

*If you have not, separately and in writing, executed an agreement for the license and/or use of the Kubex Subscription Service, then the following terms and conditions will apply.*

## **KUBEX CUSTOMER SUBSCRIPTION AGREEMENT**

### **GENERAL TERMS AND CONDITIONS**

*PLEASE READ THE FOLLOWING **CUSTOMER SUBSCRIPTION AGREEMENT** CAREFULLY. BY CLICKING THE “AGREE” BUTTON AND PROCEEDING WITH THE ORDER FOR THE KUBEX SUBSCRIPTION SERVICE, YOU, ON BEHALF OF THE COMPANY OR ORGANIZATION FOR WHOSE BENEFIT YOU ACT (“CUSTOMER”) ACKNOWLEDGE THAT YOU HAVE READ AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS AS DEFINED IN THE **CUSTOMER SUBSCRIPTION AGREEMENT** (“AGREEMENT”) BETWEEN CUSTOMER AND EVENKEEL INC. (D/B/A KUBEX) (“KUBEX”) (TOGETHER THE “PARTIES” AND INDIVIDUALLY A “PARTY”).*

*BY CLICKING “DO NOT AGREE”, THIS ORDER FOR THE KUBEX SUBSCRIPTION SERVICE WILL NOT PROCEED. YOU MAY NOT USE THE KUBEX SUBSCRIPTION SERVICE UNLESS YOU ACCEPT THESE TERMS AND CONDITIONS.*

*IF YOU CLICK THE “AGREE” BUTTON, THAT ACTION IS THE EQUIVALENT OF YOUR SIGNATURE AND INDICATES YOU HAVE READ THIS AGREEMENT, UNDERSTAND AND ACCEPT ALL THE TERMS AND CONDITIONS AND THAT YOU INTEND TO BE LEGALLY BOUND BY THEM AND THAT YOU HAVE THE AUTHORITY TO BIND THE COMPANY OR ORGANIZATION FOR WHOSE BENEFIT YOU ACT.*

This Kubex Customer Subscription Agreement (including the terms, DPA, Schedules, Orders and other documents included by reference herein) (“**Agreement**”) is made by and between Evenkeel Inc. (d/b/a Kubex) (“**Kubex**”), an Ontario corporation located at 120 East Beaver Creek Road, Suite 200, Richmond Hill, Ontario, Canada, L4B 4V1 and the customer entity (“**Customer**”) for whom you act and becomes effective on the date of acceptance of the Agreement by you (“**Effective Date**”).

#### **1. Interpretation.**

##### **a. Definitions**

In this Agreement, the following terms and expressions will have the following meanings:

- “**Affiliate**” means every corporation in which Customer holds, or which holds in Customer, directly or indirectly, whether through one or more subsidiaries or otherwise, other than by way of security only, securities to which are attached more than 50% of the votes that may be cast to elect directors of such corporation and the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of such corporation.
- “**AI**” means a technological system that, using a model, makes inferences in order to generate output, including predictions, recommendations or decisions.
- “**Authorized Users**” means Customer’s and its Affiliates’ employees and Contractors who are authorized to access and use the Kubex Technology in accordance with the terms and conditions of this Agreement.
- “**Commercial Third Party Software**” means the commercial third party computer programs, in object code format only, that are included by Kubex with the Kubex Technology

and accessed through the Kubex Subscription Service. The current list of Commercial Third Party Software is set forth in Part 2 of Schedule E - Third Party Software, located at <http://www.kubex.ai/legal/schedule-e-cco>, which Schedule is incorporated into this Agreement by reference and deemed to be a part hereof. This Schedule may be updated from time to time by Kubex as part of any Updates and included in the link referenced above and in the Documentation.

- **“Confidential Information”** means: (i) all information of Kubex or Customer that is marked confidential, restricted or proprietary or that may reasonably be considered as confidential from its nature or from the circumstances surrounding its disclosure; (ii) the Customer Data, (iii) the Kubex Technology; (iv) the Commercial Third Party Software; and (v) the specific terms and conditions of this Agreement, any Order and any amendment and attachment thereof between the parties.
- **“Customer Data”** means electronic data uploaded by or for Customer and Customer’s agents, employees and contractors, and processed using the Kubex Subscription Service.
- **“Documentation”** means the user documentation for the Kubex Subscription Service that is made generally available by Kubex to customers of the Kubex Subscription Service and which may include technical program or interface documentation, user manuals, operating instructions and release notes, as updated from time to time by Kubex. The Documentation is provided in electronic form and is accessible through the Kubex Subscription Service and may also be found at <https://www.kubex.ai/legal/docs-cco>.
- **“DPA”** means the Data Processing Agreement available at <https://www.kubex.ai/legal/dpa>, which may be updated by Kubex from time to time and which supplements and forms part of this Agreement.
- **“Instance”** means a discrete unit of compute capacity, including but not limited to physical servers, virtual machines (VMs), cloud-based compute instances or containers (whether Standalone Containers or Replicated Containers), deployed within Customer’s infrastructure environment. An Instance is any such compute resource that is actively analyzed, managed, or otherwise supported by the Kubex Subscription Service, as described in the Documentation.
- **“Intellectual Property Rights”** means all worldwide intellectual and industrial property rights including all rights in each country to copyrights, trademarks, patents, inventions, industrial designs, trade secrets, trade dress and all other proprietary rights.
- **“Kubex Add-On Options”** means the list and description of add-on options available for the Kubex Subscription Service, which can be found in Schedule B – Add-On Options, located at <http://www.kubex.ai/legal/schedule-b-cco>, which Schedule is incorporated into this Agreement by reference and deemed to be a part hereof. This Schedule may be updated by Kubex from time to time.
- **“Kubex Software”** means the proprietary computer programs of Kubex, in object code format only, that are accessed by the Kubex Subscription Service.
- **“Kubex Technology”** means: (a) the Kubex Subscription Service; Kubex Software; Documentation and Kubex technology and methodologies and third party software (including, without limitation, products, software tools, algorithms, templates, software (in source and object forms), architecture, class libraries, objects and documentation) existing as of the Effective Date; (b) Updates, upgrades, improvements, configurations, extensions, and derivative works of the foregoing and related technical or end user documentation or manuals; and (c) intellectual property anywhere in the world relating to the foregoing.
- **“Kubex Subscription Service”** means the Kubex cloud and container software as a service (SaaS) Service hosted by Kubex or its subcontractors and ordered by Customer pursuant to an Order. A description of the principal features of the Kubex Subscription Service is set out in Schedule A – Product Description, located at <http://www.kubex.ai/legal/schedule-a-cco>, which Schedule is incorporated into this Agreement by reference and is deemed to be a part hereof. This Schedule may be updated by Kubex from time to time. The Kubex Subscription Service shall also include all Kubex Add-On Options that have been provided by Kubex to Customer, whether or not specified on an Order or its related Quote.
- **“Open Source Third Party Software”** means the open source third party computer programs, in object code format only, that are included by Kubex with the Kubex Technology and accessed through the Kubex Subscription Service. The current list of Open Source Third

Party Software is set forth in Part 1 of Schedule E - Third Party Software, located at <http://www.kubex.ai/legal/schedule-e-cco>, which Schedule is incorporated into this Agreement by reference and is deemed to be a part hereof. This Schedule may be updated from time to time by Kubex as part of any Updates and included in the link referenced above and in the Documentation.

- **“Order”** means the purchase order or other ordering document submitted to Kubex (either directly by Customer or through Reseller), and accepted by Kubex (which may be by notice to Customer or Reseller, or by the processing of the Order by Kubex). All Orders must reference the applicable Quote.
- **“Outputs”** means any insights, recommendations, predictions, analyses, reports or other results generated by the Kubex Subscription Service, including through the use of AI. Outputs are generated through the application of Kubex’s models, algorithms, and methodologies, are distinct from and do not include any part of the Kubex Technology, and may be similar or identical to outputs generated for other Customers without the use of the Customer Data.
- **“Quote”** means a quote containing the details for Customer’s access to the Kubex Subscription Service, as well as for any Kubex Add-On Options requested by the Customer, which is provided to Customer by Kubex or by Reseller.
- **“Replicated Container”** means those containers where 2 or more Instances are created from the same definition.
- **“Reseller”** means Kubex’s authorized reseller for the resale or distribution of the Kubex Subscription Service to customers.
- **“Restricted Countries”** means any of the countries listed in Schedule F – List of Restricted Countries, located at <http://www.kubex.ai/legal/schedule-f-cco>, which Schedule is incorporated into this Agreement by reference and is deemed to be a part hereof. This Schedule may be updated by Kubex from time to time.
- **“Service Level Agreement”** means the service levels that are applicable to the Kubex Subscription Service list in Schedule G – Service Level Agreement, located at <http://www.kubex.ai/legal/schedule-g-cco>, which Schedule is incorporated into this Agreement by reference and is deemed to be a part hereof. This Schedule may be updated by Kubex from time to time.
- **“Standalone Container”** means those containers where there is only ever one Instance running (or zero).
- **“Subscription Term”** means the term of authorized use of the Kubex Subscription Service as set forth in a Quote and/or Order and as may be further described in Section 4(a) hereof.
- **“Technical Support”** shall have the meaning set forth in Section 7 hereof.
- **“Territory”** means worldwide.
- **“Updates”** means any new versions and releases of the Kubex Subscription Service, which Kubex makes generally available to its licensees from time to time, and is more specifically described in Section 6 of the Technical Support. For certainty, Updates shall exclude any new functionality for the Kubex Subscription Service that Kubex generally provides to its customers for an additional charge.

**b. Schedules**

The following Schedules are incorporated into this Agreement by reference and are deemed to be a part hereof.

Schedule A	-	Product Description
Schedule B	-	Add-On Options
Schedule C	-	[omitted]
Schedule D	-	Technical Support
Schedule E	-	Third Party Software
Schedule F	-	List of Restricted Countries
Schedule G	-	Service Level Agreement

## 2. Grant of Use Rights

- a. Kubex Subscription Service. Subject to the terms of this Agreement, Kubex hereby authorizes Customer to access and use the Kubex Subscription Service, including the features and functions provided by the software programs and programming, applications, operating systems, networks, utilities, hardware and interfaces (other than those components comprising Customer's computing and network systems), in each case solely as made accessible to Customer through the client-facing portion of the Kubex Subscription Service, and including any Updates thereto, such right of access and use to be during the Subscription Term and for the number of Instances (including the Kubex Add-On Options) set forth in an applicable Quote and/or Order. Customer shall use the Kubex Subscription Service in accordance with the Documentation and only for its internal business purposes. Customer shall not use or access the Kubex Subscription Service in a manner that exceeds Customer's authorized use as set forth in this Agreement and the applicable Quote and/or Order.
- b. License to Use Outputs. Subject to the terms and conditions of this Agreement, Kubex hereby grants Customer a limited, non-exclusive, non-transferrable (except as permitted under Section 12(c)), non-sublicensable right during the Subscription Term to access and use the Outputs solely for Customer's internal business purposes and solely in connection with Customer's authorized use of the Kubex Subscription Service. Customer's use of the Outputs shall at all times comply with the restrictions set forth in Section 3(a). Nothing in the Agreement grants Customer any right, title, or interest in or to the Outputs or Output Elements, except for the limited license granted in this Section 2(b).

## 3. Supplementary License Rights

- a. Restrictions. Customer shall not (and shall not permit others to) do any of the following with respect to the Kubex Technology: (i) use the Kubex Subscription Service with external programs in a manner that intentionally circumvents contractual usage restrictions; (ii) license, sublicense, sell, resell, rent, lease, transfer, distribute, use for time sharing, or otherwise make any of it available for access by third parties; (iii) access it for the purpose of developing or operating products or services intended to be offered to third parties in competition with Kubex or the Kubex Subscription Service; (iv) disassemble, decompile, translate or convert into human readable form or into another computer language, reconstruct or decrypt, or reverse engineer all or any part of it, including any algorithms, models, or other components of the AI; (v) use, analyze, or access the Kubex Subscription Service, any AI, or any Outputs in a manner intended to discover, infer, extract, reconstruct, or replicate any aspect of the Kubex Technology, including any algorithms, models, scoring systems, classifications, or optimization methodologies; (vi) copy, create derivative works based on or otherwise modify it, except as may be expressly authorized hereunder; (vii) remove or modify a copyright or other proprietary rights notice on it; or (viii) use the Kubex Subscription Service, any AI features, or any Outputs for the purpose of benchmarking, performance analysis, training machine-learning models, evaluating or testing model performance (except as expressly permitted by Kubex), or in any manner to develop or operate products or services that compete with the business of Kubex; or (ix) use it to create, use, send, store or run viruses or other harmful computer code, files, scripts, agents or other programs or otherwise engage in a malicious act or disrupt its security, integrity or operation. In addition and notwithstanding anything to the contrary in the Agreement, (A) Customer shall not intentionally disclose or provide access to any Confidential Information of Kubex to any person or entity located in any Restricted Countries; and (B) Customer shall use reasonable efforts to ensure that only its Authorized Users have access to the Kubex Subscription Service, whether via Customer's access credentials or otherwise and, in the event that Customer becomes aware of any unauthorized use of Customer's access credentials, Customer shall so notify Kubex in writing and shall work together in good faith with Kubex to address the situation in a timely manner. For clarity, the foregoing in clause (A) in this Section 3(a) shall not prevent an Authorized User located in a Restricted Country from accessing and using the Kubex Subscription Service via its web-based user interface unless its access is prohibited by applicable law and provided that in no case may any Kubex Technology or Kubex Confidential Information be physically located in a Restricted Country.
- b. Open Source. The Open Source Third Party Software is also subject to certain terms and conditions that the licensor of such software imposes on Kubex (the "Open Source Provisions"). The licenses applicable to the Open Source Third Party Software are identified in the definition of the Open Source Third Party Software in Section 1 hereof and in the Documentation. Customer's right to use the Open Source Third Party Software provided hereunder is solely as accessed through the Kubex Subscription Service. In the event that Customer elects to use any Open Source Third Party Software provided hereunder other than as integrated by Kubex and accessed through the Kubex Subscription Service, then Customer shall be responsible for such use and the Open Source Provisions shall govern such use. Customer hereby agrees not to make any modification to any Open Source Third Party Software for use with the Kubex Subscription Service.

- c. Documentation. The Documentation may be used by Customer for the purpose of assisting in its use of the Kubex Subscription Service for the internal business purposes of Customer. No reproduction or other use of the Documentation is permitted.
- d. Access and License by Affiliates.
  - i. Upon Customer's written request, Kubex agrees to grant access to the Kubex Subscription Service to any Affiliate, in accordance with the terms and conditions of this Section 3 and the other terms and conditions of this Agreement, as if such access and license were provided directly to Customer. To the extent that Customer has obligations or responsibilities to be fulfilled under this Agreement to Kubex, Customer shall likewise be responsible for the performance of such obligations or responsibilities by any Affiliate to which such access and license is granted, and any breach of such obligations by any Affiliate will be deemed a breach by Customer under this Agreement.
  - ii. Without limiting Section 3(d)(i), if the conduct on the part of Kubex constitutes a breach that causes damages to an Affiliate, then Customer may enforce such rights or remedies against Kubex as if Customer had suffered such damages and such Affiliate shall not be entitled to enforce such rights or remedies directly against Kubex on its own behalf.
  - iii. Kubex's provision of access and a license to an Affiliate will not render such Affiliate a third party beneficiary under this Agreement.
  - iv. If a dispute arises between Kubex and an Affiliate, the dispute will be resolved by Customer on behalf of the Affiliate.
  - v. Neither the provision of access and licenses to Affiliates nor the extension of this Agreement to Affiliates shall have the effect of altering the liability limitations set forth in Section 10 applicable to either Kubex or Customer, it being understood that damages incurred by any Affiliate arising from any act or omission on the part of Kubex in fulfilling its obligations under this Agreement shall be deemed to be incurred by Customer.
  - vi. Customer shall be responsible for ensuring that Affiliates agree to be bound by the provisions of this Section 3(d) and shall indemnify and hold Kubex harmless from any failure of Customer to meet this obligation.
- e. Third Party Access Rights. Customer shall have the right to provide access to the Kubex Subscription Service and Documentation to third party contractors or consultants of Customer, and/or any third party to whom Customer outsources its business operations (together, "Contractors"), for the purpose of performing and/or exercising any applicable Customer rights with respect to the Kubex Subscription Service and Documentation granted hereunder, provided that: (i) such access is solely for Customer's internal business purposes; (ii) such Contractors do not include any entities (or their employees or contractors) that are in direct competition with Kubex; (iii) such use of the Kubex Subscription Service by Contractors together with use by Customer does not exceed the aggregate number of Instances authorized for use by Customer hereunder; (iv) Customer shall be responsible for the Contractor's compliance with the terms and conditions of this Agreement and shall indemnify and hold Kubex harmless from any breach by Contractors of the applicable terms and conditions of this Agreement; (v) Customer shall ensure that each Contractor enters into a written agreement with Customer, enforceable under applicable law, containing terms and conditions that are no less protective of Kubex's rights than those in this Agreement, including, without limitation, provisions relating to: (1) confidentiality and protection of proprietary information, (2) data privacy and security obligations, (3) limitations on use and access to the Kubex Subscription Service, and (4) restrictions on reverse engineering, decompiling, or creating derivative works of the Kubex Subscription Service, (collectively, the "Flow-Down Terms"); (vi) Customer shall use reasonable efforts to ensure that each such agreement with the Contractor contains a third-party beneficiary clause providing that Kubex shall be an intended third-party beneficiary with respect to the Flow-Down Terms; and (vii) Kubex reserves the right to suspend or terminate Contractor's access in the event of a material breach of the Flow-Down Terms or any security or operational risk to the Kubex Subscription Service.
- f. Service Level Agreement. Kubex's service level agreement in connection with the operation of the Kubex Subscription Service shall be as set forth in the Service Level Agreement.
- g. Free Tier Services. If Customer accesses or uses the Kubex Subscription Service free-of-charge, including without limitation pursuant to any free version, free tier, promotional offer, proof-of-concept, beta release, trial period or sandbox ("Free Tier Services"), Customer acknowledges and agrees that:

- i. Scope and Term of Use. The grant of use rights in Section 2(a) with respect to Free Tier Services shall be limited as follows: (A) for the first thirty (30) days of the term of Free Tier Services, Customer may use the Free Tier Services without restriction on the number of vCPUs; and (B) thereafter, Customer's use shall be limited to no more than two hundred fifty (250) vCPUs for an unspecified duration, at all times subject to the terms and conditions of this Agreement.
- ii. As Is Basis. Free tier Services are provided on an "as is" and "as available" basis. To the maximum extent permitted by applicable law, Kubex disclaims all representations, warranties and/or conditions, express, implied, statutory or otherwise, with respect to the Free Tier Services, including without limitation any implied warranties or conditions of merchantability, non-infringement, or fitness for a particular purpose, and Sections 8(a) and 8(b) shall not apply to the free Tier Services.
- iii. Exclusions from Agreement. The following provisions of this Agreement shall have no force or effect with respect to Free Tier Services: Schedule G – Service Level Agreement; Section 7 (Technical Support); the warranties and remedies set forth in Section 8(a); Kubex's indemnification obligations in Section 9; and any obligations or guarantees set forth in the Service Level Agreement.
- iv. No Service Commitment. Kubex has no obligation to provide any maintenance, support, updates, upgrades, or modifications for Free Tier Services, and may change, suspend, or discontinue the Free Tier Services at any time without notice.
- v. Eligibility and Duration. Kubex may determine, in its sole discretion, eligibility requirements for access to Free Tier Services, as well as the duration of any such Free Tier Services ("Free Tier Term"). Upon expiration of the Free Tier Term, or if Customer breaches this Agreement, Kubex may immediately suspend or terminate Customer's access to the Free Tier Services without liability. Continued access to the Kubex Subscription Service after the Free Tier Term requires a paid subscription.
- vi. Applicability of Restrictions. All other terms and restrictions of this Agreement, including without limitation Section 3(a) (Restrictions) and Section 5 (Proprietary Rights and Confidential Information), continue to apply to Free Tier Services.

#### **4. Ordering and Payment.**

- a. Orders. Orders may be submitted by Customer, either directly to Kubex or through Reseller. Ordering terms for Orders submitted by Customer through a Reseller shall be governed by the terms of the applicable agreement between Reseller and Customer. Upon submission of an Order by Customer directly to Kubex and acceptance of the Order by Kubex, which may be by notice to Customer by Kubex or by processing of the Order by Kubex:
  - i. each Order is non-cancellable and non-refundable, other than as provided in this Agreement;
  - ii. prices stated in each Quote and/or Order are final;
  - iii. except as expressly set forth in the applicable Quote and/or Order, fees for the Kubex Subscription Service are invoiced annually in advance;
  - iv. each Subscription Term as set forth in the Quote and/or Order is a continuous and non-divisible commitment for the full duration of the Subscription Term, regardless of the invoice schedule;
  - v. upon the expiration of any initial or subsequent renewal Subscription Term, each Order shall automatically renew for the period of the Subscription Term and for the fees set forth in the Order, unless Customer provides Kubex with written notice not less than thirty (30) days prior to the expiration of such initial or renewal Subscription Term of its intention not to renew the Order, except that if Kubex wishes to change the fees for such Order, Kubex shall provide Customer with written notice of such change not less than sixty (60) days prior to the end of such initial or renewal Subscription Term; and
  - vi. the fees for Technical Support are included in the fees for the Kubex Subscription Service payable by Customer.
- b. Invoicing and Payment for Kubex Orders. The following provisions apply in the case of Orders placed by Customer directly to Kubex (and not through Reseller, for which invoicing and payment terms shall be governed by the agreement between Customer and Reseller):

- i. Customer shall pay each invoice in full within thirty (30) days after the invoice date;
- ii. Customer may issue a purchase order (submitted to [orders@kubex.ai](mailto:orders@kubex.ai)) consistent with the terms of the Order, but a purchase order is not required;
- iii. If Customer issues a purchase order, then it shall be for the full amount of the Order, it shall reference the Quote on the purchase order, and any additional or conflicting terms appearing on the purchase order shall not amend the Order or this Agreement; and
- iv. Upon request, Kubex shall reference the purchase order number on its invoices, solely for administrative convenience, provided that Customer provides the purchase order at least five (5) business days prior to the date of invoice.
- v. **Late Payments.** All overdue amounts shall bear interest on the amounts outstanding from the time such amounts become due until payment is received by Kubex and shall be calculated based upon the lesser of: (i) a rate of two percent (2%) per month; and (ii) the highest interest rate allowable under applicable law.
- vi. **Taxes.** All payments required by this Agreement are stated exclusive of all taxes, duties, levies, fines or similar governmental assessments, including sales and use taxes, value-added taxes ("VAT"), goods and services taxes ("GST"), excise, business, service, withholding and similar transactional taxes imposed by any jurisdiction and the interest and penalties thereon (collectively, "Taxes"). Customer shall be responsible for and bear Taxes associated with its purchase of, payment for, access to or use of the Kubex Subscription Service. If Kubex has the legal obligation to collect and remit Taxes, Kubex shall invoice Customer for any Taxes due on Orders placed. In all other instances, Customer will be responsible for self-assessing for any such Taxes due and remitting same to the applicable tax authority. Taxes shall not be deducted from the payments to Kubex, except as required by law, in which case Customer shall increase the amount payable as necessary so that after making all required deductions and withholdings, Kubex receives and retains, free from any Tax liability, an amount equal to the amount it would have received had no such deductions or withholdings been made. Each party is responsible for and shall bear taxes imposed on its net income.
- vii. **Currency.** All amounts referred to herein are in the lawful currency of the United States of America (U.S. Dollars), provided that upon request from Customer, if Customer is located in: (A) the United Kingdom, the lawful currency of the United Kingdom shall apply (Pound Sterling – GBP); or (B) the European Economic Community, the currency of the Euro shall apply; or (C) Canada, the lawful currency of Canada shall apply (Canadian Dollars).

## 5. Proprietary Rights and Confidential Information.

- a. **Kubex Technology.** As between Kubex and Customer, all right, title and interest in and to all intellectual property rights in the Kubex Technology are and shall remain exclusively owned by Kubex. Nothing in this Agreement transfers or conveys to Customer any ownership right, title or interest in or to all or any part of the Kubex Technology or any Intellectual Property Rights therein, or to any copy thereof or any license right with respect to same not expressly granted herein. Nothing in this Agreement constitutes a sale of the Kubex Technology to Customer and no copies are being sold to Customer. All rights not expressly granted to Customer hereunder are retained by Kubex.
- b. **Customer Data and Inputs.** As between Customer and Kubex, Customer shall retain all of its right, title and interest in and to its intellectual property rights in the Customer Data and any inputs it provides for use with the Kubex Subscription Service. Kubex shall have no ownership rights to Customer Data or Customer input. Customer hereby grants to Kubex a royalty-free, fully paid up, non-exclusive, non-transferrable (except as set forth in Section 12.c (Assignment)), sub-licensable right in the Territory to use Customer Data solely for the purpose of providing the Kubex Subscription Service to Customer, which for certainty includes providing Customer the ability to use the Kubex Subscription Service, as well as for Kubex to use the Customer Data in a user acceptance test ("UAT") environment for the purpose of responding to and resolving specific issues reported by Customer concerning the Kubex Subscription Service or for the purpose of validating upgrades to the Kubex Subscription Service prior to such upgrades being made available to Customer. Such UAT environment shall contain all the same security and protections that Kubex employs for the production environment. For clarity, Kubex does not use Customer Data to train, tune, or improve its AI models. Customer Data is used solely for the purpose of providing the Kubex Subscription Service, including generating Outputs requested by Customer. Customer is responsible for the content, quality, and legality of Customer Data, for obtaining all rights, licenses and consents required to provide Customer Data to Kubex and use it with the Kubex Subscription

Service, and for ensuring that Customer's use of Customer Data with the Kubex Subscription Service complies with all applicable laws.

- c. **Ownership of Outputs and Output Elements.** As between the parties, Kubex owns all right, title and interest in and to the Outputs, including all system-generated components of Outputs, such as recommendations, analyses, insights, predictions, rationales, explanations, classifications, confidence scores, tags, metadata, prioritization indicators, and any other structural, analytic, or contextual elements created by or derived from the operation of the Kubex Subscription Service (collectively, "**Output Elements**"). Notwithstanding the foregoing, any portion of an Output that consist solely of Customer Data or Customer inputs within an Output shall remain the property of Customer. The inclusion or reflection of Customer Data or Customer inputs within an Output does not transfer to Customer any ownership or other rights in or to the Kubex Technology or Output Elements. Customer acknowledges that Outputs may be similar or identical to outputs generated for other customers and nothing herein restricts Kubex from generating or providing such similar outputs to other customer.
- d. Kubex encourages Customer to provide suggestions, proposals, ideas, recommendations or other feedback regarding improvements to the Kubex Subscription Service and other Kubex products. To the extent Customer provides such feedback, Customer grants to Kubex a royalty-free, fully paid up, sublicensable, transferrable (notwithstanding Section 12.c (Assignment)), non-exclusive, irrevocable, perpetual, worldwide right and license to make, use, sell, offer for sale, import and otherwise exploit feedback (including by incorporation of such feedback into the Kubex Technology) without restriction.
- e. Each party agrees to maintain the confidentiality of the Confidential Information of the other party that has been disclosed or made available by the other party or otherwise received by the receiving party, whether prior to, subsequent to or on the Effective Date hereof, and to use same only as expressly authorized herein. Each party shall safeguard and maintain the other party's Confidential Information in strict confidence and shall not disclose, provide, or make the Confidential Information or any part thereof available in any form or medium to any person except to such party's employees, agents, contractors and consultants who have executed an agreement in writing to protect such Confidential Information and who have a need to access such Confidential Information for the purpose of this Agreement. Customer shall ensure that all persons to whom it gives access to the Confidential Information, including employees, agents, contractors and consultants, shall comply with the provisions of this Section 5 and the other provisions of this Agreement related to the use of the Kubex Technology.
- f. The provisions of Section 5.d shall not apply to any information which: (i) was at the time of disclosure to a party, in the public domain; (ii) after disclosure to a party becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party prior to the time of disclosure to it without any obligation of confidence or any breach of confidence; (iv) was received after disclosure to a party from a third party who had a lawful right to disclose such information to it; (v) was independently developed by a party without reference to the Confidential Information of the other party; or (vi) was ordered to be disclosed by a court, administrative agency, or other governmental body with jurisdiction over the parties hereto, provided that, to the extent legally permissible, the ordered party will have first provided the disclosing party with prompt written notice of such required disclosure and will take reasonable steps to allow the disclosing party to seek a protective order with respect to the confidentiality of the information required to be disclosed. Further, the ordered party will promptly cooperate with and assist the disclosing party in connection with obtaining such protective order.
- g. Customer shall not remove any proprietary copyright, patent, trademark, design right, trade secret, or any other proprietary rights legends from the Kubex Technology.
- h. Customer shall not export or re-export any part of the Kubex Technology or any copies thereof, either directly or indirectly, outside of the Territory. Customer shall have the exclusive obligation to ensure that any export of the Kubex Technology is in compliance with all applicable export laws and the laws of any foreign country.

## 6. Passwords.

- a. Customer agrees to (and shall ensure that its personnel shall) keep Passwords absolutely confidential and ensure that Passwords are never disclosed, accidentally or otherwise, to anyone at any time. Customer is solely responsible for the maintenance and security of Passwords assigned or controlled by it and its personnel.
- b. Customer is responsible for all consequences and losses relating to the use of Passwords assigned or controlled by Customer or its personnel, whether or not Customer authorized that use. If you know or suspect a Password is being misused, you must as soon as possible notify Kubex and immediately change the Password. Customer agrees that until we receive such notice and have had a reasonable opportunity

to implement measures to prevent unauthorized use of your Password, Customer will remain liable for all unauthorized use of your Password.

## **7. Technical Support.**

- a. Subject to the provisions of Section 7.d and provided that Customer has paid to Kubex (either directly or through Reseller) the fees for the Kubex Subscription Service when due hereunder, Kubex shall provide technical support to Customer for the Kubex Subscription Service as further described in Schedule D – Technical Support, located at <http://www.kubex.ai/legal/schedule-d-cco>, (the “Technical Support”), which Schedule is incorporated into this Agreement by reference and is deemed to be a part hereof. This Schedule may be updated by Kubex from time to time.
- b. Customer shall:
  - i. Provide to Kubex all necessary information, support and co-operation as is necessary for the performance of the Technical Support;
- c. Kubex shall notify Customer of any scheduled maintenance downtime for the Kubex Subscription Service in accordance with the policy set forth in Section 5 of the Technical Support.
- d. Technical Support does not include or apply to any of the following: (i) making modifications to the Kubex Subscription Service for Customer; (ii) user training; (iii) consultation for new programs or equipment; (iv) hardware problems including any malfunction of hardware, or to any external causes affecting the Kubex Subscription Service (including the media upon which they are provided), such as accident, disaster, electrostatic discharge, fire, flood, lightning, water or wind; or (v) correction of errors attributable to software other than the Kubex Subscription Service. Any services required by Customer and provided by Kubex to address any of the above exclusions shall be chargeable to Customer by Kubex or Reseller (as applicable), which for orders placed with Kubex shall be at Kubex’s then-applicable list price for such services. Kubex (or Reseller, as applicable) may also charge Customer for analysis or removal of errors that are caused by improper operation or handling of the Kubex Subscription Service or caused by circumstances unrelated to Kubex. Payment for these services shall be made by Customer in accordance with Section 4.b hereof. All professional services rates are exclusive of travel and related expenses, which will be billed at cost and subject to any applicable taxes.

## **8. Warranties and Disclaimer.**

- a. Kubex warrants that it has the right to grant the rights and privileges to the Kubex Subscription Service to Customer. Kubex warrants that during the Subscription Term, Customer’s production instances of the Kubex Subscription Service shall materially conform to the subscription descriptions and the Documentation therefor, provided that Customer’s exclusive remedy and Kubex’s sole obligation with respect to any breach of this warranty is for Kubex to provide Technical Support to correct or provide a workaround to any nonconformity identified by Customer, provided that Customer has specified in writing for each such nonconformity how the Kubex Subscription Service failed to conform to the subscription descriptions and the Documentation.
- b. OTHER THAN THE WARRANTIES EXPRESSLY SET FORTH IN SECTION 8.a, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, KUBEX DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND/OR CONDITIONS, EXPRESS OR IMPLIED, CONCERNING OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, PERFORMANCE, RESULTS, TITLE, NON-INFRINGEMENT AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, KUBEX DOES NOT WARRANT THAT THE KUBEX SUBSCRIPTION SERVICE, KUBEX TECHNOLOGY OR DOCUMENTATION WILL MEET THE REQUIREMENTS OF CUSTOMER OR OTHERS OR THAT THEY WILL BE ACCURATE OR OPERATE WITHOUT INTERRUPTION OR ERROR. CUSTOMER ACKNOWLEDGES THAT IN ENTERING INTO THIS AGREEMENT IT HAS NOT RELIED ON ANY PROMISE, WARRANTY OR REPRESENTATION NOT EXPRESSLY SET FORTH HEREIN.
- c. Customer acknowledges that certain features of the Kubex Subscription Service may utilize AI. AI features generate probabilistic outputs that may be inaccurate or incomplete and are intended solely to assist Customer in evaluating infrastructure-related decisions. Customer remains solely responsible for verifying the accuracy, completeness and suitability of any output produced by AI and for all decisions, configurations, or actions made or taken in reliance on such outputs. Kubex makes no warranty regarding the accuracy, completeness, or suitability of any output generated by AI features. Customer assumes all

risks associated with its use of AI and must conduct its own independent assessment of any Outputs before relying on them.

#### **9. Indemnification.**

- a. Subject to the exclusions set forth below, Kubex shall: (i) defend Customer, its officers, directors and employees against any third party suit, claim, action or demand (each, a "Claim") to the extent arising from an allegation that the Kubex Subscription Service, used in accordance with this Agreement, infringes any third party patent, copyright or trademark or misappropriates any third party trade secret, and (ii) pay any settlement made by Kubex or pay any damages awarded by a court by final order from which no appeal is taken or the time for appealing has expired, provided that (1) Customer notifies Kubex promptly in writing of the Claim; and (2) Customer permits Kubex to control the litigation and to defend, compromise or settle the Claim and provides all available information, assistance and authority to enable Kubex to do so. Kubex shall not be liable to reimburse Customer for any compromise or settlement made by Customer without Kubex's prior written consent or for any legal fees or expenses incurred by Customer in connection with such Claim. Customer shall have no authority to settle any Claim on behalf of Kubex.
- b. Should any portion of the Kubex Subscription Service become or in Kubex's sole opinion be likely to become the subject of a Claim, Kubex may: (i) contest the Claim; (ii) obtain permission from the claimant for Customer's continued use of the Kubex Subscription Service; (iii) replace or modify the Kubex Subscription Service to avoid infringement, if such replacement or modification has substantially the same capabilities as the Kubex Subscription Service; or, if the foregoing (i), (ii), and (iii) are not available on commercially reasonable terms in Kubex's sole judgment, then (iv) terminate Customer's use of the Kubex Subscription Service and pay Customer a refund of any prepaid subscription fees covering the remaining portion of the applicable Subscription Term for the affected Kubex Subscription Service after the date of termination.
- c. Notwithstanding the above in this Section 9, Kubex shall have no obligation or liability for any Claim under Section 9.a arising in whole or in part from: (i) any use of the Kubex Subscription Service which exceeds the authorized use permitted under this Agreement or not in accordance with the Documentation; (ii) Customer Data or Customer inputs; (iii) Outputs or Customer's use thereof; (iv) use of the Kubex Subscription Service after termination in accordance with Section 9.b(iv); (v) use of the Kubex Subscription Service in combination with any hardware, software, application or service that was not provided by Kubex, if the Claim would have been avoided by the non-combined or independent use of the Kubex Subscription Service; or (vi) Customer's use of the Kubex Subscription Service in violation of this Agreement or applicable law.
- d. This Section 9 states Kubex's entire liability and Customer's exclusive remedy with respect to any intellectual property rights of any third party.
- e. Customer shall indemnify, defend and hold harmless Kubex and its affiliates from and against all claims, damages, losses, costs, and expenses (including reasonable legal fees) arising out of or relating to: (i) Customer's use of the Free Tier Services; or (ii) Customer Data or Customer inputs, including any allegation that such data or inputs infringe, misappropriate, or violate any Intellectual Property Right, privacy right, or applicable law; (iii) Customer's use of AI or reliance on any Outputs, including any decisions, configurations, implementations, or actions made or taken based on or in response to Outputs; (iv) Customer's violation of law arising from its use of AI or Outputs, including but not limited to automated decision-making, data protection, export control, or consumer-protection requirements; and (v) any claim by Customer's end users, employees, contractors, or partners arising from or relating to Customer's use of the Kubex Subscription Service, including AI.

#### **10. Limitation of Liability.**

- a. FOR ANY BREACH OR DEFAULT BY KUBEX OF ANY OF THE PROVISIONS OF THIS AGREEMENT, OR WITH RESPECT TO ANY CLAIM ARISING HEREFROM OR RELATED HERETO, EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY, REGARDLESS OF THE FORM OF ACTION, WHETHER BASED ON CONTRACT OR TORT, INCLUDING NEGLIGENCE, SHALL IN NO EVENT EXCEED THE AMOUNTS PAID OR PAYABLE BY CUSTOMER (WHETHER TO KUBEX OR RESELLER, AS APPLICABLE) FOR THE PRODUCTS OR SERVICES GIVING RISE TO THE CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE CLAIM (THE "LIABILITY CAP"). THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT INCREASE THIS LIMIT. THE LIABILITY CAP SHALL NOT APPLY TO: (1) EACH PARTY'S OBLIGATIONS UNDER SECTION 5 (PROPRIETARY RIGHTS AND CONFIDENTIAL INFORMATION); (2) CUSTOMER'S OR AFFILIATES' BREACH OF SECTION 3(A) (RESTRICTIONS); (3) CUSTOMER'S OR AFFILIATES' FAILURE TO PAY THE FEES OWING UNDER THIS AGREEMENT (TO THE EXTENT A CUSTOMER/AFFILIATE OBLIGATION AND NOT A RESELLER OBLIGATION); (4) KUBEX'S OBLIGATIONS UNDER SECTION 9 (INDEMNIFICATION);

- (5) INFRINGEMENT OR MISAPPROPRIATION BY CUSTOMER OF KUBEX'S INTELLECTUAL PROPERTY RIGHTS; (6) INFRINGEMENT OR MISAPPROPRIATION BY KUBEX OF CUSTOMER'S INTELLECTUAL PROPERTY RIGHTS; AND (6) A PARTY'S FRAUD, GROSS NEGLIGENCE OR WILFULL MISCONDUCT .
- b. OTHER THAN FOR A BREACH OF SECTION 3.A (LICENSE RESTRICTIONS) OR SECTION 5 (PROPRIETARY RIGHTS AND CONFIDENTIAL INFORMATION), IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY IN CONNECTION WITH THIS AGREEMENT FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE, LOST BUSINESS REVENUE, LOSS OF PROFITS, OR LOSS OF DATA, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. KUBEX SHALL NOT BE RESPONSIBLE FOR ANY LOSS, DAMAGE, DOWNTIME, MISCONFIGURATION, INCREASED CLOUD CONSUMPTION, OR OTHER HARM ARISING FROM THE USE, IMPLEMENTATION, APPLICATION OF, OR DECISIONS, ACTIONS, OR INACTIONS TAKEN BY CUSTOMER IN RELIANCE ON OUTPUTS GENERATED BY AI.
  - c. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS AGREEMENT SHALL APPLY IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION, DEMAND, OR ACTION BY CUSTOMER, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL THEORY AND SHALL SURVIVE A FUNDAMENTAL BREACH OR BREACHES OR THE FAILURE OF THE ESSENTIAL PURPOSE OF THIS AGREEMENT.
  - d. Neither Kubex nor Customer may bring an action, regardless of form, arising out of or related to this Agreement more than two (2) years after the cause of action has arisen or the date of discovery of such cause, whichever is later.
  - e. Notwithstanding anything to the contrary in this Agreement, with respect to any Free Tier Services, Kubex's aggregate liability to Customer for all claims shall not exceed, in the aggregate for all claims, one hundred dollars (USD \$100)

## **11. Termination.**

- a. This Agreement continues until terminated under the terms of this Agreement. Either party may terminate this Agreement in its entirety either: (i) upon thirty (30) days' prior written notice to the other party, if at the time of notice there are no Orders in effect; or (ii) upon written notice if the other party becomes insolvent, makes an assignment for the general benefit of creditors, files for protection or makes a proposal to creditors generally under any insolvency, bankruptcy or creditors' relief legislation, if the other party is subject to an accepted petition for an involuntary bankruptcy, if any proceedings are commenced by or against the other party under any bankruptcy or insolvency laws or if proceedings for the appointment of a trustee, custodian, liquidator, receiver or receiver manager for the other party are commenced, or if the other party ceases or threatens to cease to carry on business. Either party may terminate this Agreement or an applicable Order upon written notice if the other party materially breaches this Agreement or the applicable Order for the affected service and does not cure the breach within thirty (30) days after receiving written notice thereof from the non-breaching party. Notwithstanding the foregoing, Kubex may terminate any Free Tier Services at any time, for any reason or no reason, immediately upon notice to Customer, without liability.
- b. Upon termination of the Kubex Subscription Service for any reason, Customer shall stop using, and Kubex shall stop providing, the Kubex Subscription Service and all rights granted to Customer in this Agreement shall terminate. Kubex shall within thirty (30) days following the effective date of termination by Customer for Kubex's breach, refund to Customer all prepaid fees received by Kubex for the remaining portion of the Subscription Term for the affected Kubex Subscription Service after the date of termination. Within thirty (30) days following the effective date of a termination by Kubex for Customer's breach, Customer shall pay (to Kubex or Reseller, as applicable) all remaining amounts (if any) payable under this Agreement for the Subscription Term applicable to the terminated Kubex Subscription Service regardless of the due dates specified in the Order.
- c. Kubex shall provide Customer Data in an industry standard database export format (e.g. CSV) (excluding for certainty any Kubex Technology) to Customer within thirty (30) days of Customer's written request and at no additional cost to Customer. After forty-five (45) days following the expiration or termination of this Agreement or all Orders for the Kubex Subscription Service, if Customer has not requested the return of its Customer Data, Kubex shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, have the right to delete all Customer Data in its systems or otherwise in its possession or under its control and delete Customer's instances of the Kubex Subscription Service. For Free Tier Services, Kubex shall have no obligation to retain any Customer Data beyond (14) days after termination or expiration of the Free Tier Term, and may delete such data thereafter without

further notice. Customer shall have no right to request the return of Customer Data for any Free Tier Services, and deletion shall be the sole method of disposition of such data.

## 12. Miscellaneous.

- a. Notices. Except as otherwise provided herein, all notices shall be in writing and deemed given upon: (i) personal delivery; (ii) when received by the addressee if sent by a recognized overnight courier (receipt requested); (iii) the second business day after mailing; or (iv) the first business day after sending by email with confirmation of receipt, except that email shall not be sufficient for notices regarding a claim. Notices shall be sent to the parties as set forth in this Agreement or as otherwise advised by a party.
- b. FAR/DFARS Requirements. The Parties agree that the Kubex Technology was developed exclusively at private expense and are Commercial Items as that term is defined in Federal Acquisition Regulation (FAR) 48 C.F.R. §2.101. Use, duplication, release, modification, transfer or disclosure (“Use”) of the Kubex Technology is restricted by the terms of this Agreement and the Kubex Technology is Licensed hereunder (i) only as commercial items, and (ii) with only those rights as are typically granted to commercial end users, consistent with the terms and conditions of this Agreement. Such Use is further restricted in accordance with FAR 52.227-14 for civilian Government agency purposes and 252.227-7015 of the Defense Federal Acquisition Regulation Supplement (“DFARS”) for any Government agency within the U.S. Department of Defense of the similar acquisition regulations of other applicable Government organizations, as applicable and amended. Use of the Kubex Technology shall be in accordance with DFARS Section 227.7202 and FAR Sections 12.211 and 12.212. Except as described herein, all other use is prohibited. Thus, pursuant to the FAR 48 C.F.R. §§12.211 and 12.212 and 227.7202-4, this section describing U.S. Government use is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses Government rights in Kubex computer software, computer software documentation, or technical data under this Agreement and in any contract or subcontract under which the Kubex Technology is acquired or licensed.
- c. Assignment. Neither party may assign its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of the other party. Notwithstanding the foregoing, either party may, without the other party’s consent, assign this Agreement: (i) to a successor in connection with a merger, reorganization or sale of all or substantially all of the assets or equity of such party; or (ii) to any affiliate. The assigning party shall provide the non-assigning party with prompt written notice of any such assignment. Any attempted or purported assignment in violation of this Section 12.c will be null and void. Subject to the foregoing, this Agreement shall bind and enure to the benefit of the parties, their respective successors and permitted assigns.
- d. Force Majeure. If the performance of this Agreement, or any obligation thereunder, except the making of payments hereunder, is prevented, restricted, or interfered with by reason of: fire, flood, earthquake, explosion or other casualty or accident or act of God; strikes or labour disputes; inability to procure or obtain delivery of parts, supplies, power, equipment or software from suppliers; war or other violence; any law, order, regulation, ordinance, demand or requirement of any governmental authority; or any other act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction or interference; provided, however, that the party so affected shall take all reasonable steps to avoid or remove such cause of non-performance and shall resume performance hereunder with dispatch whenever such causes are removed.
- e. Severability. The parties agree that it is the intention of each party not to violate any public policy, statutory or common law or government regulation. To the extent that any provision, portion or extent of this Agreement is deemed to be invalid, illegal or unenforceable, such provision, portion or extent shall be severed and deleted herefrom or limited so as to give effect to the intent of the parties insofar as possible and the parties will use their best efforts to substitute a new provision of like economic intent and effect for the illegal, invalid or unenforceable provisions and each remaining provision shall be enforced.
- f. Waiver. No modification, addition to or waiver of any rights, obligations or defaults shall be effective unless in writing and signed by the party against whom the same is sought to be enforced. One or more waivers of any right, obligation or default shall not be construed as a waiver of any subsequent right, obligation or default. No delay or failure of either party in exercising any right hereunder and no partial or single exercise thereof shall be deemed of itself to constitute a waiver of such right or any other rights hereunder.
- g. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. With respect to any action, suit or proceeding brought by either party hereto under or relating to this Agreement, each party irrevocably

submits to the exclusive jurisdiction of the courts of the Province of Ontario. The Uniform Computer Information Transaction Act shall not apply to this Agreement. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

- h. Dispute Resolution. All disputes arising out of or in connection with this Agreement, or in respect of any legal relationship associated with or derived from this Agreement, shall be arbitrated and finally resolved pursuant to the National Arbitration Rules of the ADR Institute of Canada, Inc. The place of arbitration shall be Toronto, Ontario. The language of the arbitration shall be English. This provision shall not apply to disputes involving Section 5 (in which case either party shall be free to seek available remedies in any forum).
- i. No Partnership or Agency. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorize any party to make or enter into any commitments for or on behalf of another party.
- j. Use of Aggregate Data. Customer agrees that Kubex may collect, use and disclose quantitative data derived from the use of the Kubex Subscription Service for industry analysis, benchmarking, analytics, marketing, and other business purposes. All data collected, used and disclosed will be in aggregate form only and will not identify Customer or its users.
- k. Survival. The provisions of this Agreement which by their nature should survive, shall survive any termination or this Agreement, including, without limitation, Sections 3.a, 4, 5, 8.b, 9, 10, 11.b, 11.c, and 12.
- l. Third Party Beneficiaries. No third party will be deemed to be an intended or unintended third party beneficiary of this Agreement.
- m. Headings. The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of the Agreement.
- n. Entire Agreement. This Agreement, together with the DPA, Orders and other information included by reference herein, contains the entire agreement of the parties with respect to the subject matter hereof and supersedes any prior agreements or understandings of the parties concerning the subject matter hereof. The terms of this Agreement apply to the exclusion of any other terms that Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Any purchase order submitted by Customer to Kubex is for Customer's internal purposes only and its terms and conditions are superseded and replaced by this Agreement, and the purchase order terms and conditions have no force or effect. Customer acknowledges that is has not relied on any statement, promise or representation made or given by or on behalf of Kubex that is not set out in this Agreement. Customer's Orders are not contingent on, and Customer has not relied on, the delivery of any future functionality regardless of any verbal or written communication about Kubex's future plans. Customer agrees not to commence any action, suit or proceeding in respect of any matters contemplated herein against Reseller. This Agreement may be executed in counterparts, each of which shall be deemed to be an original.