

## Kitemetrics Agreement

Last Updated: May 4, 2017

PLEASE READ THIS AGREEMENT CAREFULLY. BY CLICKING THE AGREE BUTTON OR BY ACCESSING OR USING THE KITEMETRICS SDK TECHNOLOGY, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL THE TERMS OF THIS AGREEMENT, YOU MAY NOT ACCESS OR USE THE KITEMETRICS SDK TECHNOLOGY.

This Kitemetrics Agreement (“Agreement”) is entered into by Kitefaster, LLC (Kitefaster) and you (“Developer” or “You”) and governs Your access and use of the Kitemetrics Technology (defined below). If You are accessing or using the Kitemetrics Technology on behalf of a company or other legal entity, You represent and warrant that You are an authorized representative of that entity and have the authority to bind such entity to this Agreement, in which case the terms “Developer” and “You” shall refer to such entity. You and Kitefaster hereby agree as follows:

1. Definitions. In addition to terms defined elsewhere in this Agreement, the terms set forth immediately below have the following meanings. “Kitemetrics SDK” means the software development kit made available for Applications that enables access to Kitemetrics Services, including any Kitemetrics API, or other software, data, code, and other materials included therein, and any updates or modifications thereto.

“Kitemetrics SDK Application” means any Application into which Kitemetrics SDK has been integrated.

“Kitemetrics SDK Services” means any features or functionality made available by Kitefaster to a Kitemetrics SDK Application, including any analytics, dashboards, conversion tracking, or other functionality.

“Kitemetrics SDK Technology” means Kitemetrics SDK, Kitemetrics SDK Services, and Documentation.

“Application” means any mobile application of Developer into which Kitemetrics SDK may be integrated.

“Kitemetrics API” means any Kitefaster application programming interface (“API”) included within Kitemetrics SDK or Kitemetrics SDK Services and the related documentation, data, code, and other materials provided by Kitefaster with such API, including any modifications or updates thereto.

“Developer Data” means any information, data, and other content, including End User Data, received by Kitefaster in connection with Developer’s authorized use of the Kitemetrics SDK Services so long as it is associated with a particular Developer, Kitemetrics SDK Application, end user, mobile device identifier, vendor identifier, or full IP address, including the Kitemetrics SDK version number used by a Kitemetrics SDK Application, the bundle identifier and build version number of a Kitemetrics SDK Application, vendor identifiers, advertising identifiers (IDFA), unique installation identifiers for each installation of each Kitemetrics Kit Application, timestamps, session start and stop events, installation events, custom application events and

errors defined by Developer and the associated attributes, application events predefined by Kitemetrics and the associated attributes, app lifecycle events, and Apple Search Ads attribution information.

“Documentation” means the documentation, instructions, user guides, and other documents made available by Kitefaster that relate to Kitemetrics SDK.

“End User” means any end user of any Kitemetrics SDK Application.

“End User Data” means any data received by Kitefaster via any Kitemetrics SDK Application so long as it is associated with a particular end user, mobile device identifier, or full IP address, including the name and app store identifier of such Kitemetrics SDK Application, the bundle identifier and build version of that application, unique mobile device identifiers, advertising identifier (IDFA), identifier for vendor, and the associated interest based advertising opt out preference as applicable, full IP addresses, timestamps, device model name, device operating system name and version number, the language and country settings of the device, custom application events defined by Developer and the associated attributes, application events predefined by Kitemetrics (e.g. Install, Reinstall, Purchase, Add to Cart, Start Checkout, Sign Up, Log In, Invite, Session Start and Stop) and the associated attributes, app lifecycle events, and Apple Search Ads Attribution information (e.g. ad group name, ad group id, campaign name, campaign id, click date, conversion date, creative id, creative name, keyword, organization name).

"Kitefaster" means Kitefaster, LLC (A Delaware Limited Liability Company).

“Term” means the term of this Agreement, which commences on the date upon which You enter into this Agreement (or the date on which this Agreement becomes effective, if later) and continues until terminated by You or Kitefaster.

“Usage Data” means all information and data received by Kitefaster in connection with Developer’s access and use of the Kitemetrics SDK Technology, including without limitation uptime, reliability, traffic, network quality, and other Developer usage statistics related to the Kitemetrics SDK Technology. Usage Data excludes Developer Data and End User Data.

## 2. Licenses; Restrictions.

2.1. License Grant. The Kitemetrics iOS Client SDK available at [https://github.com/kitefaster/kitemetrics\\_ios](https://github.com/kitefaster/kitemetrics_ios) is available under the Apache License, Version 2.0. All other aspects of the Kitemetrics SDK Technology are subject to Developer’s compliance with the terms and conditions of this Agreement (as a condition to the grants below), Kitefaster grants Developer, and Developer accepts, a personal, nonexclusive, nontransferable, nonsublicensable, and revocable license, during the Term, to: (a) install, modify, and use the source code from Kitemetrics SDK that is expressly identified by Kitefaster in the Documentation as sample code (“Sample Code”) solely for the purpose of enabling the Kitemetrics SDK Services for an Application; and (b) make and use a reasonable number of copies of any Documentation solely as necessary to exercise any of the licenses or rights expressly granted to Developer under this Agreement.

2.2. Restrictions. Developer shall not directly or indirectly: (a) modify or create any derivative works of any component of any Kitemetrics SDK Technology (except as permitted in Section 2.1); (b) work around any technical limitations in the Kitemetrics SDK Technology or use the Kitemetrics SDK Technology alone or in conjunction with any device, program, or service to circumvent technical measures employed to control access to, or the rights in, a content, file, or other work; (c) reverse engineer, decompile, decipher, translate, disassemble or otherwise attempt to access source code of any Kitemetrics SDK Technology (except as permitted in Section 2.1 and unless, and only to the extent that, the foregoing restriction is prohibited by applicable law); (d) publish, rent, lease, lend, sell, sublicense, distribute, transfer, disclose, or otherwise make any Kitemetrics SDK Technology available to any third party (except as permitted in Section 2.1); (e) provide use of the Kitemetrics SDK Technology on a service bureau, rental or managed services basis or permit other individuals or entities to create Internet “links” to the Kitemetrics SDK Technology or “frame” or “mirror” the Kitemetrics SDK Technology on any other server, or wireless or Internet based device (except as permitted in Section 2.1); (f) remove or alter any proprietary notices or labels on or in any Kitemetrics SDK Technology; (g) use any Kitemetrics SDK Technology in connection with the development or transmission of any virus, worms or malicious code; (h) use any Kitemetrics SDK Technology to infringe the rights of Kitefaster or any third party, or in any way that does not comply with all applicable laws; or (i) use any Kitemetrics SDK Technology (including to create any Application) in any way that interferes with, disrupts, damages, or accesses in an unauthorized manner the servers, networks, or other properties or services of Kitefaster or any third party, including any mobile communications carrier.

3. Updates. Developer acknowledges that Kitefaster may update or modify any component of the Kitemetrics SDK Technology at any time and in its sole discretion without prior notice to Developer. Developer acknowledges that future versions of Kitemetrics SDK may be incompatible with Applications developed using previous versions of Kitemetrics SDK, which may adversely affect the manner in which Developer accesses or communicates with Kitemetrics SDK. Kitefaster may provision any updates to Kitemetrics SDK automatically or it may prompt Developer to install such updates.

4. Security. Developer is fully responsible for all of its Kitemetrics SDK Applications, including for maintaining the security of all such Kitemetrics SDK Applications. Developer will use industry standard security measures to prevent unauthorized access or use of any of the features and functionality of all such Kitemetrics SDK Applications, including access by viruses, worms, or any other harmful code or material. Developer will immediately notify Kitefaster if Developer knows of or suspects any breach of security or potential vulnerability of any such Application that may damage, interfere with or otherwise impact the Kitemetrics SDK Technology. Developer will promptly remedy such breach or potential vulnerability.

5. Compliance. Developer shall comply with (a) all applicable laws, rules, and regulations, (b) all instructions and requirements set forth in any applicable Documentation, and (c) any applicable third party terms, including any third party terms applicable to Developer’s development and distribution of its Application via any relevant operating system platform. Developer will not, directly or indirectly, export or reexport, or knowingly permit the export or reexport of, Kitemetrics SDK Technology or technical information obtained under this Agreement, including without limitation any Documentation: (d) without compliance with all laws applicable to the export or reexport of Kitemetrics SDK or technical information obtained under this Agreement, or (e) to any country to which the United States Export Administration Act, any regulation

thereunder, or any similar United States law or regulation, prohibits the export or reexport of Kitemetrics SDK and/or technical information.

6. Reports. Kitefaster may provide any reporting tools and other dashboard functionality related to Kitemetrics SDK at [cloud.kitemetrics.com](https://cloud.kitemetrics.com). Any access or use of any reporting tools and other dashboard functionality via [cloud.kitemetrics.com](https://cloud.kitemetrics.com) are subject to the terms of this Agreement.

7. Feature Sets. Core Feature Set. Predefined events, custom events, and mobile application analytics, including analysis and computation of daily active users, daily new users, daily active users by OS, daily users for top builds, monthly active users, ratio of daily active users to monthly active users, top builds, number of sessions, sessions per active users, median session length, time in app per user, current active users, user retention, keyword attribution, ARPU, and LTV, are the “Core Feature Set” of the Kitemetrics SDK Technology and are available for all Kitemetrics SDK Applications. The functionality, including the particular predefined events and mobile application analytics, offered as part of the Core Feature Set is subject to change at any time in Kitefaster’s sole discretion. With the exception of features that Developer must take affirmative action in order to implement, including custom events, the Core Feature Set cannot be disabled.

## 8. Developer Data.

8.1. Ownership. As between Developer and Kitefaster, Developer owns all right, title, and interest in and to the Developer Data.

### 8.2. License to Kitefaster

8.2.1. Core Feature Set. For all Kitemetrics SDK Applications, Developer hereby grants Kitefaster a license fee free, royalty free, fully paid up, nonexclusive, perpetual and irrevocable, worldwide right and license to access, copy, distribute, process, use, and to make, use and otherwise dispose of systems and processes using, Developer Data solely for the purpose of (a) providing any Kitemetrics SDK Technology to Developer, including without limitation providing customer support to Developer; (b) creating aggregate measures of any Kitemetrics SDK Technology usage, engagement, and performance; and (c) improving any component of the Kitemetrics SDK Technology generally or any other service of Kitefaster.

8.2. Representations and Warranties. Developer represents and warrants that it (a) owns all right, title, and interest, or possesses sufficient license rights, in and to the Developer Data and has obtained and shall maintain all rights, approvals, and consents as may be necessary to grant the rights and licenses under this Agreement, (b) it has provided to End Users of its Kitemetrics SDK Applications legally sufficient notice, and has obtained legally sufficient informed consent from such End Users, regarding the use of Developer Data, including without limitation as set forth in Section 9.1 below, and (c) to the extent Developer controls the content or format of Developer Data, that Developer Data does not contain or reveal any personally identifiable information of any person or household.

8.3. Responsibility for Developer Data. Developer acknowledges and agrees that Kitefaster will not assume any responsibility or liability for, or undertake to verify, the accuracy, completeness, or legality of any Developer Data. Kitefaster shall have no obligation to store, delete, or return any Developer Data. Developer bears all responsibility and liability for the legality, accuracy, and completeness of the Developer Data as well as Kitefaster’s access, possession, distribution, and use thereof, as permitted under this Agreement.

8.4. Disclosure of Developer Data. Except as expressly set forth in this Agreement, Kitefaster shall not disclose Developer Data to any third party without Your consent; provided, however, that Kitefaster shall have the right to disclose any such information (a) if Kitefaster believes that such disclosure is reasonably necessary to comply with any applicable law, regulation, legal process, or governmental request, (b) to any third party service provider that performs services on behalf of Kitefaster subject to confidentiality obligations consistent with this Agreement, or (c) if it is or becomes available to the public without breach of this Agreement by Kitefaster.

8.5. Consent to Data Processing and Transfer. Developer consents to the collection, transfer, manipulation, storage, disclosure and other uses of information, including without limitation Developer Data, as described in this Agreement. Irrespective of which country Developer is based in, Developer authorizes Kitefaster to use its information (including without limitation Developer Data) in, and as a result to transfer it to and store it in, the United States and any other country where Kitefaster operates. Privacy and data protection laws in some of these countries may vary from the laws in the country where Developer is based.

## 9. End Users

9.1. Notice & Consent. Developer shall maintain and comply with a privacy policy that (a) is conspicuously posted from all Kitemetrics SDK Applications and other services from which Developer Data and End User Data are collected and/or made available to Kitefaster (whether through the Kitemetrics SDK Technology or otherwise); (b) complies with all applicable laws and regulations; (c) that fully and accurately discloses to End Users what information is collected about them, including without limitation End User Data, and how any of such information is used and shared by Developer; (d) that fully and accurately discloses to End Users that third parties such as Kitefaster may collect and use End User Data to improve their products and services and for analytics purposes; and (e) that third parties such as Kitefaster may disclose aggregated End User Data. For Developer's users in the European Union, Developer shall provide such users with clear notice of, and obtain such users' consent to, the transfer, storage, and use of their information in the United States and any other country where Kitefaster, or any third party service providers acting on its behalf, operates, and shall further notify such users that the privacy and data protection laws in some of these countries may vary from the laws in the country where such users live.

9.2. Children. Developer shall not integrate Kitemetrics SDK into any Application (a) with End Users who Developer has actual knowledge are under the age of 13, or (b) that may be deemed to be a "Web site or online service directed to children" as defined under the Children's Online Privacy Protection Act of 1998 and the regulations promulgated thereunder.

10. Developer Feedback. From time to time, Kitefaster may solicit from Developer or Developer may provide, in its sole discretion, suggestions for changes, modifications, or improvements or any other feedback related to any Kitemetrics SDK Technology or Kitefaster (collectively, "Developer Feedback"). All Developer Feedback shall be solely owned by Kitefaster (including all intellectual property rights therein and thereto) and shall also be deemed Kitefaster's Confidential Information. Developer hereby assigns all of its right, title, and interest in and to any Developer Feedback to Kitefaster and acknowledges and agrees that Kitefaster has the unrestricted right to use and exploit such Developer Feedback in any manner, without attribution, and without any obligations or compensation to Developer. Kitefaster may reuse all

general knowledge, experience, knowhow, works and technologies (including ideas, concepts, processes, and techniques) acquired during provision of any Kitemetrics SDK Technology to Developer.

11. Developer Systems. Developer is solely responsible for providing all modems, servers, devices, storage, software, databases, network and communications equipment, and ancillary services needed to connect to, access or otherwise use the Kitemetrics SDK Technology (collectively, "Developer Systems"). Developer shall ensure that Developer Systems are compatible with any Kitemetrics SDK Technology and comply with all configurations and specifications described in the applicable Documentation.

12. Suspension; Discontinuance. Kitefaster reserves the right to discontinue or suspend (permanently or temporarily) the Kitemetrics SDK Technology or any features or portions thereof without prior notice. Kitefaster will not be liable for any suspension or discontinuance of the Kitemetrics SDK Technology or any part thereof.

13. Confidentiality.

13.1. "Confidential Information" means any information disclosed by one party ("Discloser") to the other party ("Recipient") that is marked or otherwise identified as "confidential" or "proprietary," or by its nature or the circumstances of disclosure should reasonably be understood to be confidential. In particular, Confidential Information shall include the Kitemetrics SDK Technology and all related information, but does not include Usage Data, Developer Data, End User Data and the source code to Kitemetrics iOS Client SDK located at [https://github.com/kitefaster/kitemetrics\\_ios](https://github.com/kitefaster/kitemetrics_ios). Recipient may use the Confidential Information of the Discloser only as necessary in fulfilling its obligations or exercising its rights under this Agreement. Recipient may not disclose any Confidential Information of the Discloser to any third party without the Discloser's prior written consent. Recipient will protect the Discloser's Confidential Information from unauthorized use, access, and disclosure in the same manner that it protects its own confidential and proprietary information of a similar nature, but in no event with less than a reasonable degree of care. Recipient shall have the right to disclose any Confidential Information of Discloser to any third party service provider that performs services on behalf of Recipient subject to confidentiality obligations consistent with this Agreement. Promptly upon the Discloser's request at any time, Recipient shall return all of Discloser's tangible Confidential Information, and/or permanently erase all such Confidential Information from any storage media and destroy all information, records, copies, summaries, analyses, and materials developed therefrom.

13.2. Limitations. The foregoing obligations shall not apply to any information that Recipient can demonstrate is (a) already known by it without restriction, (b) rightfully furnished to it without restriction by a third party not in breach of any obligation of this Agreement or any other applicable confidentiality obligation or agreement, (c) generally available to the public without breach of this Agreement or wrongdoing by any party, or (d) independently developed by it without reference to or use of any information deemed confidential under this section and without any violation of any obligation of this Agreement. Recipient shall be responsible for any breach of confidentiality by its employees, contractors, and agents, as applicable. Nothing herein shall prevent Recipient from disclosing any of Discloser's Confidential Information as necessary pursuant to any court order or any legal, regulatory, law enforcement, or similar requirement or investigation; provided, however, prior to any such disclosure, Recipient shall

use reasonable efforts to promptly notify the Discloser in writing of such requirement to disclose where permitted by law, and cooperate in protecting against or minimizing any such disclosure and/or obtaining a protective order.

14. Ownership; Reservation of Rights. Kitefaster retains all right, title, and interest in and to all Usage Data. Developer acknowledges and agrees that Kitefaster may use Usage Data for its own business purposes, including without limitation analyzing Developer's installation, use of, and engagement with, and the functionality of the Kitemetrics SDK Technology, as well as improving the functionality of the Kitemetrics SDK Technology and other products and services offered or developed by Kitefaster, and may share such Usage Data with third party service providers to assist with or conduct such activities on Kitefaster's behalf. Kitefaster may share such Usage Data with other third parties solely in an aggregated and anonymized manner or otherwise in a manner that does not identify the source of such Usage Data. Kitefaster and its suppliers own all right, title, interest, copyright, and other intellectual property rights in the Kitemetrics SDK Technology (and any derivative works and enhancements thereof developed by or on behalf of Kitefaster) and reserve all rights not expressly granted to Developer in this Agreement. The Kitemetrics SDK Technology (and any derivative works and enhancements thereof developed by or on behalf of Kitefaster) are protected by copyright and other intellectual property laws and treaties.

THE KITEMETRICS SDK TECHNOLOGY IS SOLELY LICENSED AS SET FORTH IN SECTION 2, NOT SOLD.

15. Representations and Warranties.

15.1 Kitefaster represents and warrants that it has full right, power, and authority to enter into this Agreement and to perform its obligations and duties under this Agreement, and that the performance of such obligations and duties does not conflict with or result in a breach of any other agreement of Kitefaster, or any judgment, order, or decree by which such party is bound. Developer's sole and exclusive remedy for any and all breaches of this provision is the remedy set forth in Section 17.2.

15.2. Developer represents and warrants to Kitefaster that: (a) it has all requisite legal and corporate power to execute and deliver this Agreement, (b) it has taken all actions required to make this Agreement a legal, valid, and binding obligation, (c) the Kitemetrics SDK Applications do not and will not infringe any intellectual property or other proprietary right of any third party or violate any right of or duty owed to any third party (including contract rights, privacy rights, and publicity rights), and (d) the Kitemetrics SDK Applications and Developer's performance under this Agreement (including use of the Kitemetrics SDK Technology) do not and will not breach any other agreement of Developer or violate any applicable rules, regulations, or foreign, federal, state or local laws.

16. Kitefaster Disclaimers. THE KITEMETRICS SDK TECHNOLOGY IS PROVIDED "AS IS", "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, KITEMETRICS AND ITS PARENTS, SUBSIDIARIES, AFFILIATES, RELATED COMPANIES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, PARTNERS, AND LICENSORS (COLLECTIVELY, THE "KITEFASTER ENTITIES") MAKE NO REPRESENTATION OR WARRANTY (A) THAT THE KITEMETRICS SDK TECHNOLOGY OR RESULTS THEREFROM WILL MEET DEVELOPER'S

REQUIREMENTS OR BE UNINTERRUPTED, ERROR FREE, BUG FREE, OR VIRUS FREE, (B) REGARDING THE RELIABILITY, TIMELINESS, OR PERFORMANCE OF THE KITEMETRICS SDK TECHNOLOGY, OR (C) THAT ANY ERRORS IN THE KITEMETRICS SDK TECHNOLOGY CAN OR WILL BE CORRECTED. THE KITEFASTER ENTITIES HEREBY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY, TITLE, OR FITNESS FOR ANY PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE.

## 17. Indemnification

17.1. Claims Against Kitefaster. Developer will defend Kitefaster from all third party claims, actions, suits, or proceedings, whether actual or alleged (collectively, "Kitefaster Claims"), and will indemnify and hold harmless Kitefaster from any and all losses, liabilities, damages, costs, and expenses (including reasonable attorney's fees) resulting from such Claims, that arise out of Developer's (a) access or use of the Kitemetrics SDK Technology; (b) actual or alleged infringement, misappropriation, or violation of the rights of any third party, including without limitation any intellectual property rights, privacy rights, or publicity rights; and (c) breach of any term of this Agreement, including without limitation Developer's representations and warranties set forth in Section 15 above. Developer is solely responsible for defending any such Kitefaster Claims, subject to Kitefaster's right to participate with counsel of its own choosing, and for payment of all judgments, settlements, damages, losses, liabilities, costs, and expenses, including reasonable attorneys' fees, resulting from such Claims, provided that Developer will not agree to any settlement related to any such Claims without Kitefaster's prior express written consent regardless of whether or not such settlement releases Kitefaster from any obligation or liability. If Developer uses the Kitemetrics SDK Technology in an official capacity as an employee or representative of a United States federal, state or local government entity and is legally unable to accept this indemnification provision, then it does not apply to such entity, but only to the extent as required by applicable law.

17.2. Claims Against Developer. Kitefaster will defend claims, suits, or actions brought against Developer by a third party solely to the extent that such claims, suits, or actions arise from an allegation that the Kitemetrics SDK Technology, when used as expressly permitted by this Agreement, infringes the intellectual property rights of such third party ("Developer Claim"). Notwithstanding the foregoing, Kitefaster will have no obligation under this Section 17.2 or otherwise with respect to any infringement claim based upon: (a) any use of the Kitemetrics SDK Technology not expressly permitted under this Agreement; (b) any use of the Kitemetrics SDK Technology in combination with products, equipment, software, or data not made available by Kitefaster if such infringement would have been avoided without the combination with such other products, equipment, software, or data; (c) any modification of the Kitemetrics SDK Technology by any person other than Kitefaster or its authorized agents or subcontractors; or (d) any claim not clearly based on the Kitemetrics SDK Technology itself. This Section 17.2 states Kitefaster's entire liability and Developer's sole and exclusive remedy for all third party claims.

17.3 Procedure. The foregoing obligations are conditioned on the party seeking indemnification: (a) promptly notifying the other party in writing of such claim; (b) giving the other party sole control of the defense thereof and any related settlement negotiations except as otherwise provided in 17.1; and (c) cooperating and, at other party's request and expense, assisting in such defense. Neither party may make any public announcement of any claim, defense or



settlement without the other party's prior written approval. The indemnifying party may not settle, compromise or resolve a claim without the consent of the indemnified party, if such settlement, compromise or resolution (x) causes or requires an admission or finding of guilt against the indemnified party, (y) imposes any monetary damages against the indemnified party, or (z) does not fully release the indemnified party from liability with respect to the claim.

18. Limitation of Liability IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FOR ANY DAMAGES ASSOCIATED WITH LOSS OF USE, BUSINESS, PROFITS, OR GOODWILL, OR FOR INTERRUPTION, LOSS, OR CORRUPTION OF DATA OR NETWORKS. IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EXCEED FIFTY (\$50.00) DOLLARS (USD). THE FOREGOING LIMITATIONS SHALL NOT APPLY TO BREACHES OF CONFIDENTIALITY OBLIGATIONS OR FOR MISAPPROPRIATION OR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF ANY REMEDY PROVIDED HEREIN. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY TO ANY AND ALL CLAIMS, REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to You. INSOFAR AS APPLICABLE LAW PROHIBITS ANY LIMITATION ON LIABILITY HEREIN, THE PARTIES AGREE THAT SUCH LIMITATION WILL BE AUTOMATICALLY MODIFIED, BUT ONLY TO THE EXTENT SO AS TO MAKE THE LIMITATION COMPLIANT WITH APPLICABLE LAW.

19. Termination Either party may terminate this Agreement with or without cause immediately upon providing notice to the other party. Upon any termination of this Agreement, (a) Developer must discontinue accessing and using the Kitemetrics SDK Technology and delete all copies of Kitemetrics SDK Technology, and any Documentation; (b) the provisions in Sections 8 (Developer Data), 9 (End Users), 10 (Developer Feedback), 13 (Confidentiality), 14 (Ownership; Reservation of Rights), 16 (Kitefaster Disclaimers), 17 (Indemnification), 18 (Limitation of Liability), this Section 19 (Termination) and Section 20.5 (Governing Law; Arbitration; Prevailing Fees) shall survive; (c) all obligations or liabilities that accrued prior to the effective date of termination and all remedies for breach of this Agreement shall survive; and (d) all other rights, obligations, and licenses of the parties under this Agreement shall terminate.

## 20. Miscellaneous

20.1. Entire Agreement. This Agreement constitutes the entire agreement, and supersedes all prior negotiations, understandings, or agreements (oral or written), between the parties about the subject matter of this Agreement.

20.2. Amendments. Kitefaster may amend this Agreement from time to time. If Kitefaster makes a change to this Agreement that, in its sole discretion, is material, Kitefaster will notify Developer by providing notice of the change via the Kitemetrics dashboard website, at the email address that Developer provided to Kitefaster upon signing up to access the Kitefaster services, or

otherwise through the Kitemetrics SDK Technology. If Developer does not agree to the modified terms of the Agreement, Developer shall notify Kitefaster in writing within thirty (30) days, after which this Agreement shall immediately terminate and the Kitefaster Entities shall have no further responsibility or liability to Developer.

20.3. Waivers. The failure of either party to enforce its rights under this Agreement at any time for any period will not be construed as a waiver of such rights.

20.4. Severability. If any provision of this Agreement is determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

20.5. Governing Law; Arbitration; Prevailing Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflicts of law provisions. (a) Except as set forth in Section 20.5(b) below, all claims arising out of or relating to this Agreement or the Services ("Disputes") will be governed by California law, excluding California's conflict of laws rules, and all Disputes will be litigated exclusively in the federal or state courts of Santa Clara County, California, USA, and You and Kitefaster consent to personal jurisdiction in those courts. (b) If Your principal place of business (for entities) or place of residence (for individuals) is in any country within APAC (other than Australia, Japan, New Zealand or Singapore) or Latin America, this Section 20.5(b) will apply instead of Section 20.5(a) above. ALL DISPUTES (AS DEFINED ABOVE) WILL BE GOVERNED BY CALIFORNIA LAW, EXCLUDING CALIFORNIA'S CONFLICT OF LAWS RULES. The parties will try in good faith to settle any Dispute within 30 days after the Dispute arises. If the Dispute is not resolved within 30 days, it must be resolved by arbitration by the American Arbitration Association's International Centre for Dispute Resolution in accordance with its Expedited Commercial Rules in force as of the date of this Agreement ("Rules"). The parties will mutually select one arbitrator. The arbitration will be conducted in English in Santa Clara County, California, USA. Either party may apply to any competent court for injunctive relief necessary to protect its rights pending resolution of the arbitration. The arbitrator may order equitable or injunctive relief consistent with the remedies and limitations in this Agreement. Subject to the confidentiality requirements in this Agreement, either party may petition any competent court to issue any order necessary to protect that party's rights or property; this petition will not be considered a violation or waiver of this governing law and arbitration section and will not affect the arbitrator's powers, including the power to review the judicial decision. The parties stipulate that the courts of Santa Clara County, California, USA, are competent to grant any order under this subsection. The arbitral award will be final and binding on the parties and its execution may be presented in any competent court, including any court with jurisdiction over either party or any of its property. Any arbitration proceeding conducted in accordance with this section will be considered Confidential Information under this Agreement's confidentiality section, including (i) the existence of, (ii) any information disclosed during, and (iii) any oral communications or documents related to the arbitration proceedings. The parties may also disclose the information described in this section to a competent court as may be necessary to file any order under this section or execute any arbitral decision, but the parties must request that those judicial proceedings be conducted in camera (in private). The parties will pay the arbitrator's fees, the arbitrator's appointed experts' fees and expenses, and the arbitration center's administrative expenses in accordance with the Rules. In its final decision, the arbitrator will determine the non-prevailing party's obligation to reimburse the amount paid in advance by the prevailing party for these fees. Each party will bear its own lawyers' and experts' fees and expenses, regardless of the arbitrator's final

decision. (c) If Your principal place of business (for entities) or place of residence (for individuals) is in Greece, all Disputes (as defined above) will be governed by Greek law and the parties submit to the exclusive jurisdiction of the courts of Athens in relation to any Dispute.

20.6. Force Majeure. In the event that either party is prevented from performing, or is unable to perform, any of its obligations under this Agreement (except payment obligations) due to any cause beyond its reasonable control, the affected party shall give written notice thereof to the other party and its performance shall be extended for the period of delay or inability to perform due to such occurrence.

20.7. Notices. Any notice or communication hereunder shall be in writing and either personally delivered or sent via confirmed facsimile, confirmed electronic transmission, recognized express delivery courier, or certified or registered mail, prepaid and return receipt requested, addressed to the other party, which, in the case of Developer, shall be the email address that Developer provided to Kitefaster upon signing up to access the Kitefaster services and, in the case of Kitefaster, shall be Kitefaster LLC, PO Box 134, Lizella, GA 31052, USA, with a copy to Legal Department. All notices shall be in English, and deemed to have been received when they are hand delivered or upon confirmed electronic transmission.

20.8. Assignment. Developer may not assign this Agreement or any of the interests, rights, or obligations granted hereunder, in whole or in part, whether voluntarily or by operation of law, contract, merger (whether Developer is the surviving or disappearing entity), stock or asset sale, consolidation, dissolution, through government action, or otherwise. Any such attempted assignment, except with the express written consent of Kitefaster, is null and void, and Kitefaster may immediately terminate this Agreement. This Agreement shall be binding upon, and inure to the benefit of, each party's permitted successors, representatives, and assigns.

20.9. Independent Contractors. The parties shall be independent contractors under this Agreement, and nothing herein will constitute either party as the employer, employee, agent, or representative of the other party, or both parties as joint venturers or partners for any purpose. Neither party will have the right or authority to assume or create any obligation or responsibility on behalf of the other party.

20.10. No Publicity. Developer will not issue any press release or otherwise make any public announcement with respect to this Agreement, any Kitemetrics SDK Technology, or Developer's relationship with Kitefaster without Kitefaster's prior written consent.