



KANERIKA MASTER SUBSCRIPTION SERVICES AGREEMENT FLIP LICENSE, CLOUD AND HOSTING SERVICES

THIS FLIP MASTER SUBSCRIPTION SERVICES AGREEMENT GOVERNS YOUR RIGHTS OF ACCESS AND USE OF THE FLIP, FLIP CLOUD AND HOSTING SERVICES AND ANY SERVICES MADE AVAILABLE TO YOU BY KANERIKA, INC., A DELAWARE CORPORATION WITH A PRINCIPAL PLACE OF BUSINESS AT 13706 RESEARCH BLVD STE 211D, AUSTIN, TX 78750, USA (“KANERIKA”).

THIS AGREEMENT IS ENTERED INTO BETWEEN **KANERIKA** AND THE CUSTOMER (DEFINED BELOW) AND IS EFFECTIVE ON THE DATE YOU ASSENT TO THESE TERMS BY EXECUTING AN ORDER REFERENCING THESE TERMS (“**EFFECTIVE DATE**”). THE “**CUSTOMER**” SHALL MEAN THE PERSON OR ENTITY LISTED ON THE ORDER REFERENCING THIS AGREEMENT. KANERIKA AND CUSTOMER MAY BE REFERRED TO HEREIN AS A “**PARTY**” AND COLLECTIVELY AS THE “**PARTIES**”.

IF YOU ARE AN EMPLOYEE OF, OR CONSULTANT OR CONTRACTOR OF AN ENTITY NAMED ON THE ORDER, YOUR AGREEMENT TO THESE TERMS WILL BE DEEMED TO BE THE AGREEMENT OF THAT ENTITY. YOU AND THE ENTITY NAMED ON THE ORDER, REPRESENT AND WARRANT THAT YOU HAVE AUTHORITY OR HAVE BEEN PROVIDED THE AUTHORITY TO BIND THE NAMED CUSTOMER TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

1.0 DEFINITIONS

“**Affiliate**” means any entity controlling, controlled by or under common control with a party, where “control” and its variants means (i) the beneficial ownership of a majority of the outstanding equity entitled to vote for directors, or (ii) the power to otherwise direct or cause the direction of the management and policies of the entity whether by contract or otherwise.

“**Agreement**” means this Kanerika Master End User License Agreement including all its attachments and exhibits, referencing this Agreement, and any terms incorporated into this Agreement by reference.

“**Authorized Reseller**” means any authorized reseller of Software who validly sells Customer a license to the Software subject to the terms and conditions of this Agreement.

“**Customer Data**” means any data transmitted by Customer to the Flip Cloud Subscription Services.

“**Data Processing Addendum**” means the Customer Data Processing Addendum found at <https://kanerika.com/dpa/> (or such updated URL provided by Kanerika from time to time), and incorporated by reference.

“**Documentation**” means any user instructions, manuals, on-line help files, or other materials regarding the use of the Flip Cloud Subscription Service or Software that are generally provided by Kanerika to its customers.

“**Expert Services**” means any Expert Services to be delivered by Kanerika personnel or Kanerika subcontractors to Customer related to the Flip Cloud Subscription Service or Software which are outlined in an Exhibit or Order, such as training, configuration or implementation. For clarity, Expert Services do not include Support and Maintenance Services, Software customization or any other work for hire.

“**Fees**” means the compensation payable to Kanerika for the Flip, Flip Cloud Subscription Service, Software Licenses or Expert Services as stated in the specific Order.

“**Field of Use**” means the field of use set forth in the applicable Order, if any.

“**Gen AI Functionality**” means features and functions that incorporate generative artificial intelligence to aid the Customer’s use of the Flip Technology as specified in an applicable Order and subject to the addendum at the end of this Agreement.

“**Hosting Service**” means the service provided to the Customer to enable the hosting of the Customers data through the Flip Cloud Subscription Services expressly identified on the applicable Order.

“**Flip Cloud Subscription Service**” means Flip’s web-based services expressly identified on the applicable Order.

“**Flip Technology**” means collectively the Flip Cloud Subscription Service (including all technology constituting or used to provide such service), Software, Documentation, and Usage Data.

“**Internal Business Purposes**” means use of the Software by Users on behalf of and for the benefit of Customer or Customer Affiliates, solely for the purposes of Customer’s or Customer Affiliates’ internal business projects and to deploy the projects in production mode for Customer’s or Customer Affiliates’ exclusive internal use and benefit.

“**License Parameter(s)**” means any factor that serves as a basis for calculating the amount of Fees payable for the license to the Software as identified in the Order.

“**Order**” means an ordering document that identifies the commercial terms of the purchase, namely, for example, the Flip Cloud Subscription Service and/or Software licensed, the Expert Services (if any) purchased under this Agreement, the applicable License



Parameters, the Subscription Term, and any pricing and payment terms relating to the same. Orders may be direct between Kanerika and Customer or indirect via an Authorized Reseller. Multiple Orders may apply if additional licenses, products, or services are purchased, but unless expressly stated otherwise terms specified in an Order will apply only to that Order.

“**Privacy Policy**” means the Kanerika Privacy Policy found at <https://www.kanerika.com/privacy-policy> (or such updated URL provided by Kanerika from time to time) and incorporated herein by reference.

“**Security Policy**” means the Kanerika Security Policy found at <https://www.kanerika.com/privacy-policy> (or such updated URL provided by Kanerika from time to time) and incorporated herein by reference.

“**Software**” means the computer software program(s), in object code form, as specified in the applicable Order, together with any Upgrades and related Documentation, all to the extent provided or made available to Customer under this Agreement. “Software” does not include any Third Party Products or plug-ins to the Software identified as provided by or originating from third parties which may be delivered together with the Software.

“**Subscription Term**” means the term of the license granted with respect to the Flip Cloud Subscription Service or Software as identified on the relevant Order. For clarity, the Subscription Term will terminate upon any termination of the Agreement.

“**Support and Maintenance Services**” means the standard support and maintenance services delivered by Kanerika to its customers with an on premises license under the Support Policy (defined below).

“**Support and Availability**” means the standard support and availability delivered by Kanerika to its customers using the Flip Cloud Subscription Services under the Support Policy (defined below) and in accordance to the support level purchased.

“**Support Policy**” means the Kanerika Support and Maintenance Services Policy found at <https://www.kanerika.com/legal/flip-support-policy> (or such updated URL provided by Kanerika from time to time) and incorporated herein by reference, describing Kanerika’s current maintenance, support and service level policies for Software.

“**Terms of Use Policy**” means the Kanerika Terms of Use found at <https://www.kanerika.com/terms-and-conditions/> (or such updated URL provided by Kanerika from time to time) and incorporated herein by reference.

“**Third Party Open Source**” means any publicly available third party open source software which may be delivered to Customer as part of or as embedded within the Software delivered to Customer. Kanerika to provide Customer a list (as updated) upon request.

“**Third Party Products**” means any third party proprietary programs, interfaces, firmware or services that interoperate or communicate with or are made available through or together with the Software.

“**Update**” means a release or version of the Software delivered by Kanerika to Customer as part of Support and Maintenance Services (or otherwise), including bug fixes, patches, new features or functional enhancements to the Software that is generally made available free of charge to Kanerika’s customers whom have purchased a subscription to Software.

“**Users**” means any individual authorized by Customer (or any Customer Affiliate or contractor) to access and/or use the Flip Cloud Subscription Services or the Software, including contractors that use the Software for Customer Internal Business Purposes, and for whom Customer has paid all applicable fees to Kanerika.

2.0 ORDERING; SOFTWARE DELIVERY; SUBSCRIPTION START DATE. Customer may place Orders either with Kanerika or an Authorized Reseller. All Orders placed by Customer are subject to written acceptance by Kanerika or an Authorized Reseller and Kanerika (as relevant). Software will be delivered to Customer electronically and promptly after the Order is executed and becomes effective. The start date of the Subscription Term shall be specified in the Order.

3.0 GRANTS AND RESTRICTIONS.

3.1 Right to Access the Flip Cloud Subscription Services. If applicable as specified in an Order, and subject to Customer’s ongoing compliance with this Agreement, including the payment of all Fees in accordance with Article 7, Kanerika hereby grants Customer a worldwide, non-exclusive, non-transferable, non-sublicensable, non-assignable (except as permitted under Article 15.1) right, during the applicable Term as defined below, to access and use the Flip Cloud Subscription Services by and up to the number and types of Users specified on the applicable Order, solely for Customer’s own internal business purposes in the Field of Use and in accordance with the relevant Documentation and any additional limitations or restrictions set forth in the applicable Order. Customer (a) is responsible for Users’ compliance with, and any breach of, this Agreement and the Terms of Use Policy, (b) will use commercially reasonable efforts to prevent unauthorized use of the Flip Technology, and notify Kanerika promptly of any unauthorized use, (c) will use the Flip Technology only in accordance with the Documentation and applicable laws and government regulations, (d) will only use the Documentation as necessary to use the Flip Cloud Subscription Services as described in the applicable Order and (e) is responsible for maintaining a current back up copy of all Customer Data and for implementing such backup facilities and systems to safeguard against the loss of Customer Data. Customer agrees that its purchases under this Agreement are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Kanerika regarding future functionality or features.



3.2 Availability. During the applicable Term for such Flip Cloud Subscription Services, Kanerika will use commercially reasonable efforts to make such Flip Cloud Subscription Services available to Customer. Customer acknowledges that from time to time Flip Cloud Subscription Services may be inoperative or only partly operational as a consequence of telecommunication connectivity problems or other causes. Kanerika will maintain commercially reasonable administrative, physical and technical safeguards for the Customer Data that is stored in the Flip Cloud Subscription Services; provided that Customer is solely responsible for maintaining its equipment, timely transmission of, and the accuracy, quality, integrity, and reliability of, the Customer Data.

3.3 Software License. If applicable as specified in an Order, and subject to the terms and conditions of this Agreement, during the Subscription Term, Kanerika grants to Customer (and any Users authorized by Customer to use the Software), a non-exclusive, non-transferable and non-sublicensable license to: (i) install instances of the Software on computers owned or controlled by Customer or its Affiliates or in cloud instances controlled by Customer or its Affiliates and hosted by third parties, and (ii) use the Software for Customer's and/or Customer Affiliates' Internal Business Purposes in accordance with the relevant Documentation and subject to the License Parameters set out in the applicable Order and the restrictions of this Agreement. Customer may maintain a reasonable number of copies of the Software on its systems for backup and recovery purposes, provided use of the copies is strictly limited to back up or disaster recovery purposes.

3.4 Evaluation Copies of Flip Technology. The following terms will apply to any pre-release versions, or beta, evaluation or proof of concept copies, periods or trials of Flip Technology provided to Customer (notwithstanding any contrary term specified in any other sections of this Agreement): (i) the Flip Technology will be deemed "Flip Technology" under this Agreement and the use of the Flip Technology will terminate at the end of the trial period identified by Kanerika or Kanerika's Authorized Reseller (or if no period is identified then in thirty (30) days from delivery of access to the Flip Technology) and use of the Flip Technology by Customer or Customer's Users will be for the limited purpose of evaluating the relevant Flip Technology and establishing Customer's desire to purchase such Flip Technology or providing any feedback desired; (ii) the Flip Technology is provided "As Is" without any warranty or liability by Kanerika of any kind; (iii) Customer will not be entitled to any Support and Maintenance Services or any Upgrades with respect to the Flip Technology unless Flip Technology is later purchased; (iv) Customer will not be entitled to Indemnification protection as further outlined in Section 9 of this Agreement; and (v) Kanerika and/or the Authorized Reseller may at any time terminate Customer's use of the Flip Technology by written notice to Customer and require Customer to cease use of such pre-release, beta, evaluation or proof of concept Evaluation Services.

3.5 Restrictions. Unless otherwise agreed upon in writing with Kanerika, Customer will not, directly or indirectly, and will not permit any third party, to: (a) except as permitted under Section 2.A, assign, sell, lease, distribute, license, sublicense or otherwise transfer or attempt to transfer rights in the Flip Technology; (b) reverse engineer, decompile, disassemble or otherwise derive or attempt to derive source code or algorithms from any element of the Flip Technology; (c) access or use the Flip Technology in order to build a competitive product or service; (d) modify, translate or create derivative works, adaptations or compilations of, or based on, any part of the Flip Technology; (e) remove or otherwise interfere with any part of the Flip Technology designed to monitor Customer's compliance with this Agreement; (f) use the Flip Technology on behalf of, or to perform any services for, any third party or include any part of the Flip Technology in any services or products provided by Customer to any third party; (g) use any analytics, data, content, or other output created by or from the Flip Technology on behalf of, or to perform any services for, any third party or include such analytics, data, content or other output in any services or products provided by Customer to any third party; (h) provide, disclose, divulge or make available to, or permit use any of the Flip Technology, in whole or in part, by any third party without Kanerika's prior written consent; (i) make the Flip Technology, in whole or in part, available to third parties on a service bureau, rent, lease, software as a service or application service provider basis; (j) replicate or copy Flip Technology, or any feature, function, or graphic of the Flip Technology, in whole or in part, except as specifically authorized by this Agreement; (k) remove any proprietary notices or labels on or in any of the Flip Technology; (l) transmit unlawful, infringing or harmful data or code to or from the Flip Technology; (m) access the Flip Cloud Service using "bots" or "spiders" or any automated system that call a service more frequently than may reasonably be performed by a human user using a standard web browser; or (n) otherwise use the Flip Technology except as expressly permitted under this Agreement. The restrictions in this Section will apply except to the extent that a right cannot, by law, be excluded or limited (and then only when Customer has sought Kanerika's express permission and Kanerika has refused). For the avoidance of doubt, all restrictions specified in this Agreement with respect to the Flip Technology apply to all components (including Documentation). There are no implied licenses granted by Kanerika under this Agreement. It is the responsibility of the Customer to ensure that all Users are aware of the terms and conditions (including the restrictions) of this Agreement. Customer agrees that all actions or inactions of Users will be deemed an action or inaction by Customer and that Customer will be liable and responsible for any action or inaction of the Users which is in violation of the terms of this Agreement.



4.0 Expert Services. If applicable, Kanerika will provide Customer the Expert Services purchased under this Agreement. The scope of Expert Services will be as set forth in an Exhibit referencing this Agreement. Expert Services will be delivered subject to the terms and conditions of this Agreement and the applicable Exhibit. Customer may use anything delivered as part of the Expert Services in support of its use of the Software during a Subscription Term but Kanerika will retain all right, title and interest in and to any such work product, code and deliverables and any derivative, enhancement or modification thereof created by or on behalf of Kanerika.

5.0 Support and Maintenance. During a Subscription Term, Kanerika will provide Customer the Support and Availability for the Flip Technology set out in the Support Policy based on the support service level purchased by Customer under the applicable Order. For clarity, the Support and Maintenance Services are included as part of the license fee specified in the applicable Order. The Support and Maintenance Services includes, as applicable, updates to the Flip Cloud Subscription Services or Software as they become generally available to other Kanerika customers for the applicable Flip Technology during the relevant Subscription Term. Kanerika may make changes to the Support Policy with thirty (30) days' notice to Customer (via the support portal or otherwise), provided there is no material degradation of the support offering. Notwithstanding the foregoing, if Customer has placed its Order through an Authorized Reseller who is obligated to provide support directly to Customer (as identified in the relevant Order), then the Support Policy will not apply to Customer, and Customer's support and maintenance services will be provided by the Authorized Reseller.

6.0 OWNERSHIP

6.1 Flip Technology. Customer agrees that Kanerika will retain all right, title and interest (including all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Flip Technology, all Documentation, and all related underlying technology. Further, Customer acknowledges that the Flip Technology is offered as an online, hosted solution, and Customer has no right to obtain a copy of the underlying computer code for any Flip Technology.

6.2 Feedback. Customer may provide feedback to Kanerika concerning the functionality of, and enhancements and changes to, the Flip Technology from time to time, including without limitation identifying errors and potential improvements ("**Feedback**"). Such Feedback includes any comments or content posted by Customer on Flip websites regarding the Flip Technology or provided to Kanerika personnel. Customer hereby grants to Kanerika a worldwide, irrevocable, perpetual, royalty-free license to use and otherwise exploit such Feedback without restriction, including, without limitation, utilizing and displaying such Feedback in connection with the Flip Technology, Kanerika's other products and services, and/or providing Expert Services and Maintenance and Support Services. The Parties acknowledge and agree that notwithstanding anything to the contrary herein, such Feedback will not be deemed the Confidential Information of Customer, and Kanerika has the right to modify, disclose and/or remove from display any such Feedback in its sole discretion.

6.3 Customer Data. Except for the limited rights granted in this Agreement, Customer retains all of its rights, title and interest in the Customer Data. Customer hereby grants to Kanerika and its affiliates a worldwide, irrevocable, perpetual, royalty-free, and non-exclusive license to (a) use, host, copy, transmit and display all Customer Data for the purposes of performing its obligations under this Agreement, (b) view, modify, collect and use meta-data derived from the Customer Data solely for the purpose of providing the Flip Cloud Subscription Services to Customer, and (c) use log and other de-identified information related to Customer's use of the Flip Cloud Subscription Services ("**Usage Data**") and aggregate it with statistical information from other customers, for Kanerika's business purposes, including to improve the Flip Technology and to develop new features or functionality related to the Flip Technology or Kanerika's other products or services. Kanerika will have no obligation hereunder to obtain any third-party data for Customer or pay any usage fee therefor. Customer is responsible for the accuracy, quality and legality of any data created or provided by Customer (including any Customer Data) and all data derived therefrom and the means by which Customer acquired such data, and Customer will obtain all permissions or approvals from each applicable data source as may be necessary or required to comply with applicable laws and/or to provide such data to Kanerika in connection with the delivery of the Flip Cloud Subscription Services in accordance with this Agreement. Customer will not process or store any Customer Data on the Flip Cloud Subscription Services that is subject to the International Traffic in Arms Regulations maintained by the U.S. Department of State or, if applicable, is Protected Health Information (as defined in HIPAA).

6.4 Third Party Services. Kanerika may make available to Customer third party services that interoperate with the Flip Cloud Subscription Services ("**Third Party Services**"). Any exchange of data between Customer and any Third-Party Service is solely between Customer and the applicable Third-Party Service provider. Except as specified in an Order Kanerika does not warrant or support Third Party Services, whether or not they are designated by Kanerika as "certified" or otherwise. If any Third -Party Services provider ceases to make the Third-Party Service available for interoperation with the Flip Cloud Subscription Services or any feature thereof on terms



deemed reasonable by Kanerika, then Kanerika may cease providing such features without refund, credit, or any other compensation or liability to Customer.

6.5 Reservation of Rights. Except for the limited rights granted in Article 3.0, Flip and its licensors will own and retain all right, title and interest in and to the Flip Technology and all intellectual property rights therein and thereto. Nothing in this Agreement will constitute a transfer of any ownership rights by Kanerika to Customer in any Kanerika Technology. All rights in the Flip Technology not expressly granted in this Agreement are reserved by Kanerika and its licensors.

7.0 FEES AND PAYMENT

7.1 Fees; Taxes. Customer will make all payments identified on the Order in accordance with its terms. Orders are non-cancelable, and all payments are non-refundable, and payments are not subject to any deduction or set-off. If the Order is placed indirectly through an Authorized Reseller, then the Order entered into with the Authorized Reseller will identify the Fees due and payment terms. If the Order is entered into directly with Kanerika and not through an Authorized Reseller, then, unless otherwise agreed in the Order, the following terms will apply: (i) Customer will pay Kanerika invoices within thirty (30) days after the effective date of the relevant invoice; (ii) all amounts are payable in U.S. Dollars; (iii) all fees outlined in the Orders are exclusive of all taxes, duties, and similar amounts, all of which are Customer's responsibility (excluding taxes based on Kanerika or its Authorized Reseller's income); and (iv) if Customer is in default of making any payment due to Kanerika, then Kanerika may, without prejudice to other remedies available, assess a late payment charge, at the lower rate of 1.5% per month, or the maximum rate under applicable law, and/or suspend delivery of any product or service under this Agreement. Kanerika's Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including value-added, sales and use, or withholding taxes, assessable by any jurisdiction (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with its purchases under this Agreement. If Kanerika has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, Customer will pay that amount when invoiced by Kanerika unless Customer provides Kanerika with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Kanerika is solely responsible for taxes assessable against it based on its income, property and employees.

7.2 Updating Parameters; Reporting. In connection with the use of the Flip Technology, Customer will not exceed the Flip License Parameters agreed to as part of the Order(s) placed by Customer. At any time during the Subscription Term, if Customer desires to increase the relevant Flip License Parameters, or if Customer learns that Customer's actual usage ("**Actual Usage**") exceeds the relevant Flip License Parameters paid for by Customer ("**Purchased Usage**"), then Customer will notify Kanerika (or the Authorized Reseller) and pay the incremental Fees due, and after the relevant Order is placed, the relevant Flip License Parameters will be deemed amended to reflect this purchase. Within thirty (30) days of Kanerika's or its Authorized Reseller's written request, Customer will provide Kanerika or its Authorized Reseller (as relevant) a report, which report will identify usage required to show compliance with the Kanerika License Parameters and compliance with restrictions identified in this Agreement and in the Order. In order to verify compliance with this Agreement or to verify the report provided under this Agreement, within thirty (30) days' of Kanerika's written request to Customer, which request will not be made more than once per calendar quarter, Customer will provide Kanerika access to the relevant systems, records and/or product usage logs in order to show compliance with Flip License Parameters and other restrictions. Kanerika and/or its Authorized Resellers may invoice Customer if it learns that the Actual Usage is above the Purchased Usage. Unless otherwise mutually agreed in writing, the Fees charged to Customer for the additional usage during the Subscription Term will be based on the then-current pricing charged to the Customer in the relevant Order and, unless otherwise agreed, the Fees will be charged for the balance of the Term so that the Term may be coterminous with the existing Term.

7.3 Reseller Orders. If Customer has procured the Flip Technology through an Kanerika Authorized Reseller, then different terms regarding invoicing, payment and taxes may apply between Customer and Reseller. Customer acknowledges: (a) Kanerika may share information with the Reseller related to Customer's use of Flip Technology for management and billing purposes; (b) the termination provisions below will also apply if Reseller fails to pay applicable fees; (c) Reseller is not authorized to make any changes to this Agreement or otherwise authorized to make any warranties, representations, or commitments on behalf of Kanerika.

8.0 WARRANTIES AND LIMITATION OF LIABILITY

8.1 Mutual Warranties. Each party represents and warrants to the other that (i) it has the full power to enter into this Agreement and that this Agreement constitutes a legal, valid and binding obligation of the party, enforceable against it, and (ii) this Agreement does not contravene, violate or conflict with any other agreement of the party with any third party.



8.2 Software Warranty. If applicable, for a period of ninety (90) days from the effective date of the relevant Order for the Software, Kanerika warrants that the Software materially conforms to its published specifications described in the Documentation supplied by Kanerika. Customer's sole and exclusive remedy and the entire liability of Kanerika and its suppliers and licensors under this limited warranty will be, at Kanerika's option, repair or replacement of the Software, or if repair or replacement is not possible, to terminate the license and refund the license fee paid by Customer for the affected Software, provided Customer removes all copies of the relevant Software from its systems and ceases any further use of the Software.

8.3 Flip Cloud Subscription Service Warranty. If applicable, Kanerika warrants that the Flip Cloud Subscription Service will materially conform to its published specifications described in the relevant Documentation supplied by Kanerika. Customer's sole and exclusive remedy and the entire liability of Kanerika and its suppliers and licensors under this limited warranty will be, at Kanerika's option, repair or replacement of the Flip Cloud Subscription Service, or if repair or replacement is not possible, to terminate the Agreement and refund the Fee(s) paid by Customer for the affected Flip Cloud Subscription Service.

8.4 Expert Services Warranty. For a period of thirty (30) days from the date of delivery of any Expert Services by Kanerika to Customer, Kanerika represents and warrants to Customer that the services provided will be professional, workmanlike and performed in a manner conforming to any requirements stated in this Agreement or in the relevant Exhibit or Order. Kanerika's entire liability and Customer's sole and exclusive remedy for any breach of this warranty will be for Kanerika to re-perform the nonconforming Expert Services, or if Kanerika is unable to deliver conforming Expert Services within a reasonable time, then refund any Fees paid to Kanerika for the relevant non-conforming Expert Services.

8.5 Warranty Limitations. The express warranties in this Agreement do not apply if the applicable Flip Technology: (i) has been altered, except by Kanerika or its authorized representatives or its contractors; (ii) has not been used, installed, operated, repaired, or maintained in accordance with this Agreement and/or Documentation; or (iii) is for beta, evaluation, or testing purposes. Additionally, the warranties set forth in this Agreement only apply to a warranty claim made within the warranty period specified in this Agreement and do not apply to any bug, defect or error caused by or attributable to software or products or services not supplied by Kanerika.

8.6 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE FLIP TECHNOLOGY, EXPERT SERVICES, AND SUPPORT SERVICES ARE PROVIDED ON AN "AS-IS" BASIS AND KANERIKA MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY REGARDING OR RELATING TO THE SAME. KANERIKA HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, ACCURACY OF RESULTS, OR ARISING FROM COURSE OF DEALING OR RELIANCE. KANERIKA DOES NOT WARRANT OR SUPPORT ANY THIRD-PARTY WEBSITE, SERVICE, SOFTWARE, CONTENT OR FUNCTIONALITY. KANERIKA DOES NOT WARRANT THAT THE FLIP TECHNOLOGY WILL BE ERROR- FREE OR UNINTERRUPTED.

9.0 LIMITATION OF LIABILITY

9.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT FOR ANY LIABILITY ARISING OUT OF ANY VIOLATION OF A PARTY'S PROPRIETARY RIGHTS (INCLUDING A VIOLATION OF ANY RESTRICTIONS SET OUT IN THIS AGREEMENT), OR ANY VIOLATION OF CONFIDENTIALITY OR ANY INDEMNITY OBLIGATION:

- A.** IN NO EVENT WILL CUSTOMER, KANERIKA, OR FLIP'S LICENSORS OR SUPPLIERS BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, PUNITIVE, CONSEQUENTIAL, INCIDENTAL DAMAGES, OR FOR ANY LOST REVENUE, LOST PROFIT, LOSS OF BUSINESS, LOSS OF USE, LOSS OF CONTRACTS, ANTICIPATED SAVINGS, LOSS OF GOODWILL, LOSS OF ANY OTHER ECONOMIC ADVANTAGE, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR ANY LOSS OR DAMAGE TO DATA, OR ANY BUSINESS INTERRUPTION ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ARISING FROM FLIP TECHNOLOGY OR ANY SERVICES DELIVERED UNDER OR RELATED TO THIS AGREEMENT, UNDER ANY CAUSE OF ACTION, WHETHER IN CONTRACT, UNDER STATUTE, TORT OR OTHERWISE, EVEN IF ADVISED BEFOREHAND OF THE POSSIBILITY OF SUCH; AND
- B.** IN NO EVENT WILL THE AGGREGATE LIABILITY OF CUSTOMER, KANERIKA, FLIP'S LICENSORS OR SUPPLIERS ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, THE USE OF OR INABILITY TO USE THE FLIP TECHNOLOGY, SERVICES, EXPERT SERVICES OR OTHERWISE (UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, UNDER STATUTE, TORT OR OTHERWISE)



EXCEED THE FEES RECEIVED BY KANERIKA UNDER THE RELEVANT ORDER (OR IN THE CASE OF CUSTOMER'S LIABILITY EXCEED THE FEES PAID OR DUE TO KANERIKA OR ITS AUTHORIZED RESELLER UNDER THE RELEVANT ORDER), WHETHER ANY REMEDY SET FORTH IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE; AND

- C. IN THE CASE OF "DATA PROTECTION CLAIMS" EACH PARTY'S TOTAL LIABILITY TO THE OTHER PARTY AND ITS AFFILIATES FOR ALL CLAIMS IN THE AGGREGATE (FOR DAMAGES OR LIABILITY OF ANY TYPE) SHALL NOT EXCEED TWO TIMES (2X) THE AMOUNT PAID OR DUE TO KANERIKA OR ITS AUTHORIZED RESELLER UNDER THE RELEVANT ORDER.

10. INDEMNIFICATION

10.1 By Kanerika. Kanerika will defend Customer and its Affiliates, and their respective officers and employees ("**Customer Indemnitees**") from and against any claim by a third party brought against Customer Indemnitees alleging that the Flip Technology infringes or violates third party intellectual property rights, and will indemnify and hold harmless Customer Indemnitees from and against any damages and costs finally awarded against Customer Indemnitees or agreed to by Kanerika in a monetary settlement (including reasonable attorneys' fees) resulting from such claim. In the event any such claim is brought or threatened, Kanerika may, at its sole option and expense: (i) procure for Customer the right to continue use of the Flip Technology or infringing part thereof; (ii) modify or amend the Flip Technology or infringing part thereof to make it non-infringing; (iii) replace the Flip Technology or infringing part thereof with non-infringing technology having substantially similar capabilities; or (iv) terminate any applicable Orders and/or this Agreement and repay to Customer a pro-rata portion of any prepaid and unused Fees for the balance of the Subscription Term. Notwithstanding the foregoing, Kanerika will have no liability to Customer for any claim of infringement to the extent such claim arises out of or is based upon (1) use of the Flip Technology in combination with software, products or services not provided or authorized by Kanerika; (2) any modification of the Flip Technology, in whole or in part, not made or authorized by Kanerika; (3) failure to use the Flip Technology in accordance with this Agreement, the Terms of Use Policy, or Documentation, or otherwise using the Flip Technology for purposes for which it was not designed or intended; (4) any content or materials provided by Customer or third parties, including Third Party Open Source. THE FOREGOING PROVISIONS OF THIS SECTION STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF KANERIKA, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY OR OTHER PROPRIETARY RIGHT BY THE FLIP TECHNOLOGY OR ANY PART THEREOF.

10.2 By Customer. Customer will defend Kanerika and its Affiliates, and their respective officers and employees ("**Kanerika Indemnitees**") from and against any claim by a third party brought against Kanerika Indemnitees relating to or arising from (i) any data or content imported or uploaded to the Flip Cloud Subscription Services, or (ii) use of the Flip Technology in violation of this Agreement, the Terms of Use Policy, or applicable law or any third-party rights.

10.3 Indemnity Procedures. In the event of a potential indemnity obligation under this Article 10, the indemnified party will: (i) promptly notify the indemnifying party in writing of the claim, (ii) allow the indemnifying party the right to control the investigation, defense and settlement (if applicable) of the claim at the indemnifying party's sole cost and expense, and (iii) upon request of the indemnifying party, provide all necessary cooperation at the indemnifying party's expense. Failure by the indemnified party to notify the indemnifying party of a claim under this Article will not relieve the indemnifying party of its obligations; however, the indemnifying party will not be liable for any litigation expenses that the indemnified party incurred prior to the time when notice is given or for any damages and/or costs resulting from any material prejudice caused by the delay or failure to provide notice to the indemnifying party in accordance with this Article. The indemnified party may participate in the defense of the claim with its own counsel at its own expense. The indemnifying party may not settle any claim in any matter that would require obligation on the part of the indemnified party (other than payment or ceasing to use infringing materials), or any admission of fault by the indemnified party, without the indemnified party's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. Further, any indemnification obligation under this Article will not apply if the indemnified party settles or makes any admission with respect to a claim without the indemnifying party's prior written consent.

11. DATA PROTECTION

11.1 Kanerika and Customer agree to comply with respective obligations under the UK Data Protection Act 1998, the E.U. General Data Protection Regulation, the California CCPA and CPRA, the data privacy laws of Virginia, Connecticut, Colorado, Utah, Iowa, Indiana, Tennessee, and Montana, and any other relevant data privacy laws (hereafter the "**Laws**"), along with any updates to these



Laws, as applicable to Personal Data (“Personal Data”) that it controls or processes as part of, or in connection with, its use or provision of the Flip Cloud Subscription Service. Kanerika does not take responsibility for the protection of Personal Data held by the Customer under the Flip Cloud Subscription Service. Specifically, but without limitation, the Customer must comply with the Laws as it relates to Personal Data the Customer stores or transfers using the Flip Cloud Subscription Service.

12. DISASTER RECOVERY

12.1 Kanerika’s disaster recovery and business continuity plan relative to the Flip Cloud Subscription Service Disaster Recovery Plan (“**Disaster Recovery Plan**”) found at <https://www.flipnow.cloud/legal/flip-business-continuity-and-disaster-recovery-overview> (updated URL provided by Kanerika from time to time) and incorporated herein by reference, documents the measures that Kanerika will take in order to reduce the risk of, and enable the prompt recovery from and interruption of the Flip Cloud Subscription Service.

13. CONFIDENTIAL INFORMATION

13.1 Definition. “Confidential Information” means (i) any information disclosed (directly or indirectly) by one Party (“**Disclosing Party**”) to the other Party (“**Receiving Party**”) pursuant to this Agreement that is marked as “Confidential,” “Proprietary” or in some other manner to indicate its confidential nature; and (ii) information otherwise reasonably expected to be treated in a confidential manner under the circumstances of disclosure under this Agreement or by the nature of the information itself. Notwithstanding the foregoing, the Flip Technology and the Documentation is the Confidential Information of Kanerika.

13.2 Exceptions. Confidential Information will not, however, include any information which (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the Disclosing Party; (ii) becomes publicly known and made generally available after disclosure by the Disclosing Party to the Receiving Party through no action or inaction of the Receiving Party; (iii) is already in the possession of the Receiving Party at the time of disclosure by the Disclosing Party as shown by the Receiving Party’s files and records immediately prior to the time of disclosure; (iv) is obtained by the Receiving Party from a third party without a breach of such third party’s obligations of confidentiality; or (v) is independently developed by the Receiving Party without use of or reference to the Disclosing Party’s Confidential Information, as shown by documents and other competent evidence in the Receiving Party’s possession.

13.3 Duties. Except as expressly authorized in this Agreement, the Receiving Party agrees to: (i) use the Confidential Information of the Disclosing Party only to perform under this Agreement (including providing the features and services associated with the normal use of the Flip Technology) or exercise rights granted to it under this Agreement; (ii) treat all Confidential Information of the Disclosing Party in the same manner as it treats its own similar proprietary information, but in no case less than reasonable care; and (iii) disclose the Disclosing Party’s Confidential Information only to its Affiliates, and those employees, agents and contractors of the Receiving Party and those of its Affiliates who have a need to know the information for the purposes of this Agreement, provided that any such employee, agent or contractor must be subject to obligations of non-use and confidentiality with respect to the Confidential Information at least as restrictive as the terms of this Agreement, and the Receiving Party will remain liable for any non-compliance of such Affiliates, and its or their employees, agents or contractors with the terms of this Agreement.

13.4 Compelled Disclosure. If a Receiving Party is compelled by law, regulation or a court of competent jurisdiction to disclose any of the Disclosing Party’s Confidential Information, the Receiving Party will promptly notify, if permitted by applicable law, the Disclosing Party so that it may seek a protective order or other appropriate remedy. The Receiving Party agrees to cooperate at the Disclosing Party’s expense in seeking such order or other remedy. If disclosure is ultimately required, the Receiving Party will furnish only that portion of the Confidential Information that is legally required, exercise reasonable efforts to obtain assurance that it will receive confidential treatment, and continue to treat such Confidential Information in accordance with its obligations under this Section.

14. TERM AND TERMINATION

14.1 Term and Termination. The Order and the Flip Technology granted as part of any Order will remain effective until terminated or until the Term expires, whichever is earlier. This Agreement will be effective as of the Effective Date and will remain in effect until terminated or until the Term for all Flip Technology pursuant to any Order expires, whichever is earlier. This Agreement may be terminated by a party: (i) upon thirty (30) days’ written notice, if the other party materially breaches any provision of this Agreement and the breach remains uncured after the thirty (30) day notice period expires; or (ii) effective immediately, if the other party



ceases to do business, or otherwise terminates its business operations without a successor; or (iii) effective immediately, if the other party becomes insolvent or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is filed against it and not dismissed within ninety (90) days. As of the termination date Customer will cease all use of the Software. Further, Customer agrees to contact Kanerika on such termination date for assistance in the removal of all Software. Immediately thereafter Customer will provide written confirmation signed by an officer of Customer's company certifying that all such Software in its possession or control has been purged and either destroyed or returned. Articles 1 (Certain Definitions), 3.5 (Restrictions), 6 (Ownership), 7 (Fees and Payment), 8 (Warranties and Limitation on Liability), 9 (Limitation on Liability), 10 (Indemnification), 11 (Data Protection), 13 (Confidential Information), 14 (Term and Termination), and 15 (Miscellaneous) will survive any termination or expiration of this Agreement.

15. MISCELLANEOUS

15.1 Assignment. This Agreement may not be assigned or transferred without the other party's prior written consent, provided each party expressly reserves the right to assign this Agreement to a successor in interest of all or substantially all of its business or assets to which this Agreement relates, provided the assigning party notifies the other party of such assignment within thirty (30) days of the assignment. Any action or conduct in violation of the foregoing will be void and without effect. All validly assigned rights and obligations of the parties under this Agreement will be binding upon and inure to the benefit of and be enforceable by and against the successors and permitted assigns.

15.2 Relationship of Parties. Nothing contained in this Agreement will be construed as creating any agency, partnership or other form of joint enterprise between the Parties. The relationship between the Parties shall at all times be that of independent contractors. Neither Party will have the authority to contract for or bind the other in any manner whatsoever. This Agreement confers no rights upon either Party except those expressly granted herein.

15.3 Notices. Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be (a) delivered in person, (b) sent by first class registered mail, or air mail, as appropriate or (c) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address first set forth below or (d) sent by electronic mail to the address set forth in the relevant Order. Either Party may change its address for notice by providing notice to the other Party in accordance with this Section. Notices will be deemed to have been given at the time of actual delivery in person, three (3) business days after deposit in the mail as set forth above or one (1) day after delivery to an overnight courier service, or upon confirmation of receipt of electronic mail.

15.4 Force Majeure. Except for the obligation to pay money, neither Party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation an act of war, act of God, earthquake, flood, act of terrorism, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet, (each a "Force Majeure Event"), provided that the delayed Party: (a) gives the other Party notice of such cause and (b) uses its reasonable commercial efforts to correct such failure or delay in performance.

15.5 Export Control. Customer understands that the Flip Technology is subject to export control laws and regulations. Customer may not download or otherwise export or re-export the Flip Technology or any underlying information or technology except in full compliance with all applicable laws and regulations, including United States export control laws. None of the Kanerika Technology or any underlying information or technology may be downloaded or otherwise exported or re-exported: (i) into (or to a national or resident of) any country to which the United States has embargoed goods; or (ii) to anyone on the U.S. Treasury Department's list of specially designated nationals or the U.S. Commerce Department's list of prohibited countries or debarred or denied persons or entities. Customer hereby agrees to the foregoing and represents and warrants that customer is not located in, under control of, or a national or resident of any such country or on any such list.

15.6 Anti-Bribery or Anti-Corruption Laws. In carrying out activities pursuant to this Agreement, each party agrees that it will comply with and will not commit, authorize, or permit any action by its personnel which would violate any applicable anti-bribery or anti-corruption laws.

15.7 Publicity. Each Party agrees that Kanerika may publish and use Customer's name and logo in order to identify Customer as a customer of Kanerika in its promotional and marketing materials, including on its website. Any other use of a party's logo shall be upon prior written approval only; however, Kanerika and Customer agree to discuss Customer's participation in the Kanerika Customer Reference



Program which may include: (i) Kanerika Customer Advisory Board, (ii) reference calls with other companies that are evaluating Kanerika, (iii) print and/or video testimonials, (iv) speaking sessions, and (v) press releases.

15.8 Waiver. Any waiver of the provisions of this Agreement or of a Party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect or delay by a Party to enforce the provisions of this Agreement or its rights or remedies at any time will not be construed and will not be deemed to be a waiver of such Party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such Party's right to take subsequent action. No exercise or enforcement by either Party of any right or remedy under this Agreement will preclude the enforcement by such Party of any other right or remedy under this Agreement or that such Party is entitled by law to enforce.

15.9 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the Flip Technology, delivery of Support and Maintenance Services, and delivery of any Expert Services outlined in an Exhibit or Order referencing this (where relevant). Except as expressly provided in this Agreement, this Agreement supersedes and cancels all previous written and previous or contemporaneous oral communications, proposals, representations, and agreements relating to the subject matter contained in this Agreement. This Agreement prevails over any pre-printed terms or other conflicting or additional terms of any purchase order, ordering document, acknowledgement, click through agreement or terms, or confirmation or other document issued or made available by Customer, even if signed and returned or otherwise accepted. Additionally, with respect to any Flip Technology under this Agreement, this Agreement supersedes and cancels any "click wrap" or "click accept" or any web-based agreement incorporated into the Flip Technology or accepted by User in connection with access to the Flip Technology or otherwise.

15.10 Severability. If any term, condition or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the Parties will endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the Parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

15.11 Integration. This Agreement (including the Exhibits and any addenda hereto signed by both Parties) contains the entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the Parties with respect to said subject matter. In the event of a conflict between the terms of an Order and the terms of this Agreement, the terms of this Agreement will take precedence unless expressly set forth in the applicable Order. This Agreement may not be amended, except by a writing signed by both Parties.

15.12 Counterparts. This Agreement may be executed in one or more counterparts and each of such counterparts shall be deemed to be an original for all purposes, and all of such counterparts shall together constitute one and the same document. Any signature required for the execution of this Agreement may be in the form of either an original signature, a facsimile transmission bearing the signature of any party to this Agreement or an electronic representation of the signed signature page in portable document format ("**PDF**"). No objection shall be raised as to the authenticity of any signature due solely to the fact that said signature was transmitted via facsimile or is represented in PDF.

15.13 Headings; Construction. The headings to the clauses, sub-clauses and parts of this Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement. Any ambiguity in this Agreement will be interpreted equitably without regard to which Party drafted the Agreement or any provision thereof. The terms "this Agreement," "hereof," "hereunder" and any similar expressions refer to this Agreement and not to any particular Section or portion hereof. As used in this Agreement, the words "include" and "including," and variations thereof, will be deemed to be followed by the words "without limitation."

15.14 Governing Law. This Agreement will be interpreted and construed in accordance with the laws of the State of California and the United States of America, without regard to conflict of law principles. Notwithstanding any choice of law provision or otherwise, the Uniform Computer Information Transactions Act (UCITA) and the United Nations Convention on the International Sale of Goods will not apply with respect to any subject matter of this Agreement. Any judicial action or proceeding arising hereunder or relating hereto will be brought in, and the Parties hereby consent to the exclusive, personal jurisdiction of, the state and federal courts located in San Francisco County, California.

15.15 Equitable Relief. The parties agree that a material breach of this Agreement adversely affecting Flip's or its licensors' intellectual property rights in the Flip Technology or the Confidential Information of either party may cause irreparable injury to the



party for which monetary damages would not be an adequate remedy and the non-breaching party will be entitled to equitable relief (without a requirement to post a bond) in addition to any remedies it may have under this Agreement or at law.

15.16 Basis of the Bargain. Customer acknowledges and agrees that Kanerika has set its prices and entered into this Agreement in reliance upon the disclaimers of warranty and the limitations of liability set forth in this Agreement, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.



Generative Artificial Intelligence Addendum

Gen AI Functionality: Flip Technology may include features and functions that incorporate generative artificial intelligence to aid the Customer's use of the Flip products and services ("**Gen AI Functionality**"). The information provided by the Customer for and during their use of the Gen AI Functionality shall be termed "**Input Data**," and the information or content generated through the Gen AI Functionality based on the Input Data shall be termed "**Output Data**".

Customer Responsibility: The Output Data is created based on a statistical analysis of the Input Data provided by Customer, without any detailed understanding of the source content. Customer acknowledges that all results depend on the quality of the source content, and results may be inaccurate, incomplete, unexpected or unfaithful to the provided source content, or may contain biases. Customer is solely responsible for (i) the accuracy and quality of any Input Data; (ii) verifying and validating the accuracy of any Output Data, and (iii) any decision, action or omitted action based on any Output Data. Customer acknowledges and agrees that the Gen AI Functionality may produce outputs that could inadvertently infringe upon third party intellectual property rights. Customer is solely responsible for ensuring that their use of the Output Data complies with all applicable intellectual property laws and regulations.

Ownership of Gen AI Functionality and Input and Output Data: Kanerika and its sub-processors shall retain ownership of the Gen AI Functionality and shall retain all ownership in and to the proprietary information used in the AI Functionality that may include aggregated and anonymized data, machine learning algorithms or other related intellectual property (collectively "**Machine Learning Data**"). However, all rights and ownership in the Input and Output Data associated with Customer's use of Gen AI Functionality shall solely be owned by the Customer. Kanerika will only use the Input and Output Data for the purpose of providing the Services.

Third Party Gen AI: Gen AI Functionality may include features which are powered by AI models operated by a third party, in which case Customer permits the relevant third party provider of such Gen AI Functionality to use the Input Data and Output Data or other Customer Data submitted to the Gen AI Functionality as necessary to provide and maintain the Gen AI Functionality, to comply with applicable laws, and to enforce its policies.

Liability: To the maximum extent permitted by law and notwithstanding anything to the contrary in the Agreement, Kanerika does not provide any representation, warranty, indemnification or other commitment of any kind regarding any Gen AI Functionality (including, for sake of clarity, any Beta Gen AI Features, and including, without limitation, in relation to the accuracy, reliability or completeness of the Output Data) and shall have no liability for any loss or damage caused by use of or reliance on any Output Data.

Beta and Trial Licenses: Gen AI Functionality may be made available by Kanerika as new products, features or functionality identified as trial, beta and/or early access, and in such case will be provided free of charge ("**Beta Gen AI Features**"). Where Kanerika decides to make the Beta Gen AI Features generally available, Kanerika may at any time, upon reasonable notice to Customer, introduce fees for continued use of such Gen AI Functionality. Such fees will apply to Customer's use of the relevant Gen AI Functionality as set forth in an Order or otherwise agreed in writing between the parties. Notwithstanding the foregoing, Kanerika is under no obligation to develop, release, make generally available or commercially offer a final product based on the Beta Gen AI Features.