



Streamlined Observability For Developers

**KERNO SUBSCRIPTION ORDER FORM  
AND  
SUBSCRIPTION AGREEMENT  
FOR**

**[INSERT COMPANY NAME]**

**DATE: XX - XX - XXXX**

## Table of Contents

<b>SUBSCRIPTION ORDER FORM.....</b>	<b>1</b>
1. PARTIES.....	1
2. SUBSCRIPTION ORDER DETAILS.....	1
3. SUBSCRIPTION FEE.....	2
<b>SUBSCRIPTION AGREEMENT.....</b>	<b>3</b>
1. INTERPRETATION AND DEFINITION.....	3
2. GRANT OF LICENCE AND USAGE RIGHTS.....	5
3. SERVICES.....	6
4. CUSTOMER DATA.....	6
5. KERNO'S OBLIGATIONS.....	7
6. CUSTOMER'S OBLIGATIONS.....	7
7. CHARGES AND PAYMENT.....	8
8. INTELLECTUAL PROPERTY RIGHTS.....	9
9. CONFIDENTIALITY.....	9
10. INDEMNITY.....	10
11. LIMITATION OF LIABILITY.....	11
12. TERM AND TERMINATION.....	12
13. FORCE MAJEURE.....	13
14. GENERAL.....	13
15. SERVICE LEVEL COMMITMENT.....	15
16. SUPPORT.....	15

# SUBSCRIPTION ORDER FORM

This Subscription Order Form is made between [CUSTOMER NAME] (“**Customer**”) and Fyck Limited t/a Kerno (“**Kerno**”). The Subscription is provided pursuant to the terms of the Kerno Subscription Agreement attached to this Subscription Order Form between the Customer and Kerno, all terms are hereby incorporated by reference. All terms not defined herein have the same meaning as set out in the Subscription Agreement.

## 1. PARTIES

### (a) Customer

Company Name	[Insert]
Company Number	[Insert]
Registered Address	[Insert]
Customer Contact/Position	[Insert]
Invoice/Billing Contact	[Insert]

### (b) Kerno

Kerno Entity	Fyck Limited
Company Number	726087
Kerno Address	Knockanare, Buttevant, Co. Cork, Ireland
Kerno Representative/Position	[Insert]
Kerno Technical Contact	

## 2. SUBSCRIPTION ORDER DETAILS

Access to and use of the Kerno Software will commence on [DD-MM-YYYY] (Start Date) and continue for [XX] months up to [DD-MM-YYYY] (“**End Date**”).

### 3. SUBSCRIPTION FEE

LICENSES START DATE	LICENSE END DATE	TOTAL NO. OF LICENSE	INITIAL SUBSCRIPTION TERM (MONTHS)	TOTAL CONTRACT VALUE
DD-MM-YYYY	DD-MM-YYYY	UNLIMITED FOR CUSTOMER ENTITY	XX	XX,XXX

The total subscription fee will be broken into [24] equal payments of [xxxxx] billed annually (the “Billing Dates”).

- All prices are in EURO.
- Purchase orders: All invoices will be provided to the billing contact as specified in item 1(a) above.
- Invoice payment terms are 15 days from receipt of the invoice.
- The Subscription Order Form and the Subscription Agreement constitute the entire agreement between the Customer and Kerno, and this supersedes and replaces all prior, contemporaneous communications with respect to the subject matter hereof.
- If a purchase order is required, any terms and conditions on Customer’s purchase order, or specified in any email from the Customer or handwritten on this Subscription Order Form, are subject to Kerno’s approval, and where those terms and conditions conflict with this Subscription Order Form or the Subscription Agreement, they shall be considered void and shall have no legal effect.
- Any amendment to this Subscription Order Form and the Subscription Agreement must be agreed to by both parties and in writing.
- The Subscription Order Form may be executed in any number of counterparts, each of which, when executed, shall constitute an original, but all counterparts together shall constitute one and the same agreement.
- Signatures on the Subscription Order Form that are transmitted by email or by other electronic means are deemed to have the same effect as manually executed counterparts for this Subscription Order Form.
- When executed by both parties, this Subscription Order Form, together with the Subscription Agreement, form a legally binding and enforceable agreement between the parties.

AGREED to and SIGNED by authorized representatives of each party, as set out below:

[Insert]	Kerno
Signature:	Signature:
Print Name:	Print Name:
Title:	Title:
Date:	Date:

# SUBSCRIPTION AGREEMENT

## AGREEMENT BETWEEN:

1. **[NAME]**, [registered in [COUNTRY] under company number [NUMBER] and having its registered office at [ADDRESS]/[of [ADDRESS]] (the "**Customer**"); and
2. **FYCK LIMITED (TRADING AS KERNO)**, registered in Ireland under company number 726087, whose registered office is at Unit 6E, Nutgrove Office Park, Rathfarnham, Dublin 14, Ireland. ("**Kerno**").

## RECITALS:

- A. Kerno has developed a software platform, "Kerno", that provides real-time error monitoring of software services to its customer's IT teams.
- B. The Customer wishes to use the Kerno service in its business operations.
- C. Kerno has agreed to provide, and the Customer has agreed to take and pay for the Kerno service subject to the terms and conditions of this Agreement.

## 1.INTERPRETATION AND DEFINITION

- 1.1 In this Agreement (except where the context otherwise requires):
  - 1.1.1 any reference to a Recital, Section or Schedule is to the relevant Recital, Section or Schedule of or to this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement;
  - 1.1.2 use of the singular includes the plural and vice versa;
  - 1.1.3 use of any gender includes the other genders;
  - 1.1.4 any reference to "persons" includes individuals, firms, partnerships, companies, corporations, associations, organisations, foundations and trusts (in each case whether or not having separate legal personality);
  - 1.1.5 any reference in this Agreement to any statute, statutory provision, subordinate legislation, instrument or guideline ("legislation") shall be construed as referring to such legislation as the same may from time to time be amended, modified, extended, varied, superseded, replaced, substituted or consolidated; and
  - 1.1.6 any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 18.2 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any references to this Agreement includes the Schedules.

The definitions and rules of interpretation in this Section apply in this Agreement.

<b>“Agreement”</b>	means this Agreement, the Subscription Order Form, and any schedules;
<b>“Authorised Users”</b>	means those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in Section 2.2, and who have been provided with the Customer’s login details for the Software;
<b>“Billing Dates”</b>	means the date on which the Subscription Fees become due and payable as more particularly described in the Subscription Order Form;
<b>“Business Day”</b>	means any day which is not a Saturday, Sunday or public holiday in the Republic of Ireland;
<b>“Change of Control”</b>	means the direct or indirect acquisition of either the majority of the voting stock, or of all, or substantially all, of the assets, and liabilities of a party by another entity in a single transaction or a series of transactions;
<b>“Confidential Information”</b>	means all information, however recorded or preserved, disclosed by each party or their representatives to the other party or their representatives (whether before or after the date of this Agreement) relating to each party’s business and/or this Agreement, including without limitation information relating to trade secrets, business plans, finances, personnel data or any information (whether or not technical) that would be regarded as confidential by a reasonable business person or any other information identified as Confidential Information;
<b>“Customer Data”</b>	means the proprietary non-public data inputted by the Customer, Authorised Users, for the purpose of using the Services or facilitating the Customer’s use of the Services;
<b>“Data Protection Legislation”</b>	means the Data Protection Acts 1988-2018 and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data, and repealing Directive 95/46/EC (“ <b>GDPR</b> ”) and all applicable laws and regulations relating to the Processing of Personal Data;
<b>“Documentation”</b>	means the document made available to the Customer by Kerno from time to time which sets out a description of the Services and the user instructions for the Services;
<b>“Effective Date”</b>	means the date of this Agreement;
<b>“Initial Subscription Term”</b>	means the initial term of this Agreement as set out in the Subscription Order Form;
<b>“Kerno Data”</b>	means the information and data used in or in conjunction with the Services that is proprietary of, or licensed by third parties to, Kerno and or data produced and derived by the application of the Services;
<b>“Normal Business Hours”</b>	means 9.30 am to 6.00 pm local Irish time, each Business Day;
<b>“Personal Data” and “Process” and “Processing”</b>	shall have the same meaning as set out in the Data Protection Legislation and the expression “Process” shall be construed accordingly;
<b>“Renewal Period”</b>	means the period described in Section 12.1;
<b>“Services”</b>	means the subscription services provided by Kerno to the Customer under this Agreement and in relation to the Software.
<b>“Service Credits”</b>	Credits offered in the form of a monthly discount from approved invoices
<b>“Software”</b>	means the current release and version (unless otherwise agreed between the parties) of the online software applications provided by Kerno as part of the Services;
<b>“Subscription”</b>	means the subscription for the Software that the Customer, upon entering into this Agreement, will receive from Kerno;
<b>“Subscription Fees”</b>	means the subscription fees payable by the Customer to Kerno for the Services, as set out in the Subscription Order Form;
<b>“Subscription Order Form”</b>	means the order form entered into between the Customer and Kerno, which sets out certain commercial terms agreed between the parties, and which forms part of the Agreement;
<b>“Subscription Term”</b>	has the meaning given in Section 12.1.4;
<b>“Virus(es)”</b>	means anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

## 2. GRANT OF LICENCE AND USAGE RIGHTS

### 2.1

Subject to the Customer purchasing the Services in accordance with Section 7 and Section 3, the restrictions set out in this Section 2 and the other terms and conditions of this Agreement, Kerno hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations or as otherwise agreed by the parties from time to time in writing.

### 2.2

In relation to the Authorised Users, the Customer undertakes that:

- 2.2.1 each Authorised User shall keep a secure password for his/her use of the Services and Documentation, and that each Authorised User shall keep his/her password confidential;
- 2.2.2 it shall maintain a written, up-to-date list of current Authorised Users and provide such list to Kerno within 5 Business Days of Kerno's written request at any time or times;
- 2.2.3 It shall permit Kerno to audit (including on-site and/or remotely through Kerno's capture of IP and/or MAC addresses and other login/logout activity data to which it has access) the Services in order to establish the name and password of each Authorised User and verify use of the Services. Such audit may be conducted no more than once per quarter, at Kerno's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- 2.2.4 if any of the audits referred to in Section 2.2.3 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Kerno's other rights, the Customer shall promptly disable such passwords and Kerno shall not issue any new passwords to any such individual.

### 2.3

The Customer shall not access, store, distribute or transmit any Viruses or any material during the course of its use of the Services that:

- 2.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- 2.3.2 facilitates illegal activity;
- 2.3.3 depicts sexually explicit images;
- 2.3.4 promotes unlawful violence;
- 2.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or
- 2.3.6 causes damage or injury to any person or property; and Kerno reserves the right, without liability to the Customer, to disable the Customer's access to any material that breaches the provisions of this Section.

### 2.4

The Customer shall not:

- 2.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:
  - (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means including any part of Kerno Data, the data models or screens, and any data (including but not limited to, memos, notes, lists, or text) that has been entered by Kerno or one of its agents; or

- (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
  - (c) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
  - (d) except as provided for in this Agreement, use the Services and/or Documentation to provide services to third parties; or
  - (e) subject to Section 14.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
  - (f) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this Section 2; and
- 2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Kerno. The rights provided under this Section 2 are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer or any third party acting on its behalf.

### 3. SERVICES

- 3.1 Kerno shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.
- 3.2 Kerno shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- 3.2.1 planned maintenance carried out during the maintenance window of 7.00AM to 10.00AM GMT on the second Monday of every month, or such times as Kerno's providers require, of which Kerno will endeavor to provide advance notice;
  - 3.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that Kerno has used reasonable endeavours to give the Customer at least 4 Normal Business Hours' notice in advance; and
  - 3.2.3 unavailability due to matters detailed in Section 13 (Force Majeure).
- 3.3 Kerno will, as part of the Services and at no additional cost to the Customer, provide the Customer with Kerno's standard customer support services during Normal Business Hours.

### 4. CUSTOMER DATA

- 4.1 The Customer shall own all rights, title and interest in and to all of the Customer Data, and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data used in conjunction with and/or entered into the Services. Kerno shall make the Kerno Data available 'as is' and notwithstanding anything to contrary in this Agreement, Kerno shall not be liable for any reliance placed by the Customer or any third party on the Software, Kerno Data or Customer Data.
- 4.2 The Customer shall and does hereby:
- 4.2.1 permit Kerno to (a) anonymise and/or aggregate the Customer Data, (b) monitor, analyse and use such anonymised and/or aggregated data for purposes such as providing market data to the financial services industry (c) analyse use of the Services, (d) analyse and implement improvements the Services.



- 4.2.2 agree that Kerno may access and disclose Customer Data as required by applicable law, as permitted by the Customer, and as is required to provide the Services;
- 4.3 To the maximum extent permitted by applicable law, Kerno shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Kerno to perform services related to Customer Data maintenance and back-up in which case Kerno's liability shall be limited to the sums it recovers from such third parties sub-contracted by Kerno).
- 4.4 Customer agrees to comply with the Data Protection Legislation and any other applicable laws in any other relevant jurisdiction relating to the handling of Personal Data. It is acknowledged, however, that Kerno does not Process any Personal Data apart from the name and email of the Authorised User when performing its obligations under this Agreement.

## 5. KERNO'S OBLIGATIONS

- 5.1 Kerno undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 5.2 The undertaking at Section 5.1 shall not apply to the extent of any non-conformance which is caused by the use of the Services contrary to Kerno's instructions or modification or alteration of the Services by any party other than Kerno or Kerno's duly authorized contractors or agents. If the Services do not conform with the foregoing undertaking, Kerno will, at its expense, use all reasonable commercial endeavors to correct any such non-conformance promptly or (where reasonably possible) provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in Section 5.1. Notwithstanding the foregoing, Kerno:
  - 5.2.1 does not warrant that the Customer's use of the Services will be uninterrupted or error-free, nor that the Services, Documentation, and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
  - 5.2.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 5.3 This Agreement shall not prevent Kerno from entering into similar agreements with third parties or from independently developing, using, selling, or licensing documentation, products, and/or services that are similar to those provided under this Agreement.
- 5.4 Kerno agrees to comply with the Data Protection Legislation and any other applicable laws in any other relevant jurisdiction relating to the handling of Personal Data. It is acknowledged, however, that Kerno does not Process any Personal Data apart from the name and email of the Authorised User when performing its obligations under this Agreement.
- 5.5 Kerno warrants that it has and will maintain all necessary licenses, consents, and permissions necessary for the performance of its obligations under this Agreement.

## 6. CUSTOMER'S OBLIGATIONS

- 6.1 The Customer shall provide Kerno with:
  - 6.1.1 all necessary co-operation in relation to this Agreement; and
  - 6.1.2 all necessary access to such information as may be required by Kerno to render the Services including but not limited to making transactional client data available to and accessible to Kerno services as may be available from time to time;
- 6.3 The Customer shall:

- 6.3.1 in relation to security and configuration, comply with all applicable laws and regulations with respect to its activities under this Agreement;
- 6.3.2 carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Kerno may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 6.3.3 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
- 6.3.4 obtain and maintain all necessary licenses, consents, (or other valid legal bases within the meaning of the Data Protection Legislation) and permissions necessary for Kerno, its contractors and agents to perform their obligations under this Agreement; and ensure that its network and systems comply with the relevant specifications provided by Kerno from time to time;
- 6.3.5 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Kerno's data centers, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet;
- 6.3.6 be responsible for the accuracy and completeness of their records, including but not limited to the Customer Data. All liability of Kerno, howsoever arising, as a result of errors, inaccuracies, omissions, commissions, or a lack of clarity in the Customer's records are excluded to the maximum extent permitted by applicable law and the Customer indemnifies Kerno and shall keep Kerno indemnified, for any penalties, charges or interest arising directly or indirectly from the provision of inaccurate or incomplete information in the Customer's records; and
- 6.3.7 be fully responsible for responding to and resolving any real-time error in its software systems or software services, which are monitored and detected by Kerno, and notified to the Customer during the course of the Services.

## 7. CHARGES AND PAYMENT

- 7.1 The Customer shall pay the Subscription Fees to Kerno for the Services in accordance with this Section 7 and Subscription Order Form
- 7.2 The Customer shall on the Effective Date provide to Kerno valid, up-to-date, and complete banking and or credit card details or approved purchase order information acceptable to Kerno and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:
  - 7.2.1 its credit card details to Kerno, the Customer hereby authorises Kerno to bill such credit card on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and subject to Section 12.1, on each Payment Date for the Subscription Fees payable in respect of the next Renewal Period;
  - 7.2.2 its approved purchase order information to Kerno, Kerno shall invoice the Customer on the Billing Dates and the Customer shall pay each invoice within 15 days of receipt of the invoice;
- 7.3 If Kerno has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Kerno, Kerno may, without liability to the Customer, disable the Customer's passwords, accounts and access to all or part of the Services and Kerno shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid.
- 7.4 If the Customer disputes any invoice due under this Agreement, the Customer shall immediately notify Kerno in writing, and in any case, no later than five days from the date of invoice. The parties shall

negotiate in good faith to attempt to resolve the dispute promptly. Where only part of the invoice is disputed, the undisputed amount shall be paid on the due date. If it is subsequently resolved that some or all of the amount in dispute ought to have properly been paid at the time of the invoice, the Customer shall pay the amount finally resolved together with interest on that amount in accordance with the terms of payment set out in this Agreement.

7.5 All amounts and fees stated or referred to in this Agreement:

7.5.1 shall be payable in euro unless otherwise agreed in writing;

7.5.2 non-cancellable and non-refundable;

7.5.3 are exclusive of value added tax, which shall be added to Kerno's invoice(s) at the appropriate rate (unless a valid exemption applies).

## 8. INTELLECTUAL PROPERTY RIGHTS

8.1 The Customer acknowledges and agrees that Kerno and/or its licensors own all intellectual property rights in the Services and the Documentation.

8.2 Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licenses in respect of the Services or the Documentation.

8.3 Kerno confirms that it has all the rights and licenses in relation to the Services and the Documentation that are necessary to grant all the rights and licenses it purports to grant under, and in accordance with, the terms of this Agreement.

8.4 The Customer shall ensure that all titles, logos, trademarks, copyright, and other notices applied by Kerno to the Services, the Documentation, or any materials provided or produced by Kerno or the Services in connection with this Agreement shall be reproduced and shall not be deleted or removed.

8.5 The Customer acknowledges that Kerno may apply and use advertising in the Services in relation to its other products and services, which will be accessible by and to the Customer and Authorised Users.

8.6 The Customer agrees that Kerno shall have a royalty-free, worldwide, transferable, irrevocable, perpetual license to use or incorporate into any Kerno products or services any suggestions, enhancement requests, recommendations, or other feedback provided by the Customer or its Authorised Users relating to the operation of the Services or other products of Kerno.

## 9. CONFIDENTIALITY

9.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:

9.1.1 is or becomes publicly known other than through any act or omission of the receiving party;

9.1.2 was in the other party's lawful possession before the disclosure;

9.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

9.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or

9.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body however, the receiving party shall first notify the disclosing party of such a requirement.

- 9.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other party's Confidential Information available to any third party or use the other party's Confidential Information for any purpose other than for the proper performance of this Agreement.
- 9.3 Each party shall take all reasonable steps to ensure that the other party's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 9.4 To the maximum extent permitted by applicable law, neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 9.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Kerno's Confidential Information.
- 9.6 Kerno acknowledges that the Customer Data is the Confidential Information of the Customer.
- 9.7 The Customer acknowledges that details of the Services and the results of any regulatory examination performance tests of the Services or premises of Kerno as in cooperation with any Central Bank or policing authority constitute Kerno's Confidential Information.
- 9.8 Upon the written request of the disclosing party or on the termination of this Agreement, the receiving party shall promptly return the Confidential Information under this Agreement. The receiving party shall not thereafter use the Confidential Information in any way whatsoever.
- 9.9 Section 9 shall continue for the duration of the Subscription Term and shall survive for a period of five (5) years thereafter (notwithstanding the termination of this Agreement, however arising).

## 10. INDEMNITY

- 10.1 The Customer shall defend, indemnify and hold harmless Kerno against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:
- 10.1.1 the Customer is given prompt notice of any such claim;
- 10.1.2 Kerno provides reasonable co-operation to the Customer in the defense and settlement of such claim, at the Customer's expense; and
- 10.1.3 the Customer is given sole authority to defend or settle the claim, provided that the Customer shall not settle or make any arrangements to sell the claim without having consulted with Kerno in relation to the proposed settlement.
- 10.2 In the defense or settlement of any claim, Kerno may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 10.3 In no event shall Kerno, its employees, agents, and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- 10.3.1 a modification of the Services or Documentation by anyone other than Kerno; or
- 10.3.2 the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by Kerno; or
- 10.3.3 the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Kerno or any appropriate authority.
- 10.4 The foregoing states the Customer's sole and exclusive rights and remedies, and Kerno's (including Kerno's employees', agents' and sub-contractors) entire obligations and liability, for infringement of

any patent, copyright, trademark, database right or other intellectual property right or right of confidentiality.

## 11. LIMITATION OF LIABILITY

- 11.1 This Section 11 sets out the entire financial liability of Kerno (including any liability for the acts or omissions of its employees, agents, and sub-contractors) to the Customer in respect of:
  - 11.1.1 any breach of this Agreement;
  - 11.1.2 any use made by the Customer of the Services and Documentation or any part of them; and
  - 11.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 11.2 Except as expressly and specifically provided in this Agreement and to the maximum extent permitted by applicable law:
  - 11.2.1 the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer and for conclusions drawn from such use. Kerno shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Kerno by the Customer in connection with the Services, or any actions taken by Kerno at the Customer's direction;
  - 11.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement;
  - 11.2.3 the Kerno Data, the Services and the Documentation are provided to the Customer on an "as is" basis; and the Customer acknowledges that Kerno shall have no liability for the Kerno Data, or content on or in the Services, and the Customer shall defend, indemnify and hold harmless Kerno against any claims, actions, proceedings, losses, damages, expenses and costs (including without limitation, court costs and reasonable legal fees) arising from any claims by customer client or other third parties due in whole or in part to the reliance by the Customer on the Kerno Data, the Services, Documentation or their content.
- 11.3 Nothing in this Agreement excludes the liability of both a parties for fraud or fraudulent misrepresentation or any other liability that cannot be limited by law.
- 11.4 Subject to Section 11.2 and Section 11.3, and to the maximum extent permitted by applicable law:
  - 11.4.1 Kerno shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses, however, arising under this Agreement; and
  - 11.4.2 Kerno's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Subscription Fees paid for Services during the 6 months immediately preceding the date on which the claim arose.
  - 11.4.3 The parties agree that any claim or action arising out of or connected with this Agreement that the Customer is permitted to bring against Kerno must be brought within 6 months of the date when its cause of action arose.
- 11.5 For the avoidance of doubt, the Services, and any Software platform used by Kerno in providing the Services, are for real-time error monitoring purposes only. This is a monitoring service only, and it is the Customer's responsibility to respond to and resolve any error which is detected and notified to the Customer.

## 12. TERM AND TERMINATION

- 12.1 This Agreement shall, unless otherwise terminated as provided in this Section 12, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this Agreement shall be automatically renewed for successive periods equal to the Initial Subscription Term (each a “**Renewal Period**”), unless:
  - 12.1.1 either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
  - 12.1.2 the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified to make such payment; or
  - 12.1.3 otherwise terminated in accordance with the provisions of this Agreement; or
  - 12.1.4 and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the “Subscription Term.”
- 12.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement without liability to the other if:
  - 12.2.1 the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
  - 12.2.2 an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or
  - 12.2.3 an order is made for the appointment of an examiner to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an examiner of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder; or
  - 12.2.4 a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
  - 12.2.5 the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
  - 12.2.6 the other party ceases, or threatens to cease, to trade; or the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 12.3 Kerno (but not the Customer) may terminate this Agreement on notice to the Customer if there is a Change of Control of the Customer.
- 12.4 On termination of this Agreement for any reason:
  - 12.4.1 all licenses granted under this Agreement shall immediately terminate;
  - 12.4.2 Each party shall return and make no further use of any equipment, property, Documentation, and other items (and all copies of them) belonging to the other party;
  - 12.4.3 each party shall erase all the other party's Confidential Information from their computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically practicable) and if so requested,

shall certify in writing (which for the purposes of this clause shall include email) that all such Confidential Information has been returned or erased;

- 12.4.4 notwithstanding anything to the contrary in this Agreement, Kerno shall at the choice and expense of the Customer, delete or return to the Customer the Customer Data (including any Personal Data); and
- 12.4.5 Kerno shall retain and have a right of use over any anonymised data for its own purposes.
- 12.5 Kerno may destroy or otherwise dispose of any of the Customer Data in its possession unless Kerno receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then-most recent back-up of the Customer Data.
- 12.6 On termination for any reason, the Customer shall pay to Kerno the Subscription Fees payable up until the expiration of the relevant Renewal Period.
- 12.7 Kerno shall use reasonable commercial endeavors to make available the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Kerno in returning or disposing of Customer Data.
- 12.8 For the avoidance of doubt, except as and without limiting Kerno's rights under Section 12.4.5, any aggregate or anonymized data held by Kerno, which does not constitute Personal Data shall not be subject to the provisions of this Section.
- 12.9 The accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

## 13. FORCE MAJEURE

- 13.1 Kerno shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Kerno or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.
- 13.2 Where Kerno is affected by a Force Majeure event for a period of 60 consecutive days, the Customer shall have the right to terminate this Agreement immediately and receive a refund of any prepaid fees for the period after the point of termination."

## 14. GENERAL

- 14.1 Assignment
  - 14.1.1 The Customer shall not, without the prior written consent of Kerno, assign, sub-License, and delegate or transfer this Agreement or any of its rights under this Agreement to any other person, firm, or company.
  - 14.1.2 No such assignment shall relieve Customer of its obligations hereunder.
  - 14.1.3 Kerno may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement, with or without notice to the Customer.
- 14.2 Export Laws

- 14.2.1 The Customer acknowledges that the Software may be subject to export and import control laws (including United States export and import laws), and agrees to fully comply with any such laws in connection with the Software should it be required.
- 14.3 Notices
- 14.3.1 All notices to or by the respective parties shall be in writing in the English language and shall be deemed to have been duly given when (a) delivered by hand, (b) posted by recorded delivery post (postage prepaid), (c) sent by reputable overnight courier (d) sent by email to the party to which such notice is required to be given under this Agreement addressed to the parties as provided for in this Agreement; or to such other address or email address as either party may subsequently notify to the other in writing. Notices delivered by hand or by overnight courier shall be deemed received the first Business Day following such delivery or sending. Notices, which have been posted as above, shall be deemed received on the third Business Day following posting. Notices sent by email shall only be deemed delivered upon transmission, delivery recorded.
- 14.4 Waiver
- 14.4.1 Failure or neglect by Kerno to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of Kerno's rights pursuant to this Agreement nor in any way affect the validity of the whole or any part of this Agreement nor prejudice Kerno's rights to take subsequent action.
- 14.5 Entire Agreement and Amendments
- 14.5.1 This Agreement supersedes any arrangements, understandings, promises or agreements made or existing between the parties prior to the signing of this Agreement that constitutes the entire understanding between the parties hereto. Except as otherwise provided in this Agreement, no addition, amendment, or modification of this Agreement shall be effective unless it is in writing and signed by and on behalf of each party by a director or such other duly authorized officer as the case may be.
- 14.6 Severability
- 14.6.1 In the event that any or any part of the terms, conditions, or provisions contained in this Agreement or any Schedule hereto shall be determined by any competent authority to be invalid, unlawful, or unenforceable to any extent, such term, condition or provision shall to that extent be severed from the remaining terms and conditions which shall continue to be valid and enforceable to the fullest extent permitted by law.
- 14.7 Non-solicitation
- 14.7.1 Neither party shall (except with the prior written consent of the other party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other party any person employed or engaged by such other party in the provision of the Services or (in the case of the Customer) in the receipt of the Services at any time during the term of this Agreement or for a further period of 12 months after the termination of this Agreement other than by means of a national advertising campaign open to applicants and not specifically targeted at any of the staff of the other party.
- 14.7.2 If either Kerno or the Customer commits any breach of Section 14.7.1, the breaching party shall, on demand, pay to the claiming party a sum equal to one year's basic salary that was payable by the claiming party to that employee plus the recruitment costs incurred by the claiming party in replacing such person.
- 14.8 Law and Jurisdiction
- 14.8.1 This Agreement shall be governed by and construed in accordance with the laws of Ireland, and the parties agree that any dispute relating to its terms or subject matter shall be subject to the exclusive jurisdiction of the Irish courts.



## 15. SERVICE LEVEL COMMITMENT

15.1 Excluding scheduled maintenance windows, Kerno will use commercially reasonable efforts to maintain 99.5% availability of the hosted portion of the Software for each calendar month during the term of this Agreement. The Software will be deemed “available” so long as Authorized Users are able to login to the Software interface and access monitoring data.

15.2 Excluding planned maintenance periods, in the event, the Software availability drops below 99.5% in a given each calendar month, the customer will be entitled to the following service credits corresponding to the service level availability:

Below 99.5% and greater than 95%	10% discount on monthly invoice
Below 95% and greater than 90%	15%
Below 90%	25%

15.2 Any support requested deemed outside of normal service level commitments outlined in this Agreement shall be subject to extra fees and conditions which shall be agreed upon by both parties and detailed within a follow-on schedule.

## 16. SUPPORT

16.1 Subject to this Agreement, if Customer is under a paying Subscription plan, Kerno will provide unlimited in-product and email support (“**Support**”). Although no response times are guaranteed, Kerno will use commercially reasonable efforts to respond to such support requests within 48 Business Hours. Kerno may delegate the performance of certain portions of the Support to third parties but will remain responsible to Customer for delivery thereof. In the event any Support is not performed with reasonable skill, care, and diligence, Kerno will re-perform the Support to the extent necessary to correct the defective performance, and Customer acknowledges that re-performance shall be Customer’s sole and exclusive remedy for any defective performance.

16.2 Any Support requested, that is deemed outside of normal Support offering, shall be subject to extra fees and conditions agreed upon by both parties and detailed within a follow-on schedule.

*This page is blank*