

## **KOOMI SERVICE AGREEMENT**

THIS SERVICE AGREEMENT ("**AGREEMENT**") IS A LEGAL AGREEMENT BETWEEN KOOMI INC. ("**KOOMI**") AND THE INDIVIDUAL OR LEGAL ENTITY ("**CUSTOMER**") USING OR ACCESSING THE KOOMI PRODUCT WHETHER IN CONNECTION WITH A PAID SUBSCRIPTION OR A FREE TRIAL. PLEASE READ THIS AGREEMENT CAREFULLY BEFORE AGREEING TO THESE TERMS. BY AGREEING TO THESE TERMS OR USING THE KOOMI PRODUCT, WHICHEVER OCCURS EARLIER, CUSTOMER IS AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT.

### **1. Subscription to KOOMI Product**

Customer hereby agrees to license the KOOMI product(s) (each a "**Product**") identified on the web form in the case of a Product trial or in the subscription documentation (*i.e.*, the proposal or invoice)(the "**Subscription**") exchanged by the parties in conjunction with Customer's acceptance of this Agreement. The specific Products and the fees payable with respect to such Products are set forth in the Subscription. Each Product may include updates, cloud-based services, support services, applications or documentations, each of which is subject to the terms of this Agreement as applicable. KOOMI may add to, change or discontinue any component of the Products at any time; provided however, that no such change shall materially increase Customer's obligations or materially decrease Customer's entitlements under this Agreement. Customer is responsible for all actions taken under its KOOMI account credentials, regardless of whether such actions are taken by Customer, its employees or a third party. KOOMI is not liable for any loss or damage arising from any unauthorized use of Customer's account.

### **2. Grant of License**

During the Term (as defined below), KOOMI grants Customer a limited, non-exclusive, non-transferable, nonsublicensable, revocable license to use, and, in the case of KOOMI Products that permit additional Users (as set forth in the Product specific terms below), to allow such Users to use, the Products on the terms set forth in this Agreement. Customer agrees that all rights, title and interest in and to all the intellectual property rights in the Products, and all modifications, extensions, scripts and other derivative works of the Products provided or developed by KOOMI are owned exclusively by KOOMI or its licensors. All rights not granted to Customer in this Agreement are reserved by KOOMI.

### **3. License Restrictions**

Customer and any Users shall not (and shall not allow any third party to): (i) decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming or interoperability interfaces of the Products, by any means whatsoever; (ii) distribute viruses or other harmful or malicious computer code via or into the Products; (iii) engage in any conduct that disrupts or impedes a third party's use and enjoyment of the Products; (iv) remove any product identification, copyright or other notices from the Products; (v) sell, lease, lend, assign, sublicense, grant access or otherwise transfer or disclose the Products in whole or in part, to any third party; (vi) use the Products for timesharing, service bureau or hosting purposes or otherwise use, resell, sublicense, distribute or transfer or allow others to use the Products to or for the benefit of third parties; (vii) modify or incorporate into or with other software or create a derivative work of any part of the Products; (viii) use the output or other information generated by the Products for any purpose other than as contemplated by this Agreement; (ix) use the Products for any use other than Customer's internal business use; (x) use unauthorized modified versions of the Products, including without limitation, for the purpose of building a similar or competitive product or service or for the purpose of obtaining unauthorized access to the Product; or (xi) use the Products in any way that is contrary to applicable local, state/provincial, federal and foreign laws, including without limitation those relating to privacy, data protection, electronic communications and anti-spam legislation. KOOMI retains all title to, and, except as expressly licensed herein, all rights to the Products, all copies, derivatives and improvements thereof and all related documentation and materials.

### **4. Term of Agreement**

The "**Initial Term**" shall mean the number of months and/or years in the term as specified in the Subscription beginning on the date specified in the Subscription ("**Activation Date**"). Upon expiration of the Initial Term and unless otherwise stated in the Subscription, this Agreement will automatically renew on a yearly basis (each a "**Renewal Term**", and the Initial Term and all Renewal Terms collectively, the "**Term**") until terminated by Customer or KOOMI by delivery of written notice to the other party at least thirty (30) days prior to the end of the Initial Term

or then-current Renewal Term, as applicable. In the case of Products licensed on a trial basis, the Term of this Agreement shall be limited to the duration of the trial period identified in the Subscription. Except as specified in Section 12.1 below, Customer may not terminate this Agreement prior to the expiration of the Initial Term. Following expiration of the Initial Term, KOOMI may increase the fees payable by Customer under this Agreement, upon not less than 30 days' written notice.

## **5. Fees and Payment**

Customer shall pay KOOMI the annual and/or monthly fees ("**Fees**") specified in the Subscription, in accordance with the timing and currency specified in the Subscription. All payments by Customer to KOOMI under this Agreement are non-refundable, and made via the automatic payment method specified by Customer in the Subscription, or as otherwise agreed by the parties. Customer shall undertake any additional actions reasonably requested by KOOMI to implement the foregoing automated fee payment process. Any amounts past due from Customer under this Agreement shall accrue interest at a rate which is the lesser of two percent (2%) per month or, if less, the maximum rate allowable by law. Any applicable federal, state, provincial, or other goods and services or sales taxes will be added to fees owing pursuant to this Agreement. KOOMI may at any time during any Renewal Term increase fees to the then-current list price upon 30 days' prior notice.

## **6. Confidential Information**

KOOMI and Customer (and its Users) shall each retain in confidence all information received from the other party pursuant to or in connection with this Agreement that the disclosing party identifies as being proprietary and/or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary and/or confidential ("**Confidential Information**"), and will make no use of such Confidential Information except as necessary to fulfill their respective obligations under the terms and during the term of this Agreement. Each party shall treat the terms and conditions of this Agreement as confidential; however, either party may disclose such information in confidence to its immediate legal and financial consultants as required in the ordinary course of that party's business. Notwithstanding the foregoing, the restrictions set forth above will not apply to (i) information previously known to the receiving party without reference to the disclosing party's Confidential Information, (ii) information which is or becomes publicly known through no wrongful act of the receiving party, (iii) information that is independently developed by either of the parties, or (iv) information required to be disclosed pursuant to applicable law. The foregoing shall also not prevent KOOMI from using Customer data on an aggregate, anonymized basis.

## **7. Customer's Representations and Indemnification**

Customer represents and warrants that currently and throughout the Term (i) it is fully authorized to enter into this Agreement and that Customer and any Users are fully authorized to utilize the Products, (ii) Customer and any Users are and will remain in compliance with all applicable laws and regulations with respect to its and their activities related to this Agreement, including but not limited to privacy laws; and (iii) if Customer or any of its Users imports lists into the Products for the purpose of sending electronic communications (e.g., emails, texts) to such list, or otherwise collects electronic addresses for the purpose of sending electronics messages, then Customer warrants that each person on such list has previously opted-in to receive promotional electronic communications from Customer and that the content of such communications by Customer will comply with applicable laws and regulations. Customer shall indemnify, defend and hold harmless KOOMI and its officers, employees, agents and affiliates from and against all losses, expenses, liabilities, damages and costs including, without limitation, reasonable attorneys' fees (collectively "**Costs**"), to the extent that such Costs are attributable to any breach by Customer or any User, employee, independent contractor, or affiliate thereof, of any representations, warranties or other obligations set forth in this Agreement. Customer and each of its Users agree to comply with all KOOMI policies and all laws, rules and regulations relating to the use of the Products. Any violation of this section may result in loss of features, up to and including termination of Customer's account. Customer will indemnify KOOMI for any costs, fines or damages incurred by KOOMI due to Customer's or its User's failure to comply with this section.

## **8. Privacy**

KOOMI uses and protects Customer information, including information transmitted via the Products, in accordance with the KOOMI Privacy Policy, located at <https://www.koomi.com/privacy-policy/> ("**Site**"), and hereby incorporated by reference. You agree to allow KOOMI to use and share with third parties nonpersonal data to build anonymous data profiles, provide segmented marketing information, create aggregate statistical reports, and to improve current and new products and services.

## 9. Submissions

Customer agrees that any materials that it provides to KOOMI, including but not limited to questions, comments, suggestions, ideas, plans, notes, drawings, original or creative materials or other information regarding KOOMI or the Products, whether such materials are provided in email, feedback forms, or any other format, shall belong exclusively to KOOMI, without any requirement to acknowledge or compensate Customer.

## 10. Third Party Services

Customer may decide to enable, access or use any Third Party Services (as defined below). Customer agrees that access and use of such Third Party Services shall be governed solely by the terms and conditions of such Third Party Services, and that KOOMI is not responsible or liable for, and makes no representations as to any aspect of such Third Party Services, including, without limitation, their content or the manner in which they handle data (including Customer's data) or any interaction between Customer and the provider of such Third Party Services, regardless of whether or not such Third Party Services are provided by a third party that is a member of a KOOMI partner program or otherwise designated by KOOMI as "certified", or "approved" by KOOMI. Any use by Customer of Third Party Services shall be solely between Customer and the applicable third party provider. Customer irrevocably waives any claim against KOOMI with respect to such Third Party Services. KOOMI is not liable for any damage or loss caused or alleged to be caused by or in connection with Customer's enablement, access or use of any such Third Party Services, or Customer's reliance on the privacy practices, data security processes or other policies of such Third Party Services. "**Third Party Services**" means products, applications, services, software, products, networks, systems, directories, websites, databases and information from third parties, which one or more Products link to, or which Customer may connect to or enable in conjunction with one or more Products.

## 11. Maintenance activities

It may be necessary for KOOMI to perform scheduled or unscheduled repairs or maintenance, or remotely patch or upgrade the Product, which may temporarily degrade the quality of the services or result in a partial or complete outage of the Product. KOOMI will endeavor to carry out such repairs or maintenance during times that will cause the least disruptions to Customer's business. Customer shall cooperate, if necessary, to perform maintenance or repair work.

## 12. Termination and Suspension

**12.1. Termination for Breach.** In the event of a material breach of this Agreement by either party, the nonbreaching party may terminate this Agreement by giving the breaching party written notice specifying the nature of the breach in reasonable detail and the non-breaching party's intention to terminate (a "**Termination Notice**"). If the breach has not been cured within the period ending thirty (30) days following delivery of the Termination Notice, then this Agreement shall automatically terminate. Notwithstanding the foregoing, if Customer is in breach of any material provisions of this Agreement, including the license restrictions of Section 3, the payment terms of Section 5, or the confidentiality restrictions of Section 6, then KOOMI may immediately suspend or terminate Customer's use of the Products. Any such suspension shall not relieve Customer of any of its obligations under this Agreement or entitle Customer to any refund of payments previously made.

**12.2. Suspension.** KOOMI may suspend Customer's access to the Products immediately without notice if KOOMI, in its sole discretion, believes: (1) such suspension is required by law; (2) Customer has breached this Agreement and has not remedied such breach within 15 days of receiving notice of the alleged breach from KOOMI; or (3) there is a security or privacy risk to Customer. Any suspension of Customer's access to the Products will not limit or waive KOOMI's rights to terminate this Agreement or Customer's access to the Products.

**12.3. Effect of Termination.** Upon termination of this Agreement, Customer shall discontinue its use of the Product(s). Notwithstanding the foregoing, termination of this Agreement by KOOMI shall not limit Customer's obligation to pay all of the applicable fees, nor restrict KOOMI from pursuing any other remedies available to it, including injunctive relief. Sections 3, 5, 6, 7, 9-14, and 16-20 shall survive termination of this Agreement, along with any other provisions that are intended by their terms to survive.

**12.4. Customer Data.** Customer understands and agrees that KOOMI has no control over the content of the data processed by KOOMI on Customer's behalf. Customer is responsible for taking its own steps to maintain

appropriate security, protection and back-up of its data and software, including the use of appropriate back-up and archiving. Customer remains responsible for properly handling and processing notices regarding personal data Customer's clients. Customer understands and agrees that KOOMI is not responsible for any loss or corruption of Customer data or other software. Customer agrees that following termination of Customer's account and/or use of the Product, KOOMI may immediately deactivate Customer's account and delete Customer data. Customer further agrees that KOOMI shall not be liable to Customer nor to any third party for any termination of Customer access to the Product or deletion of Customer data.

### **13. Limitation of Liability**

KOOMI AND ITS AFFILIATES' AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE FEES PAID BY CUSTOMER DURING THE THREE MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CLAIM GIVING RISE TO SUCH LIABILITY WAS FIRST ASSERTED. EXCEPT WITH RESPECT TO (i) ANY WILLFUL OR DELIBERATE INFRINGEMENT OR MISAPPROPRIATION BY CUSTOMER OF ANY OF KOOMI'S, ITS AFFILIATES' OR SUPPLIERS' INTELLECTUAL PROPERTY RIGHTS, AND (ii) CUSTOMER'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, RELIANCE OR PUNITIVE DAMAGES OR LOST OR IMPUTED PROFITS OR ROYALTIES, LOST DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, WHETHER FOR BREACH OF CONTRACT, WARRANTY, TORT, STATUTORY REMEDY OR ANY OBLIGATION ARISING THEREFROM OR OTHERWISE AND IRRESPECTIVE OF WHETHER EITHER PARTY HAS ADVISED OR BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE. CUSTOMER HEREBY WAIVES ANY CLAIM THAT THESE EXCLUSIONS DEPRIVE IT OF AN ADEQUATE REMEDY. THE PARTIES ACKNOWLEDGE THAT THE PROVISIONS OF THIS SECTION FAIRLY ALLOCATE THE RISKS UNDER THIS AGREEMENT AS BETWEEN THEM. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS SET FORTH IN THIS SECTION ARE INTEGRAL TO THE AMOUNT OF FEES CHARGED IN CONNECTION WITH MAKING THE PRODUCTS AVAILABLE TO CUSTOMER AND THAT, WERE KOOMI TO ASSUME FURTHER LIABILITY OTHER THAN AS SET FOR HEREIN, SUCH FEES WOULD OF NECESSITY BE SET SIGNIFICANTLY HIGHER.

### **14. Disclaimer of Warranties**

CUSTOMER ACKNOWLEDGES THAT (i) KOOMI CANNOT GUARANTEE THE RESULTS GENERATED THROUGH THE PRODUCTS, OR THAT THE PRODUCTS WILL BE CONTINUOUSLY AVAILABLE FOR USE WITHOUT INTERRUPTION, AND (ii) THE PRODUCTS ARE PROVIDED "AS-IS", ON AN "AS AVAILABLE" BASIS WITHOUT ANY REPRESENTATION, WARRANTY OR CONDITION OF ANY KIND, AND KOOMI HEREBY DISCLAIMS ALL CONDITIONS, REPRESENTATIONS AND ALL WARRANTIES WHETHER EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE WITH RESPECT TO THE PRODUCTS, INCLUDING, BUT NOT LIMITED TO, ANY (a) IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (b) IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE, (c) WARRANTY OF TITLE OR NON-INFRINGEMENT; OR (d) STATUTORY REMEDY.

### **15. Assignment and Contractors**

Customer may not assign any of its rights or obligations under this Agreement without KOOMI's prior written consent. KOOMI may, without Customer's prior consent, assign its rights and obligations under this Agreement. Subject to the foregoing, the provisions of this Agreement shall be binding on and inure to the benefit not only of the parties hereto but also to their successors and assigns. KOOMI shall be free to perform all or any part of this Agreement through one or more subcontractors.

### **16. Governing Law, Venue and Attorneys' Fees**

This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Quebec. In the event of any controversy or claim arising out of or relating to this Agreement, or the breach or interpretation thereof, the parties agree to submit to the exclusive jurisdiction of and venue in the courts of the Province of Quebec, in the judicial district of Montreal. Each party hereby waives all defenses of lack of personal jurisdiction and forum nonconveniens in connection with any action brought in the foregoing courts. If KOOMI prevails in any action or proceeding (including for collection) under this Agreement, then KOOMI shall be entitled to recover from Customer, in addition to all other relief, its reasonable attorneys' and other experts' fees and expenses incurred with respect to such action or proceeding. Any claim, dispute or controversy (whether in contract or tort, pursuant to statute or regulation, or otherwise, and whether pre-existing, present or future) arising out of or relating to: (a) this Agreement;

(b) the services or equipment provided to KOOMI; (c) oral or written statements, or advertisements or promotions relating to this Agreement or to the services or equipment; or (d) the relationships that result from this Agreement (collectively the "Claim") will be determined by arbitration to the exclusion of the courts, except that each party retains the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents, or other intellectual property rights. Customer agrees to waive any right Customer may have to commence or participate in any class action or representative proceeding against KOOMI related to any Claim and, where applicable, Customer also agrees to opt out of any class or representative proceedings against KOOMI. Arbitration will be conducted by one arbitrator pursuant to the laws and rules relating to commercial arbitration in Quebec that are in effect on the date of the notice.

#### **17. Export Compliance and Other Restrictions**

Products which KOOMI may provide or make available to Customer may be subject to U.S. Export control and economic sanctions laws. Customer agrees to comply with all such laws or regulations as they relate to the access and use of Products. Customer agrees not to access the Product from any jurisdiction in which the provision of the Product is prohibited under U.S. or other applicable laws or regulations (a "Proscribed Country") or provide access to the Product to any government, entity or individual located in any Proscribed Country. Customer represents, warrants, and covenants that (i) it is not a national of, or company registered in, any Proscribed Country; and (ii) it shall not permit third parties to access or use the Product in violation of any U.S. or other applicable export embargoes, prohibitions or restrictions.

#### **18. Severability, Force Majeure, Entire Agreement, Amendment**

If one or more of the provisions of this Agreement is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, then the validity, legality and enforceability of the remaining provisions of this Agreement shall be unaffected. Neither party shall be deemed in default or otherwise liable for any delay in or failure of its performance under this Agreement (other than payment obligations) by reason of any act of God, fire, natural disaster, accident, act of government, shortage of materials or supplies, failure of transportation or communication or of suppliers of goods or services, or any other cause to the extent it is beyond the reasonable control of such party. This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous written, electronic or oral communications, representations, agreements or understandings between the parties with respect thereto. KOOMI may amend this Agreement at any time upon reasonable prior notice. Any terms or conditions appearing on the face or reverse side of any purchase order, acknowledgment, or confirmation that are different from or in addition to those set forth in this Agreement shall not be binding on the parties, even if signed and returned, unless expressly stated that such other terms and conditions take precedence over conflicting terms of this Agreement.

#### **19. Miscellaneous**

Customer has reviewed, understood and accepted the terms and conditions set forth in this Agreement and has either consulted with legal counsel prior to executing this Agreement or has knowingly forgone its right to consult with legal counsel prior to such execution.

KOOMI may provide any and all notices, statements and other communications to Customer through either email, posting on its Site, or by mail or express delivery service.

The provisions of this Agreement shall not be construed against either party by virtue of their authorship.

The parties acknowledge that they require that this Agreement be drawn up in the English language, that the English language version prevails and that any translation is for information purposes only.

#### **20. Provisions Applicable to Specific KOOMI Products**

##### **20.1. KOOMI POS**

20.1.1. Users. The KOOMI POS Product may be utilized by additional, specifically-identifiable devices accessing such Product ("Users") as specified in the Subscription. Customer shall be responsible for managing User access to Products.

20.1.2. License to Customer. The KOOMI POS Product is licensed on a per copy per device basis. Customer may install one copy of the KOOMI POS Product on one device. That device is the “licensed device.” Customer may only use one copy of the software on the licensed device at a time. Customer may not transfer the KOOMI POS Product to a third party.

## 20.2. Hardware

20.2.1. Purchase. If Customer agrees to purchase point-of-sale equipment and supplies (“**Hardware**”), Customer shall pay the purchase price set forth in the Subscription, including shipping/handling fees, duties, brokerage fees, and any applicable sales, use, harmonized, valued-added or similar taxes. Hardware will be shipped to Customer upon due receipt of payment. All sales of Hardware are final. Customer must verify no later than five (5) business days from receipt of Hardware that shipment was accurate and complete, failing which the Product warranty under this section 20.4 will be inapplicable.

20.2.2. Limited Warranty. In addition to any applicable manufacturer’s warranty, KOOMI warrants to Customer that new Hardware will be free from defects in workmanship and materials for thirty (30) days from the date that Hardware was shipped to Customer as original end-user (“**Warranty Period**”). This Limited Warranty is not transferable. During the Warranty Period, KOOMI may, at its sole option, repair or replace Hardware without charge for either labor or parts. If KOOMI is unable to repair or replace the Hardware, KOOMI agrees to refund Customer the net purchase price paid by Customer for the affected Hardware. Hardware must be returned in good condition in the original packaging and include all related components. Charges for returning Hardware shall be for Customer’s account. A restocking fee may also apply.

Following expiration of the Warranty Period, Customer must contact manufacturer for any repairs or replacement and adhere to manufacturer’s merchandise return procedures. The manufacturer’s warranty and contact information are included with Hardware.

KOOMI’s Limited Warranty does not apply: (i) to normal wear and tear; (ii) if the Hardware is opened, tampered with or repaired by someone not authorized by KOOMI; (iii) to any damage attributable to misuse, moisture or liquids, accident, abuse, neglect or misapplication; (iv) to physical damage to the surface of Hardware, such as scratches, dents or other cosmetic changes; or (v) if used with products or services not provided or licensed by KOOMI.

20.2.3 Exclusive Remedy. REPAIR OR REPLACEMENT ARE THE EXCLUSIVE REMEDY PROVIDED IN CONJUNCTION WITH THE PURCHASE BY CUSTOMER OF THE HARDWARE.

KOOMI, ON BEHALF OF ITSELF, ITS AFFILIATES, RESELLERS AND DISTRIBUTORS, HEREBY DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS, REPRESENTATIONS OR GUARANTEES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY AND/OR FITNESS FOR PURPOSE.