KVINTA GMBH
Pariser Platz 6a, 10117, Berlin

TERMS OF SERVICE

Preamble

(1) Kvinta GmbH ("**Kvinta**") with its principal place of business at Pariser Platz 6A, 10117 Berlin, Germany, develops and markets a software for track and trace and for optimizing supply chain activities as specified in hereto (the "**Software**"). The Software enables users of the Software to generate Unique Identifiers and to record and evaluate logistical activities linked to these Unique Identifiers. "**Unique Identifier**" is a unique alphanumeric code to be printed on packaging.

Kvinta owns all rights, including, without limitation, intellectual property rights, with regard to the Software and distributes itself or through its authorized Resellers licenses to access and use the Software remotely on an environment controlled and maintained either by Kvinta, authorized Resellers or the Customer (such concept commonly known as "*Software as a Service*") (the "**SaaS-Licenses**") in exchange for the payment of license fees.

(2) In addition, Kvinta provides professional services ("**Professional Services**") to its customers against remuneration. Such Professional Services include, but are not limited to, the installation and setup of the Software ("**Deployment**"), In-depth technical support ("**Level 2 Support**") and customized adaptions to the Software ("**Customization**") which are not subject matter of this Agreement.

(3) Customer desires to improve collaboration with its customers and/or suppliers via electronic means through the Software.

(4) For and in consideration of the mutual terms and conditions set forth herein, Kvinta and Customer hereby agree as follows:

§ 1 Subject Matter of the Agreement

(1) The subject matter of this Agreement is the limited grant of a SaaS-License to Customer against payment of the fee agreed in § 7 (15) of this Agreement to Kvinta. The scope of the SaaS-License shall be determined in accordance with § 2 of this Agreement as well as the volume ordered by the Customer for processing Unique Identifiers via the Software ("**Volume**"). Customer shall specify the expected Volume required as part of an Order in accordance with § 6 of this agreement.

(2) New versions of the Software shall become subject matter of this Agreement to the extent that Kvinta grants the necessary licenses for this purpose.

(3) Additionally, during the Term of this Agreement, Kvinta shall, if required, provide certain support services as set forth in § 5 (8) of this Agreement.

(4) Professional Services are not covered by the License Fee. The Parties may conclude supplementary agreements with regard to Professional Services in accordance with § 5 (9) and (10) of this Agreement.

§ 2 SaaS-License

(1) Subject to the terms and conditions of this Agreement, Kvinta grants to Customer a non-exclusive, revocable, non-transferable license (except as otherwise set forth herein) to install, execute, copy, display or otherwise use the Software in machine readable format solely for internal use by the Customer and its **affiliate** and solely for the Volume specified on an Order.

(2) Customer may make a reasonable number of copies of the Software in machine-readable form solely for archive or backup purposes in accordance with Customer's standard archive or backup policies and procedures. Any use of such Software beyond this is prohibited and will be subject to additional Fees.

(3) The Software may only be used according to the provisions of this Agreement and by employees of the Customer or contractors/agents of the Customer who are acting on behalf of the Customer by providing implementing, consulting or outsourcing services and are under a written agreement with the Customer that will protect the Software similar to the protections and restrictions stated under this Agreement.

(4) Any use of the software beyond the scope of this Agreement i requires the prior written consent of Kvinta.

§ 3 Title and Restrictions

(1) As already set out in the preamble, Kvinta owns all the rights, including, without limitation, intellectual property rights with regard to the Software.

(2) This Agreement confers no ownership rights or title in the Software to Customer and is not a sale of any rights in the Software, Documentation, or the media on which either is recorded or printed. Customer does not acquire any rights, express or implied, in the Software or the Documentation, other than those rights as a licensee specified in this

Agreement. All Software and Documentation furnished by Kvinta, and all copies thereof made by the Customer, all compilations, derivative products, programmatic extensions, patches, revisions, and updates made by either party, and any patent rights, copyrights, trade secrets, trademarks, trade names, service marks, designs or design marks or proprietary inventions, designs and information included within any of the items described above are and shall remain the property of Kvinta or Kvinta's licensors, as applicable. The Customer agrees not to claim or assert title to or ownership of the Software or the Documentation. The Customer will not remove or alter any copyright or proprietary notice from copies of the Software or the Documentation and copies made by or for the Customer shall bear all such copyright, trade secret, trademark and any other intellectual property right notices on the original copies.

(3) With the exception of §§ 69d, 69e German Copyright Act (*UrhG*) the Customer will not, nor allow any third party to reverse engineer, decompile or attempt to discover any source code or underlying ideas or algorithms of any Software. Unless otherwise permitted in accordance with the license rights granted in the above § 2 **Error! Reference source not found.**, and except as mutually agreed to in writing as an exception under this Agreement, Customer will not, nor allow any third party to modify, lease, lend, use for timesharing or service bureau purposes or otherwise use or allow others to use Software for the benefit of any third party.

(4) The Customer agrees to promptly report to Kvinta any violations of these provisions by the Customer's employees, consultants or agents of which the Customer is aware of.

§ 4 System Requirements; Customer's Obligation to Cooperate

(5) As a SaaS-solution, the Software requires a platform as a working basis (e.g. Amazon Web Services) ("**SaaS-Environment**"). Generally, Kvinta shall provide the Customer with Kvinta's cloud platform ("**Multi-Tenant solution**"), which is included in the price of the SaaS-Licence.

(6) The Customer shall be solely responsible for the existence and maintenance of its data on its systems. The Customer shall be obligated to provide Kvinta with access, access data and authorizations to and for the necessary systems at the Customer's premises at the right time and in good time. Customer shall provide the possibility of remote maintenance of the system.

(7) The Customer shall notify Kvinta in good time if it discovers that it requires more Volume than originally agreed between the Parties. On a non-interference basis with Customer's normal business operations, Kvinta has the right to verify the amount of Volume processed by the Customer during the uses of the Software. Such verification shall not be conducted more frequently than once per year unless agreed otherwise. If the Customer's use of Volume exceeded the amount of Volume stated in the Order, Kvinta may adjust the License Fee.

§ 5 Support and Maintenance; Professional Services

(8) Maintenance and support of the Software is divided into three levels:

- "**Level 1 Support**" includes support for locally confined problems related to the Software that do not require special IT knowledge. It is the Customer's responsibility to maintain appropriate personnel for Level 1 Support.
- "**Level 2 Support**" includes support for locally confined problems with the Software or customization needs, the resolution of which require special IT skills. The parties will include in the Order a provision as to whether Customer or Kvinta will provide Level 2 Support.
- "**Level 3 Support**" includes the fixing of defects in the Software that (i) require access to the source code or (ii) are not specific to individual Customers. Kvinta shall provide Level 3 Support in accordance with § 5 (9) through (11) of this Agreement.

"*Support Levels*".

(9) During the Term of this Agreement, Kvinta will maintain, support and, if necessary, further develop the Software in accordance with the service level agreement set forth in the SLA: "*SLA*" and provide Level 3-Support. Subject to deviating provisions in § 8 of this Agreement, Customer's statutory warranty rights shall remain unaffected hereby. Kvinta shall provide further services only in accordance with the following provisions.

(10) The Customer may place an Order pursuant to § 6 (12) of this Agreement to obtain Professional Services from Kvinta. Professional Services include in particular, but are not limited to (i) Deployment, (ii) Level 2-Support and (iii) Customization. Each Professional Service shall be performed as set forth in a mutually agreed upon and executed framework agreement.

(11) In the event that the Customer uses services of Kvinta that fall within the scope of Level 2 Support without having previously entered into a corresponding SOW with Kvinta, Kvinta shall be entitled to demand compensation from the Customer for the provision of such Level 2 Support per hour or part thereof in the amount of the daily rate defined in the quotation. This shall apply in particular if Customer requests Level 3 Support while the problem falls within the scope of Level 2 Support.

§ 6 Orders and Delivery

(12) **"Order"** means the document(s) by which the Customer orders SaaS-Licenses and/or Professional Services pursuant to this Agreement. An Order may consist of either (i) a schedule, statement of work, or quotation, that has been signed by both Customer and Kvinta, and/or (ii) if applicable, a purchase order issued by Customer pursuant to this Agreement that has been expressly accepted in writing by Kvinta. Each Order shall at least contain provisions on (i) the scope of the SaaS-Licences (i.e.: the Volume needed) or the Professional Service, (ii) term and termination and (iii) fees and expenses.

(13) This Agreement may include an initial Order. Customer may purchase additional SaaS-Licenses and/or Professional Services by executing a

follow-on Order as mutually accepted by the Parties. An Order issued by Customer shall be in writing and identify the Software being ordered, the shipping and invoicing locations, and shall be subject to acceptance by Kvinta. Standard terms and conditions contained in any purchase order or sales confirmation are deemed rejected.

(14) Kvinta fulfils orders by providing the SaaS environment. The Customer's Orders shall be deemed delivered at the time Kvinta provides the first SaaS environment (usually the test environment) to the Customer by sending the access information to the Customer electronically.

§ 7 Price and Payment

(15) The fees for the SaaS-Licence and the Professional Services are set forth in an Order.

(16) The fees required to be paid hereunder do not include any amount for taxes, duties or import/export fees.

(17) The Customer agrees to pay Kvinta all fees due hereunder net thirty (30) days from date of invoice reciept. The Customer will be invoiced promptly following the provision of the SaaS-Environment or prior to the commencement of any Support and Maintenance renewal period. Unless stated otherwise in an Order, all fees are in Euro (EUR). Customer obligations to pay all charges accrued under the Agreement but not paid before its expiration or termination shall survive the expiration or termination of this Agreement.

§ 8 Software-Warranty

(18) Kvinta warrants that the Software will materially conform to the specifications as per agreement. Rights in case of defects shall be excluded in the case of minor or immaterial deviations of the quality.

(19) Customer shall inspect the Software immediately with due care upon putting into service according to commercial law rules (§ 377 German Commercial Code (*HGB*)) and notify apparent defects under detailed description in writing, otherwise any warranty rights shall be excluded for such defects.

(20) In case of a default, Customer shall accept at least three attempts to remedy the cure, unless the remedy of the cure fails because of default by Kvinta. In such case § 440 phrase 2 German Civil Code (*BGB*) shall apply (two attempts to remedy the cure). Kvinta may remedy the defect by delivering a new version or a prior version without the defect in case this is acceptable for the Customer. A delivery of updates or upgrades that do not contain the defect, or of a patch that removes the defect may also be considered as subsequent performance.

(21) This warranty shall not apply if and insofar as: (i) the Software is not used in accordance with Kvinta's instructions; (ii) the Software defect has been caused by any of Customer's malfunctioning equipment or Customer provided software; or (iii) Customer has made modifications to the Software not expressly authorized in writing by Kvinta.

(22) Regarding the analysis and cure of defects, Customer shall support Kvinta by notifying the error symptoms to Kvinta in detail and to grant the time and opportunities to perform such remedy. Kvinta, at its sole discretion, may

perform the cure of defects at the Customer's or at Kvinta's premises. Kvinta may provide services by remote maintenance. The Customer, at its own cost, shall provide the necessary technical requirements and after prior notification, grant Kvinta access to the Software. Kvinta is in particular free to have the defect remedied by its Affiliates or by third-party companies.

§ 9 Intellectual Property Indemnification

(23) If a third party makes a claim against the Customer that the Software infringes any patent, copyright or trademark, or misappropriates any trade secret ("**Claim**"), Customer shall (i) promptly notify Kvinta of the Claim, (ii) give Kvinta sole control of the defense and settlement of the Claim, and (iii) provide the assistance, information and authority reasonably requested by Kvinta and Kvinta in such defence and settlement.

Kvinta shall defend the Customer and its directors, officers and employees against the Claim at Kvinta' expense and Kvinta shall pay all losses, damages and expenses (including reasonable legal fees) finally awarded against such parties or agreed to in a written settlement agreement signed by Kvinta or Kvinta, to the extent arising from the Claim.

(24) The foregoing obligations do not apply with respect to software or portions or components thereof (i) not supplied by Kvinta, (ii) that are modified by Customer after delivery (iii) combined with other products, processes or materials where the alleged infringement relates to such combination which were unauthorized by Kvinta, (iv) where the Customer continues use of the infringing Software following Kvinta's supplying a modified, amended or replacement version of the Software, or (v) where Customer's use of such Software is not strictly in accordance with this Agreement. The Customer will reimburse Kvinta for any reasonable out of pocket expenses incurred by Kvinta if the cause of the infringement is attributable to the Customer's actions as stated herein.

(25) In the event of such a Claim being brought or threatened or in the event an injunction is issued or threatened, Kvinta may, at its option and expense, either procure for the Customer the right to continue to use the Software, modify or replace the Software so as to avoid infringement, or accept the return of the infringing Software and return the license fee paid for such infringing Software.

(26) Damage claims of the Customer remain unaffected subject to the further provisions of this Agreement.

§ 10 Limitation of Liability

Kvinta shall be liable without limitation (i) in case of intent and gross negligence, (ii) in case of injury of body, life or health, (iii) subject to the provisions of the German product liability act (*ProdHaftG*), and (iv) subject to any resumed guarantee. In case of breach of any material duty, which forms the basis for the agreement, was decisive for the conclusion of this agreement and on the performance of which the customer may rely (cardinal obligation), through simple negligence, the liability of Kvinta shall be limited to the amount which was foreseeable and typical with regard to the time and kind of the respective action. A further liability of Kvinta does not subsist.

The preceding limitation of liability does also apply with regard to the personal liability of Kvinta's employees, representatives and board members. Upon the Customer's request, Kvinta shall provide the Customer with evidence of a liability insurance policy with a coverage amount of EUR 3 million.

§ 11 Confidentiality

(27) Each party acknowledges that in the course of this Agreement it may be entrusted with information from the other and agrees that it shall use reasonable efforts to protect the confidentiality thereof. "**Confidential Information**" means all information disclosed by one party ("**Disclosing Party**") to the other party ("**Receiving Party**"), before or after the date of this Agreement, and generally not publicly known, whether tangible or intangible and in whatever form or medium provided, as well as any information generated by the Receiving Party to the extent that it contains, reflects, or is derived from Confidential Information of the Disclosing Party. Confidential Information of Kvinta includes, without limitation, the Software and Documentation. The terms and conditions of this Agreement are Confidential Information; however, the existence of this Agreement is not Confidential Information.

(28) The Receiving Party shall retain the Confidential Information of the Disclosing Party in confidence and shall use and disclose it solely for the purpose of, and in accordance with, this Agreement. The Receiving Party shall only disclose Confidential Information of the Disclosing Party to third parties which are allowed under this Agreement, in particular, without limitation, employees of the Customer, and which have a need to know such Confidential Information and who have been informed of the obligations of confidence and are contractually bound *vis-à-vis* the Customer to preserve the confidentiality of such information under terms and conditions no less restrictive than those set forth herein.

(29) The Receiving Party shall use the same degree of care as it uses to protect its own confidential information of a similar nature, but no less than reasonable care, including, without limitation, securing all servers, drives or media on which the Confidential Information, Software and Documentation are installed or maintained to prevent the unauthorized use or disclosure of Confidential Information. For the avoidance of doubt, the terms of this Agreement and the fees identified in any order for a Professional Service are Confidential Information.

(30) For each breach of its obligations under § 11 (27) to (29) of this Agreement, the Disclosing Party may demand from the Receiving Party the payment of an appropriate contractual penalty, which the Disclosing Party may determine in its reasonable discretion and which shall be reviewed by the competent court in the event of a dispute. Any further reaching claims for damages shall not be affected thereby. A contractual penalty paid shall be applied against any damage compensation claims that may exist, whereby the contractual penalty shall represent the minimum amount of damages.

(31) The Receiving Party shall not be bound by any obligations restricting disclosure and use set forth in this Agreement with respect to Confidential Information, or any part thereof, which; (i) was lawfully known to the Receiving Party prior to disclosure; (ii) was lawfully in the public domain prior to its

disclosure, or becomes publicly available other than through a breach of this Agreement; (iii) was disclosed to the Receiving Party by a third-party, provided that such third-party is not in breach of any confidentiality obligation in respect of such information; or (iv) is independently developed by the Receiving Party. § 5 German Trade Secret Act (*GeschGehG*) remains unaffected.

(32) If the Receiving Party is compelled pursuant to legal, judicial, or administrative proceedings, or otherwise required by law, to disclose Confidential Information, the receiving party shall use reasonable efforts to (i) seek confidential treatment for such Confidential Information, and (ii) provide prior notice to the disclosing party to allow the disclosing party to seek protective or other court orders.

§ 12 Term and Termination

(33) This Agreement is effective as of (date), or if no such date is specified, as of the later signature date below (the "**Effective Date**") and shall remain in force for three (3) years (the "**Initial Term**"). After expiry of the Initial Term, this Agreement is renewed automatically for another year if not terminated in writing with a notice period of three (3) months to the end of the respective term.

(34) After expiry of the Initial Term and at the end of each subsequent year, Kvinta is entitled to offer the Customer an increase in the License Fee. This increase may be up to maximum 5% higher than the originally agreed License Fee, unless Kvinta demonstrates that purchasing costs of hosting services from e.g. AWS increased on average for more than 10%. The Customer may accept the offer within four (4) weeks following its submission. In the event the Customer rejects the offer, Kvinta is entitled to terminate this Agreement for cause.

(35) This Agreement may be terminated (i) any time by mutual agreement of Kvinta and the Customer, the conclusion of which is subject to the respective sole discretion of either Party, (ii) by the client after the initial term with a notice period of three (3) months, (iii) by either party if the other party commits a material breach of this Agreement and fails to cure such breach within thirty (30) days following receipt of breach notice. The right to terminate the agreement for another good cause (§ 314 German Civil Code (*BGB*)) remains unaffected.

(36) Upon expiration or termination of this Agreement, all rights granted to the Customer shall cease and the Customer shall immediately cease using the applicable Software and Maintenance Services associated with the applicable license. In case of termination due to an uncured Customer breach, the Customer will pay Kvinta all amounts due and payable.

(37) § 12 (36) also applies if Kvinta' non-exclusive right to distribute the SaaS-Licenses expires. In this case, Kvinta is obliged to notify the Customer immediately that its non-exclusive right to distribute the SaaS-Licenses has expired.

(38) Upon termination of this Agreement, all of the parties' respective rights and obligations hereunder shall cease, except that Sections entitled: "Title and Restrictions" (§ 3), "Price and Payment" (§ 7), "Intellectual Property Indemnification" (§ 9), "Limitation of Liability" (§ 10), "Confidentiality" (§ 11) and "Final Provisions" (§ 14) as well as § 12 (36) to (6) of this Agreement which shall survive such

termination. In the event of termination of the contract, the customer is responsible that TRADIČNÍ no longer uses the Software.

§ 13 Data Protection and Data Processing

(39) Kvinta stores Customer business information, including business contact information, contract details (copies of fully executed agreements and summary details such as products and services purchased, contract effective date and renewal dates, amounts etc.) and information about the Customer IT environment managed by the Services (Software version and related operating system, application server, web server, database, hardware specifications, etc.) Other than the foregoing, Kvinta does not require sensitive or personal data of the Customer or any its employees and Kvinta shall ensure at all times that it complies with all applicable data protection laws in relation to Customer Data, as required for the purposes of this Agreement. “**Personal Data**” being as defined in the applicable data protection law(s).

(40) Notwithstanding the foregoing, and without prejudice to the same, in the event that, by way of exception, the processing of other or additional personal data than business information is necessary in order to process a support query, or, the Customer requires Kvinta to process data on its behalf, the parties shall put in place appropriate agreements within the meaning of Art. 28 (3) General Data Protection Regulation (EU) 2016/679) (“**GDPR**”) to provide for the same and which are required and subject to the then-applicable Data Protection Laws.

(41) In the event of a support case, Kvinta shall process any Personal Data shared by the Customer for the sole purpose of raising, and handling, a support query. Upon the conclusion of a support query, and following Customer’s request, Kvinta acknowledges that he shall take reasonable measures to delete Customer’s Personal Data from its contact information log(s).

§ 14 Final Provisions

(42) Severability. Should any provision of this Agreement be invalid, ineffective, or unenforceable, under present or future laws, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

(43) Assignment**.** Neither Party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, and any such prohibited assignment shall be null and void. Notwithstanding the foregoing, (i) either Party may assign this Agreement to any party that acquires all or substantially all of its related business by merger, sale of stock or assets, or a similar transaction, and (ii) Kvinta may subcontract its obligations hereunder to a third party, provided that Kvinta shall remain liable for any breach thereof.

(44) Entire Agreement. This Agreement and the schedules or exhibits attached hereto or incorporated by reference, constitute the entire agreement between the Parties on the subject matter hereof and supersede all prior agreements, communications and understandings of any nature whatsoever, oral or written. This Agreement may not be modified or waived orally and may be modified only in writing signed by duly authorized representatives of each party.

(45) Governing Law. This Agreement shall be governed by the laws of the Federal Republic of Germany without regard to the United Nations

Convention on Contracts for the International Sale of Goods (*CISG*) and conflicts of law principles.

(46) Place of Performance; Place of Jurisdiction. The place of Performance and the place of jurisdiction shall be Würzburg.

(47) Force Majeure. Each party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or service as a result of causes beyond its reasonable control, and without its fault or negligence ("**Force Majeure**"), including without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, communication line failures, and power failures. Nothing in the foregoing shall be deemed to relieve Customer or its Affiliate of its obligation to pay fees owed under this Agreement.

(48) Language. This Agreement shall be executed in the bilingual English and German version. In case of any conflict between the English version and the German translation, the German version shall prevail and be legally binding.

(49) Relationship. Each contracting party shall instruct, supervise and issue instructions strictly to its own employees only. The employees of a party are at no time integrated into the operational and work organization of the other party.

By their execution below, the parties agree and acknowledge that this Agreement expresses their entire and complete understanding and agreement between the Parties as to the terms and conditions governing the use of the Kvinta software and the performance of the services: