. 3 (*License and Use of Software Platform*) or Section 4 (*License Restrictions*); or (v) breach of Sec. 12 (*Confidentiality*).

14.4 Essential Basis. The Parties agree that the disclaimers, exclusions and limitations of liability set forth in this Agreement form an essential basis of the bargain between the Parties, and, absent any of such disclaimers, exclusions or limitations of liability, the terms of this Agreement, including, without limitation, the economic terms, would be substantially different. Any laws preventing such limitations on liability shall only apply to the extent required by law and the remaining unaffected terms shall apply in full.

15. INDEMNIFICATION

15.1 Kion's Indemnification Obligations. Kion shall, at its sole cost and expense: (i) defend and/or settle on behalf of Customer (including Customer's officers, directors, employees, representatives and agents) and (ii) indemnify Customer for any unaffiliated third-party claims brought against Customer based upon a claim

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that Customer's use of the Software Platform in accordance with this Agreement infringes or misappropriates such third party's Intellectual Property rights in the United States.

a. Exclusive Remedies. Upon the occurrence of any claim for which Customer seeks indemnity under this Section, or in the event that Kion believes that such a claim is likely, Kion may, in its sole discretion (a) appropriately modify its Software Platform so that it becomes non-infringing, (b) replace the Software Platform with a functionally equivalent non-infringing software; (c) procure for Customer the right to continue using the Software Platform from the third party or, if neither (a), (b) or (c) is commercially reasonable in Kion's opinion, (d) terminate the Agreement and Customer's subscription to the Software Platform immediately on written notice to Customer and upon Customer's removal of the Software Platform from the Customer's cloud services, prorate and refund Customer any unused portion of the pre-paid subscription fees for any period after the termination date. THE OBLIGATIONS SET FORTH IN THIS SECTION SHALL CONSTITUTE KION'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY ACTUAL OR ALLEGED CLAIMS INVOLVING INTELLECTUAL PROPERTY RIGHTS.

b. Exclusions. Notwithstanding the foregoing, Kion shall have no obligation or liability to the extent that the alleged infringement arises from: (a) modification of the Software Platform by any party other than Kion or a Service Partner authorized by Kion; (b) the combination, operation, or use of the Software Platform with products, services, or software not provided by Kion, (c) any unauthorized use of the Software Platform including use that is in violation of this Agreement or that is not in accordance with the Documentation; (d) any unsupported release of the Software Platform; (e) modifications of the Software Platform made to confirm with Customer's specifications, designs, technology or requirements, or (f) any Third-Party Software or any other third-party materials contained within the Software Platform (collectively, the "Customer Exclusions"). Additionally, the foregoing obligations of Kion shall not apply if Customer settles or makes any admissions with respect to a claim without Kion's prior written consent.

15.2 **Customer's Indemnification Obligations**. Customer will unconditionally indemnify and defend Kion (including its officers, directors, employees, contractors and agents) against any claims, liabilities and expenses (including court costs and reasonable attorney fees) that Kion incurs as a result of or in connection with any third-party claims arising from: (1) Customer's failure to obtain any consent, authorization or license required for Kion's use data, software, materials, systems, networks or other technology provided by Customer under this Agreement; (2) a Customer Exclusion; (3) Kion's compliance with any technology, designs, instructions or requirements provided by Customer or a third party on Customer's behalf; and (4) any violation by Customer of applicable laws.

15.3 **Indemnification Procedure**. The indemnified party will: (i) provide prompt written notice to the indemnifying party of the claim (but in any event, notice in sufficient time for the indemnifying party to respond without prejudice), (ii) give the indemnifying party sole control over the defense and settlement of the claim, provided that any settlement will not include a specific performance obligation or admission of liability by the indemnified party, (iii) reasonably cooperate in connection with the defense of settlement of the claim of the claim, and (iv) not make any settlement, admission or compromise regarding such claim.

16. EVALUATION SOFTWARE SUBSCRIPTION

16.1 **Evaluation Software Subscription**. If the applicable Order specifies that the Software Platform is provided under an evaluation license (the "Evaluation Software"), then subject to Customer's compliance with this Agreement, Kion grants to Customer a limited nonexclusive, nontransferable, non-sublicensable license to install and use the Evaluation Software in a non-production environment (the "Authorized Operating Environment") during the subscription term solely to evaluate and test the Evaluation Software to assess whether Customer desires to purchase a subscription to license the Software Platform for its internal business purposes.

16.2 **Special Evaluation Subscription Terms**. In addition to the terms and conditions in this Agreement (unless excluded for Evaluation Software as set forth below), the following special evaluation terms shall apply:

a. Free. Kion offers the Evaluation Software and Documentation to Customer at no cost or fee for the Evaluation Subscription Term.

b. Term. The subscription term for Evaluation Software is thirty (30) days unless the Order provides otherwise. The Parties can agree to extend the term in writing (email will suffice).

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c. Termination. Either Party may terminate the Evaluation Subscription at any time, for any reason. Upon termination or expiration of the subscription, Customer agrees to cease all use of the Evaluation Software, and upon Kion's request, delete the Evaluation Software from its systems and cloud environment.

d. Cooperation with Kion Representatives. Customer and Kion agree to cooperate to ensure a productive evaluation. Customer understands and agrees that from time to time, it may be beneficial for Kion to view information in or access Customer's environment. Customer hereby grants Kion the right to access the authorized operating environment during the Evaluation Subscription Term, for the limited purposes of:

   i. monitoring, testing, and evaluating the performance and operation of the Evaluation Software within the Authorized Operating Environment;

   ii. providing limited technical assistance to such extent as Kion may deem necessary and/or appropriate in its sole discretion in order to facilitate Customer's testing and evaluation of the Evaluation Software; and

   iii. performing such maintenance to the Evaluation Software as Kion deems necessary and/or appropriate in its sole discretion, provided that nothing herein shall be deemed to require Kion to provide any technical assistance or to perform any maintenance with respect to the Evaluation Software.

e. Customer's Reporting and Feedback Obligations. Customer agrees to provide Kion with any error reports, results of any performance, functional or other testing, and feedback as Customer evaluates the Evaluation Software. Customer hereby irrevocably transfers and assigns to Kion all right, title and interest in and to any Intellectual Property rights that it may have, now or in the future, with respect to the Feedback. Such Feedback is considered Kion's Confidential Information.

16.3 **Excluded Agreement Provisions**. The following provisions in this Agreement are excluded from and do not apply to an Evaluation Software Subscription: Section 8 (*Maintenance and Support Services*), Section 10 (*Fees and Payments*), Section 13.1 and 13.2 (*Limited Warranty and Exclusion of Warranty*), Section 14.2 (*Cap on Direct Damages*), and Section 15.1 (*Kion's Indemnification Obligations*).

16.4 **Disclaimer of All Warranties.** This Section 16.4 applies to the software described in this Section 16 (*Evaluation Software Subscription*) and Section 17 (*Not-For-Resale Software Subscription*). THE EVALUATION SOFTWARE, THE NFR SOFTWARE (DESCRIBED BELOW IN SEC. #), ANY SERVICES AND THE DOCUMENTATION PROVIDED BY KION IN CONNECTION WITH SUCH SOFTWARE (COLLECTIVELY, THE "SOFTWARE, SERVICES AND DOCUMENTATION") ARE EACH PROVIDED "AS IS" AND "WITH ALL FAULTS" AND WITHOUT WARRANTY OF ANY KIND, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED, STATUTORY, OR ARISING FROM ANY COURSE OF DEALING, USAGE OR TRADE PRACTICE. KION SPECIFICALLY AND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE, ACHIEVEMENT OF CUSTOMER'S REQUIREMENTS OR INTENDED RESULTS, OR COMPATIBILITY WITH ANY OTHER SOFTWARE, SERVICE, TECHNOLOGY OR MATERIALS EXCEPT AS EXPRESSLY SET FORTH IN THE DOCUMENTATION. FURTHERMORE, AND WITHOUT LIMITING THE FOREGOING, KION MAKES NO WARRANTY OF ANY KIND THAT THE SOFTWARE, SERVICES AND DOCUMENTATION WILL BE SECURE, ACCURATE, COMPLETE, ERROR-FREE, FAIL-SAFE, FREE FROM HARMFUL CODE, UNINTERRUPTED OR THAT ALL DEFECTS WILL BE CORRECTED. THIRD-PARTY SOFTWARE, OPEN-SOURCE COMPNENTS AND ANY OTHER THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. CUSTOMER ASSUMES ALL RISK OF USE OF THE SOFTWARE, SERVICES, AND DOCUMENTATION.

16.5 **Maximum Liability**. TO THE EXTENT AUTHORIZED BY LAW, IN NO EVENT SHALL KION'S LIABILITY TO CUSTOMER WITH RESPECT TO EVALUATION SOFTWARE, NFR SOFTWARE AND ANY SERVICES AND DOCUMENTATION PROVIDED BY KION IN CONNECTION WITH SUCH SOFTWARE FOR ANY CAUSE EXCEED ONE-HUNDRED DOLLARS (U.S. $100).

17. NOT-FOR-RESALE ("NFR") SOFTWARE LICENSES SUBSCRIPTIONS

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17.1 Not-for-Resale Software Grant. Kion offers Not-for-Resale software to the Software Platform (the "NFR Software") for use in non-production environments only. This Sec.17 applies to those NFR Software Subscriptions. Subject to this Agreement, where the applicable Order Form specifies a NFR Software Subscription, Kion hereby grants to Customer a limited nonexclusive, nontransferable, non-sublicensable license to install and use the NFR Software only in a non-production environment for the Subscription Term and solely for development, testing, training and demonstration purposes. For any uses beyond the scope of this NFR Software license grant, Customer must enter into a separate written amendment with Kion.

17.2 Special Provisions for NFR Software Subscriptions. The terms and conditions in Section 16.3 (*Excluded Agreement Provisions*), Section 16.4 (*Disclaimer of All Warranties*), and Section 16.5 (*Maximum Liability*) shall apply to all NFR Software Subscriptions.

18. U.S. FEDERAL GOVERNMENT CUSTOMERS

18.1 U.S. Federal Government Customers. Kion provides the Software Platform and related Documentation for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Software include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with Federal Acquisition Regulation ("FAR") FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, Defense FAR Supplement ("DFARS") DFARS 252.227-7015 (Technical Data-Commercial Items) and DFARS 227.7202-03 (Rights in Commercial Computer Software or Computer Software Documentation). Customer agrees that the Software Platform meets the definition of "commercial item" in FAR 2.101 and that all of the Software Platform's components were developed exclusively at private expense. If a government agency has a need for rights not conveyed under these terms, it must negotiate with Kion to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum signed by both parties, specifically conveying such rights must be included in any applicable contract or agreement.

19. GENERAL PROVISIONS

19.1 Entire Agreement. This Agreement constitutes the complete and exclusive understanding and agreement between the Parties and supersedes any and all prior or contemporaneous agreements, communications and understandings, written or oral, with respect to the subject matter of this Agreement. The terms of this Agreement prevail over and expressly exclude any terms or conditions contained in any Purchase Order or other document issued by Customer, whether or not expressly rejected by Kion.

19.2 Amendment. No amendment to this Agreement shall be valid unless such amendment is made in writing and is signed by the duly authorized representatives of both Parties.

19.3 Notice. Unless otherwise provided in this Agreement, all required notices will be in writing, in English, and delivered by overnight delivery service, or by registered or certified mail, postage prepaid with return receipt requested, and in each instance will be deemed given upon receipt, with a copy also sent to Parties' respective e-mail addresses identified in the applicable Order, and to the attention of such other person(s) or officer(s) as either party may designate by written notice. Additional notice to Kion must be made to: John Lynch Kion may provide notices regarding the Software Platform to the email address Customer provides for its Customer Account and/or send electronic notices within the Customer's Account in the Software Platform, and Customer hereby consents to receive such communications from Kion in electronic form.

19.4 Governing Law/ Jurisdiction. This Agreement is governed by and construed in accordance with the laws of the State of Maryland without giving effect to any choice or conflict of law provisions. The Parties hereby irrevocably agree to submit to the jurisdiction of the state courts of the State of Maryland and the U.S. District Court for the District of Maryland and agree that such courts shall be the exclusive venue for any action arising under this Agreement. The Parties Agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act do not apply to this Agreement.

19.5 Injunctive Relief. The Parties agree that a breach or threatened breach of by either Party of any of its obligations under Section 3.1 (*License Grant*), Section 4.1 (*License Restrictions*), or Section 12 (*Confidentiality*) will cause immediate and irreparable harm to the non-breaching Party and for which monetary damages

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would be inadequate, and that in addition to any other remedy, the non-breaching Party shall be entitled to injunctive relief against such breach or threatened breach, without proving actual damages or posting a bond or other security.

19.6 **Assignment**. Neither Party may assign or otherwise transfer the Agreement without the other Party's prior written consent, which may not be unreasonably withheld or delayed; provided, however, that no such prior approval shall be required for an assignment in connection with a sale of all or substantially all of a Party's business related to the subject matter of the Agreement or any merger, sale of a controlling interest, or other change of control of such Party. In the event of such assignment, the assigning Party shall provide written notice as soon as is reasonably practicable. The Agreement applies to and binds the permitted successors and assigns of the Parties.

19.7 **Third Party Beneficiaries**. The Parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the Parties, their successors and permitted assigns. Nothing herein, whether express or implied, shall confer upon any person or entity, other than the Parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

19.8 **Force Majeure**. Except for payment obligations, neither Party will be in default or otherwise liable for any delay in or failure of its performance under this Agreement if such delay or failure arises by any reason beyond its reasonable control, including any act of god, earthquakes, floods, fires, epidemics, pandemics, riots, terrorist attack, war, insurrection or failures or delays in transportation or communications. The Parties will promptly inform and consult with each other as to any of the above causes which in their judgment may or could delay or excuse performance, in whole or in part, as may be reasonable under the circumstances.

19.9 **Independent Contractors**. The Parties are independent contractors under this Agreement and expressly disclaim any partnership, franchise, joint venture, agency, employer/ employee, fiduciary or other special relationship.

19.10 **Waiver.** A party's failure or delay in enforcing any provision of this Agreement will not operate as a waiver of the right to enforce that provision or any other provision of this Agreement. A waiver of any provision of this Agreement must be in writing, specifying the provision to be waived and signed by an authorized representative of the Party agreeing to the waiver.

19.11 **Severability**. If a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

19.12 **Headings.** The headings in this Agreement are merely for convenience and shall not affect the meaning or interpretation of this Agreement.

Nor Labs, Inc. DBA Kion	**Customer: {{SBQQ__QUOTE_End_Customer_Name}}**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Address: _____	Address: _____
_____	_____
Date: _____	Date: _____

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