



TermScout Certified Contract



Terms and Conditions

This contract has been carefully reviewed and certified **Customer FAVORABLE** by TermScout, an independent contract rating company.

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KX MARKETPLACE LICENSE AGREEMENT

CONFIDENTIAL

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BY CLICKING "I ACCEPT" OR BY ACCESSING OR OTHERWISE USING THE LICENSED SOFTWARE WHICH YOU ARE LICENSING VIA THE RELEVANT PLAN/SELECTION ON THE CLOUD PROVIDER'S MARKETPLACE YOU ARE AGREEING TO BE BOUND BY THIS AGREEMENT. TO THE EXTENT YOU ARE ACTING ON BEHALF OF A PERMITTED ORGANISATION, YOU CONFIRM THAT YOU HAVE THE NECESSARY POWER AND AUTHORITY TO ACT ON THEIR BEHALF AND BIND THEM TO THIS AGREEMENT. YOU ACCEPT AND AGREE THAT THIS AGREEMENT IS ENFORCEABLE AND LEGALLY BINDING.

1. LICENSED SOFTWARE ACCESS AND USAGE

1.1 Licensed Software Internal Use License Grant.

(a) Grant of Rights. Subject to and provided you comply with the terms of the Agreement, we hereby grant to you a limited, non-transferable, non-exclusive licence, without right of sublicense, for the applicable Subscription Term to access, install and execute the Licensed Software on the Cloud Provider's environment in executable code form for internal use by you (and where permitted in the Order Form or otherwise in writing by us, your Authorised Affiliates) solely for the Permitted Use.

(b) Your Responsibility. You will: (i) control access to and use of the Licensed Software by your users and shall be responsible for any use of the Licensed Software by them that does not comply with the Agreement; (ii) before commencing use of the Licensed Software in production, test the Licensed Software for defects; (iii) retain the Licensed Software and all copies thereof under your effective operational control; (iv) take appropriate precautions against the possibility that the Licensed Software or any part thereof does not function properly (including, without limitation, by performing data back-ups, error diagnosis and regular monitoring); (v) be responsible for, and ensure you have the right to enter, the data and content into the Licensed Software; and (vi) where applicable, be responsible for renewing your license entitlement at the required frequency as notified to you by us.

(c) Software Support Services. Subject to your payment of all fees due for the Licensed Software, we will provide you with the Software Support Services subject to the terms set out therein.

1.2 Restrictions on Licensed Software Use. The following restrictions apply to the license granted under clause 1.1(a) above ("License Restrictions"):

(a) Your Use Only. You will not, and will not permit any third party to display, sell, rent, lease, license, sublicense, loan, lend, assign, publish, transfer, distribute or otherwise make available to any third party (including any Affiliates, except Authorised Affiliates) all or any portion of the Licensed Software or any features or functionality of the Licensed Software and/or Documentation (as applicable) in any form or media or by any means or for any reason, whether or not over a network or on a hosted basis, including in connection with the internet or any web hosting, wide area network (WAN), virtual private network (VPN), time-sharing, service bureau, software as a service, cloud, or other technology or service. You will not allow installation of the Licensed Software on any computer or environment other than a Customer Computer. You must promptly notify us of any suspected unauthorised use or disclosure of the Licensed Software (including use outside of the Permitted Use). Upon our reasonable request and no more than annually, one of your officers or senior vice presidents will certify in writing that your use of the Licensed Software is in compliance with the Usage Metric Limitations and the License Restrictions. The Licensed Software is made available to you via the relevant Cloud Provider's Marketplace and available to run on such Cloud Provider's environment. The Marketplace and Cloud Provider's environment are owned and controlled by Cloud Provider. We shall not in any way be liable for, and we expressly disclaim all liability in respect of, the services provided to you by Cloud Provider (or any issues with the Licensed Software arising from Cloud Provider's services),

which services shall be subject to and governed by a separate agreement between you and Cloud Provider. You will be responsible for any losses we suffer as a result of the actions of any Cloud Provider you appoint.

(b) Modifications of Licensed Software. In respect of the Licensed Software, you will not, and will not permit any third party to: (i) alter or modify, frame or mirror the whole or any part of the Licensed Software in any way whatsoever; (ii) disassemble, decompile, reverse engineer, unobfuscate or reduce any part of the same to human-readable form (except as required by law to the extent necessary to ensure the interoperability of the Licensed Software, subject to your obligations of confidentiality under the Agreement and to you having provided us with reasonable advance written notice of such intended activity and the opportunity to assist with or conduct such activity on your behalf and at your expense); (iii) combine or link the Licensed Software with Copyleft Materials; (iv) other than as expressly permitted by the Agreement, attempt to gain access to, discover or recreate the source code (from the object code or via any other means); (v) create any derivative works of the Licensed Software (in whole or in part); (vi) send or store Malicious Code; (vii) use or permit others to use the Licensed Software in violation of Applicable Law; (viii) transmit or generate any content or data that is unlawful or infringes any Intellectual Property Rights or use the Licensed Software for any unlawful purpose; (ix) work around any technical limitations in the Licensed Software or restrictions in the Documentation; (x) use Third Party Software other than in accordance with the use rights that you have to the Licensed Software (except to the extent the terms of open source licenses applicable to Third Party Software prohibit any of the restrictions in this Agreement, in which event such restrictions will not apply to such Third Party Software); or (xi) use the Licensed Software (or any part of it), Supplier's Confidential Information or any Supplier Intellectual Property Rights in order to build or offer a product or service (either for internal use or otherwise) which competes with, or provides the same or similar features, functionality or graphics of, the Licensed Software or otherwise use or copy any features, functions or graphics of the Licensed Software (or any part of it) or any Supplier Intellectual Property Rights.

(c) Copyright and Other Ownership Notices. You will not remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other Intellectual Property Rights or proprietary markings or rights notices provided on or with the Licensed Software or Documentation.

(d) Use of Virtualization Software. You may run the Licensed Software on a virtualization platform subject to any Usage Metric Limitations.

(d) Verification. During the Subscription Term and for twelve (12) months thereafter, and no more than once per year (unless we reasonably suspect you are in breach of any term of the Agreement), we may ask you to complete a self-audit process to confirm compliance with the License Restrictions and Usage Metric Limitations. You must promptly provide any information and documents that we reasonably request related to the verification. If there is a material discrepancy showing that you have not complied with the License Restrictions or Usage Metric Limitations, or you do not reasonably cooperate with such audit, you agree to allow us and/or our appointed accountancy or consultancy firm ("**Auditors**") to audit pertinent records and visit any of your facilities (either your physical premises within your control and/or, upon reasonable request by you, by remote or virtual access to your Cloud Provider environment on which the Licensed Software is installed) for the purpose of conducting inspections of your use of the Licensed Software in order to confirm your compliance with the License Restrictions and Usage Metric Limitations, including to perform an architecture review. You will reasonably cooperate with any audit/inspection and provide reasonable assistance and access to information. You are required to maintain computers, books, records, and accounts to the extent required to evidence your compliance with the License Restrictions and Usage Metrics and permit examination and copying thereof by us and our Auditors. Inspections will be made during normal business hours at a mutually convenient time and upon reasonable advance notice of no less than fourteen (14) days. We and the Auditors will sign a confidentiality agreement covering such inspections and will agree to be accompanied by an Employee while on your premises and shall comply with your internal security policies and procedures. We will pay the fees associated with any such audit conducted by us (excluding your self-audit) unless the audit discloses that you are or were in non-compliance with any material provision of the Agreement, in which case you will pay the costs of the audit (in addition to our other rights in respect of such non-compliance).

2. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

2.1 Intellectual Property Rights. We are the owner (or in relation to Third Party Software, an authorised licensee) of all right, title and interest in, the Supplier Intellectual Property Rights and any Feedback.

2.2 Assignment. Where any Intellectual Property Rights do not vest automatically in us under clause 2.1, you hereby assign free of charge, all of your right, title and interest in such Feedback and other items described in clause 2.1 upon their creation to us.

2.3 Disclaimer. For the avoidance of doubt, you disclaim all right, title, and interest in the Supplier Intellectual Property Rights and Feedback (whether in whole or in part). You irrevocably waive, to the extent permitted by Applicable Law, any and all claims you or your Authorised Affiliates, Employees and Contractors (and their employees) may now or hereafter have in any jurisdiction to so-called "moral rights" (or equivalent in any jurisdiction). You will not register any trademark, patent or copyright which uses or references any Supplier Intellectual Property Rights.

3. PAYMENT

3.1 Fees. You shall pay Fees due in accordance with the payment schedule set out in the relevant Order Form or offer/plan/ pricing page, as applicable. You agree to remit all payments due to us under this Agreement to Cloud Provider (or its nominated recipient). Cloud Provider is our agent for the collection of fees and processing of refunds. Fees shall be payable on an annual basis in respect of annual subscription fees and on a monthly basis in respect of any on demand fees, in accordance with any invoice submitted to you. Unless otherwise stated on any given invoice, payment is due within 30 days of the invoice date. You agree that, should Cloud Provider fail to collect any sums payable to us, you shall remit such sums to us directly promptly upon our written request. We may increase annual license Fees at the beginning of each Renewal Subscription Term. This increase will not exceed an amount equal to 5% of the previous year's annual license Fees. If we do not increase annual license Fees this is not deemed to be a waiver of our right to do so at a subsequent commencement of a Renewal Subscription Term. Your use of the Licensed Software and the fees therefore are subject to the Usage Policy as specified on the Order Form or offer / plan / pricing page for the Licensed Software (as applicable).

3.2 Taxes. Fees and other charges imposed under the Agreement shall not include Taxes, all of which will be your responsibility. You agree to pay or reimburse us (or Cloud Provider as our agent) for all Taxes.

3.3 Overdue Amounts. Late payments will incur interest at the rate of the lesser of 1.5% per month and the maximum rate allowable under Applicable Law, or such other rate as is stipulated by your Cloud Provider. This interest accrues on a daily basis until actual payment of the overdue amount.

3.4 Set Off. You will not withhold, reduce or set-off any Fees owed. Except as otherwise provided in the Agreement, Fees are non-refundable and orders are non-cancellable.

4. CONFIDENTIAL INFORMATION

4.1 Non-Disclosure. Each Party agrees that during the Subscription Term and for a period of five (5) years afterwards, it: (i) will treat as confidential all Confidential Information of the other Party; (ii) will not use such Confidential Information except as expressly set out herein or otherwise authorized in writing; (iii) will implement reasonable procedures (using at least the same degree of care as it uses to protect its own Confidential Information) to prevent the disclosure, duplication, misuse or removal of the other Party's Confidential Information; and (iv) will not disclose such Confidential Information to any third party except as may be necessary and required in connection with the rights and obligations of such Party under the Agreement, and subject to confidentiality obligations at least as protective as those set out in the Agreement. Notwithstanding the foregoing, with respect to Confidential Information that qualifies for trade secret protection under Applicable Law, it shall be retained in confidence by the receiving Party until such protection is no longer available. The receiving Party of any Confidential Information will be responsible to the disclosing Party for any unauthorised disclosure of the disclosing Party's Confidential Information by any third party to whom the receiving Party has directly or indirectly disclosed such Confidential Information.

4.2 Exceptions. The restrictions in clause 4.1 will not apply to information that: (i) the receiving Party can demonstrate was known to the receiving Party at the time of communication to it; (ii) has become publicly known through no wrongful act of the receiving Party; (iii) has been rightfully received from a third party authorized to make such communication without restriction of which the receiving Party was aware; (iv) has been independently developed by the receiving Party without access to or use of the Confidential Information; (v) has been approved for release by written authorization of the disclosing Party; (vi) is required to be disclosed to Cloud Provider by us in order for us to provide the Licensed Software or Software Support Services, collect our fees or otherwise comply with our obligations under this Agreement or our marketplace agreement with Cloud Provider; or (vii) is required by law or regulation or the listing rules of a recognized stock exchange to which the receiving Party is subject to be disclosed, provided that if a Party is required to disclose the other Party's Confidential Information pursuant to an order under law or regulation, that Party will, to the extent permitted by law, give the other Party sufficient notice of the disclosure to allow reasonable opportunity to object to and take necessary legal action to prevent the disclosure.

4.3 Disclosure of Agreement Terms. Each Party agrees not to publicize or disclose the Agreement terms (including without limitation the Fees) to any third party without the prior written consent of the other Party, except under an appropriate non-disclosure agreement to the Cloud Provider or to a Party's Affiliates, lawyers, investors, potential investors, investment bankers, lenders, accountants, employees, and other representatives as is reasonably necessary.

4.4 Publicity. Neither Party will use the name, logo or trademarks of the other Party in any publicity without the prior written consent of the other Party.

4.5 Benchmark Test Results. You will not disclose any benchmark, test or performance information or any report which contains a competitive analysis regarding the Licensed Software or Services to any third party except as explicitly authorized in advance by us in writing.

4.6 Security. When registering, you must provide us with the most up to date contact details for you, and you must notify us promptly if this changes after your registration. You shall not and shall not permit another Person to do anything to compromise our user registration process, the security of the Cloud Provider's service, or related services or systems.

5. WARRANTY

5.1 Licensed Software Warranty. We warrant to you that: (i) the Licensed Software will, as updated and used in accordance with the Documentation, perform substantially in accordance with the Documentation for a period of ninety (90) days from the date you are provided with the ability to access the Licensed Software ("**Warranty Period**"); (ii) we will use commercial reasonable efforts to verify, using industry standard tooling and methodology, that the Licensed Software and any Version thereof does not contain any Malicious Code on delivery to you; and (iii) the Licensed Software does not contain any Copyleft Materials. WE DO NOT WARRANT AND WE DISCLAIM ANY IMPLIED WARRANTY THAT THE OPERATION OF ANY LICENSED SOFTWARE WILL BE ERROR FREE OR UNINTERRUPTED OR THAT SUCH LICENSED SOFTWARE WILL ACHIEVE ANY INTENDED RESULT OR THAT IT WILL BE COMPATIBLE, WORK WITH OR CONTINUE TO WORK WITH ANY THIRD PARTY SOFTWARE, OPERATING PLATFORM OR HARDWARE OTHER THAN AS SET OUT IN THE DOCUMENTATION. WE ARE NOT RESPONSIBLE FOR ANY ANTI-VIRUS SOFTWARE OR VIRUS DETECTION ON YOUR SYSTEMS.

5.2 Remedy. If during the Warranty Period the Licensed Software does not perform as warranted in clause 5.1(i) above, we will undertake to correct or replace the Licensed Software or, if correction or replacement of the Licensed Software is not reasonably possible, either Party may terminate the Agreement and we will refund you a pro-rata amount for the license fees paid hereunder for the applicable Licensed Software for any remaining period of the Subscription Term. THE FOREGOING ARE YOUR SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF THIS WARRANTY.

5.3 Authority. Each Party warrants that it has the legal power and authority to enter into this Agreement.

5.4 LIMITED WARRANTY. OTHER THAN THE WARRANTIES EXPRESSLY STATED IN THE AGREEMENT, NO EXPRESS OR IMPLIED WARRANTIES SHALL APPLY TO THE LICENSED SOFTWARE OR SOFTWARE SUPPORT SERVICES WHICH SHALL BE PROVIDED ON AN "AS IS" BASIS. WE EXPRESSLY DISCLAIM ANY IMPLIED WARRANTIES THAT MAY APPLY, INCLUDING (WITHOUT LIMITATION) IN RELATION TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY AND NON-INFRINGEMENT.

6. LIMITATION OF LIABILITY

6.1 EXCLUDED CLAIMS. THE LIMITATIONS SET OUT IN SECTIONS 6.2 AND 6.3 SHALL NOT APPLY TO CLAIMS THAT ARE NOT EXCLUDABLE UNDER APPLICABLE LAW (FOR EXAMPLE IF YOU ARE DOMICILED IN NEW YORK, GROSS NEGLIGENCE, WILLFUL MISCONDUCT) OR THAT ARE RESULTING FROM OR ARISING IN CONNECTION WITH: (A) A PARTY'S INDEMNIFICATION OBLIGATIONS SET OUT IN THE AGREEMENT; (B) FRAUD; (C) DEATH OR BODILY INJURY ARISING FROM A PARTY'S NEGLIGENCE; OR (D) ANY VIOLATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS (COLLECTIVELY "**EXCLUDED CLAIMS**").

6.2 EXCLUSION OF DAMAGES. EXCEPT FOR EXCLUDED CLAIMS, IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES BE LIABLE FOR LOSS OF USE, CORRUPTION OF SOFTWARE, LOSS OR DAMAGE TO OR CORRUPTION OF DATA, LOSS OF OR DAMAGE TO GOODWILL, INTERRUPTION OF BUSINESS, LOSS OF PROFITS, LOSS OF SALES OR REVENUE, LOSS OF ANTICIPATED SAVINGS, WASTED EXPENDITURE (INCLUDING PROCUREMENT COSTS AND MANAGEMENT TIME) OR ANY CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL, OR INDIRECT DAMAGES OF ANY KIND UNDER ANY ACTION IN CONTRACT OR TORT (INCLUDING NEGLIGENCE) FOR BREACH OF STATUTORY DUTY, WARRANTY, STRICT LIABILITY, PRODUCT LIABILITY, OR ANY OTHER FORM OF ACTION, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

6.3 LIABILITY CAP. SUBJECT TO CLAUSES 6.1 AND 6.2, THE AGGREGATE LIABILITY OF A PARTY, ITS AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND REPRESENTATIVES, FOR CLAIMS ARISING UNDER OR IN CONNECTION WITH THE AGREEMENT, WHETHER IN AN ACTION IN CONTRACT OR TORT (INCLUDING NEGLIGENCE) FOR BREACH OF STATUTORY DUTY, WARRANTY, STRICT LIABILITY, PRODUCT LIABILITY, OR ANY OTHER FORM OF ACTION, SHALL BE LIMITED TO AN AMOUNT NOT EXCEEDING (I) IN THE CASE OF A BREACH OF CLAUSE 4 OR CLAUSE 10.17 BY EITHER PARTY 200% OF THE TOTAL FEES PAID OR PAYABLE TO CLOUD PROVIDER AS OUR AGENT UNDER THE APPLICABLE ORDER FORM/ SUBSCRIPTION FOR THE LICENSED SOFTWARE GIVING RISE TO THE CLAIM IN THE 12 MONTHS IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY ("**SUPER CAP**"); AND (II) FOR ALL OTHER CLAIMS, THE TOTAL FEES PAID OR PAYABLE TO CLOUD PROVIDER AS OUR AGENT UNDER THE APPLICABLE ORDER FORM/ SUBSCRIPTION FOR THE LICENSED SOFTWARE GIVING RISE TO THE CLAIM IN THE 12 MONTHS IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY ("**GENERAL CAP**"). SUCH LIABILITY CAPS SHALL BE EXCLUSIVE OF ANY UNPAID FEES OWING BY YOU TO US.

6.4 CONCURRENT LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR THE SAME EVENT UNDER BOTH THE GENERAL CAP AND THE SUPER CAP. SIMILARLY, THOSE CAPS SHALL NOT BE CUMULATIVE; IF THERE ARE ONE OR MORE CLAIMS SUBJECT TO EACH OF THOSE CAPS, THE MAXIMUM TOTAL LIABILITY FOR ALL CLAIMS IN THE AGGREGATE SHALL NOT EXCEED THE SUPER CAP.

6.5 Responsibility. You accept responsibility for the selection of the Licensed Software and acknowledge that the Licensed Software has not been developed to meet your individual requirements. You will be solely responsible for any actions you take or omit to take based on your use of the Licensed Software or Services. We disclaim all liability for any errors in the output which results from your use of the Licensed Software in combination with, or where it inter-operates with, any third-party AI tool, product or system.

7. INDEMNIFICATION

7.1 Indemnification by us. Subject to the remainder of this clause 7, we will defend you against, or at our option, settle any Infringement Claim. We will indemnify you from any damages and/or costs awarded against you or an Authorised Affiliate or agreed in settlement by us (including your reasonable attorney's fees) in respect of the Infringement Claim.

7.2 Our Options. If any third party makes, or notifies an intention to make, a claim which may reasonably be considered likely to give rise to an Infringement Claim, or we reasonably conclude that the Licensed Software may be liable to an Infringement Claim, we will, at our own expense and option: (i) procure for you the right to continue to use the Licensed Software; or (ii) replace (within a reasonable period of time) the infringing components of the Licensed Software with other components with the same or similar functionality that are, in all material respects, acceptable to you (acting reasonably); or (iii) suitably modify the Licensed Software (within a reasonable period of time) so that it is non-infringing without material loss in functionality. If none of the foregoing options are available to us on commercially reasonable terms, we will have the right to terminate the Agreement without having any further liability to you except: (i) as provided in clause 7.1 above; and (ii) we shall refund you a pro-rata amount of any pre-paid Fees for the duration of any pre-paid subscription period for which you are unable to use the Licensed Software. This clause 7 states our entire liability to you in respect of the Infringement Claim.

7.3 Limitation on our indemnity. Notwithstanding the provisions of clause 7.1, we assume no liability for, and do not indemnify you against: (a) infringements which would not have arisen without the combination by you of the Licensed Software with any third party software or hardware products not approved by us or stated as compatible with the Licensed Software in the Documentation; (b) connections or integrations of the Licensed Software with any of your products or any of your components, whether enabled through APIs, third party software or otherwise; (c) modifications to the Licensed Software made by any party other than us or which are not made under our direction; (d) use of an unsupported Version of the Licensed Software; (e) trademark infringements involving any marking or branding applied by you or at your request and not approved by us; or (f) infringements arising from your negligence or wilful infringement.

7.4 Indemnification by you. Subject to clause 7.5, you will defend us against and indemnify us from any damages and/or costs awarded against us or any of our Affiliates or agreed in settlement by you (including our reasonable attorney's fees) arising out of a claim, suit or proceeding brought by a third party arising out of or in connection with your use of the Licensed Software in violation of any of our or any third party's Intellectual Property Rights.

7.5 Indemnity Procedure. Each Party's indemnification obligations (the "**Indemnifying Party**") under this clause 7 are conditional upon compliance with the following obligations of the Party seeking indemnification hereunder (the "**Indemnified Party**"): Indemnified Party will: (a) as soon as reasonably practicable (and in any event no later than thirty (30) days after becoming aware of the possibility of any such claim), give the Indemnifying Party written notice of the claim for which it is seeking indemnification, specifying the nature of such claim in reasonable detail provided that failure by the Indemnified Party to give such notice to the Indemnifying Party shall not relieve the Indemnifying Party of its indemnification obligation under this clause 7 except to the extent that such failure materially disadvantages the Indemnifying Party; (b) not make any admission of liability, agreement, settlement or compromise in relation to such claim without the Indemnifying Party's prior written consent or otherwise prejudice Indemnifying Party's defense of such claim; (c) provide reasonable cooperation and assistance to the Indemnifying Party at the Indemnifying Party's cost and request in connection with such defense; and (d) give the Indemnifying Party sole control over and authority to avoid, dispute, settle or defend such claim; provided that the Indemnifying Party will not settle any such claim without the Indemnified Party's prior written consent (not to be unreasonably withheld, conditioned or delayed) unless the settlement unconditionally releases Indemnified Party from further liability, and does not place undue restrictions on its business, products or services.

7.6 Mitigation. Each Party will use reasonable endeavours to avoid or mitigate any loss it may suffer or incur as a result of an event that may give rise to a claim under this clause 7.

8. SUSPENSION, TERMINATION

8.1 Subscription Term. Unless agreed otherwise in writing between the Parties or set out in an Order Form, “Initial Subscription Term” means an initial period of 12 months starting on the day upon which you have access to the Licensed Software (after conclusion of any evaluation period) and “Subscription Term” means the Initial Subscription Term and any Renewal Subscription Term(s). Upon expiration of the Initial Subscription Term or then-current Renewal Subscription Term, a renewal term of 12 months duration (each a “Renewal Subscription Term”) shall automatically commence unless either Party notifies the other in writing of its intention not to renew not less than 60 days before the expiry of the applicable then-current Initial Subscription Term or Renewal Subscription Term.

8.2 Access and Term. Upon successful registration in accordance with our then-current registration procedures, you will be provided with access to the Licensed Software to deploy in the Cloud Provider’s environment only. Such access will continue for the duration of the applicable Subscription Term unless (i) the Agreement/ Order Form is terminated or your access is suspended in accordance with the terms of the Agreement or (ii) you fail to maintain your subscription with Cloud Provider.

8.3 Termination for Cause. Either Party may terminate the Agreement and/or the applicable Order Form at any time upon written notice to the other Party if: (i) the other Party materially breaches any provision hereof and fails to cure such breach (where curable) within thirty (30) days after receiving written notice of such breach; (ii) the other Party becomes insolvent, is unable to pay its debts as they fall due or ceases to operate as a going concern; (iii) the other Party makes an assignment for the benefit of creditors; or (iv) there are instituted by or against the other Party proceedings in insolvency, bankruptcy, reorganization, receivership or dissolution and such proceeding is not stayed or dismissed within sixty (60) days. We will be permitted to terminate or suspend the Agreement and/or the applicable Order Form and/or any Services (including your ability to use, access and/or renew your license or license keys) immediately on written notice to you if (a) you become more than 120 days delinquent on your Fee payment; (b) you breach clause 1.2(a), 1.2(b) and/or 1.2(c); or (c) the power to conduct your affairs (whether by means of holding of shares, possession of voting rights, conferment of powers by articles of association or of incorporation or by any other means) is or becomes held by a Person or group of Persons whom we reasonably consider to be a direct competitor of ourselves without us having given consent to such change of control.

8.4 Termination for Convenience. You may terminate the Agreement, an Order Form or Marketplace subscription for convenience at any time during the Subscription Term upon giving us at least thirty (30) days’ prior written notice provided that where you terminate for convenience or we terminate for cause pursuant to clause 8.1 (and subject to our other rights and remedies) (i) you shall not be entitled to a refund of any Fees paid by you and (ii) you shall remain fully liable for any and all Fees which are due and payable as at the date of termination and for any annual license fees which would have been due for the remainder of any committed Subscription Term, which amounts shall become immediately payable as at the date of termination.

8.5 Cloud Provider Termination. This Agreement will automatically terminate if your Cloud Provider subscription is terminated.

8.6 Termination by Cloud Provider. You acknowledge that Cloud Provider has the right to terminate your access to the Licensed Software (and our ability to provide access to the Licensed Software) for convenience. In the event that Cloud Provider exercises such right, we shall notify you promptly and this Agreement shall terminate at the end of any winding-down period which is permitted by such Cloud Provider. We will each use reasonable endeavours to migrate your subscription to a direct subscription, where practicable, provided termination has not resulted from any breach by you of this Agreement or of the terms of your agreement with your Cloud Provider.

8.7 Return of Licensed Software. Upon termination of the Agreement and/ or the applicable Order Form/ Marketplace subscription (or expiry or termination of the Subscription Term) all rights granted under clause 1 shall cease and you will make no further use of any Licensed Software or Documentation which has been the subject of termination. Within five (5) Business Days after such termination of the Agreement and/ or applicable Order Form/ Marketplace subscription or termination or expiry of a Subscription Term for the applicable Licensed Software, we may disable your access to and/or use of the Licensed Software and you will either destroy or return to us the originals and all copies of the Licensed Software and Documentation in your possession or under your control and you will certify to us in writing signed by your officer or senior vice president your compliance with these requirements. In addition, you will immediately cease to use all of our trademarks, titles, copyright symbols and legends and, at our election, destroy or deliver to us all materials in your control or possession which bear such trademarks, titles, copyright symbols and legends.

9. SURVIVING PROVISIONS OF AGREEMENT.

Termination of the Agreement or an Order Form by either Party shall in no way prejudice any existing right or claim or relieve you from your obligation to pay us any sums accrued or due prior to the date of such termination. Together with any other provision which is either expressed to or by implication is intended to survive termination, the provisions of clauses 1.2(b), 1.2(d), 2, 3, 4, 6, 7, 8.3, 9 and 10 (inclusive) shall survive the termination of the Agreement or the applicable Order Form for any reason. All other rights and obligations of the Parties shall cease upon termination of the Agreement or the applicable Order Form.

10. ADDITIONAL PROVISIONS

10.1 Independent Contractors. The Parties are independent contractors. Nothing contained herein or done pursuant to the Agreement shall constitute either Party being the agent or employee of the other Party for any purpose or constitute the parties as partners or joint venturers. Neither Party will create or assume any obligation on behalf of the other Party for any purpose whatsoever unless such other Party expressly agrees to such an obligation in writing. Notwithstanding the above, each Party agrees to act in good faith in relation to its dealings with the other under the Agreement including in relation to the requirements regarding usage, audits, and reporting.

10.2 Governing Law and Jurisdiction. The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws set out below. Without prejudice to either Party's right to seek injunctive relief (or any other provisional remedy) from any court having jurisdiction over the parties and the subject matter of the dispute as they consider necessary to protect their name, proprietary information, trade secrets, know-how, or any other Intellectual Property Rights, and without regard to the United Nations Convention on Contracts for the International Sale of Goods, all disputes arising out of or in relation to the Agreement (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the courts set out below. Each Party hereby waives any disputes it may have with respect to proper venue.

Customer's Domicile (registered address as stated on the Order Form/ Subscription Order)	Governing Law	Venue (courts with exclusive jurisdiction)
Americas, Canada, Middle East; Africa	New York	New York state courts located in the County of New York, in the borough of Manhattan and in the federal courts located in the Southern District of New York
United Kingdom, Europe, Pacific and Asia, Australia and New Zealand	England & Wales	London

10.3 Dispute. Except in the case of a Party seeking to exercise its right to injunctive relief or any other provisional remedy, or in the case of infringement or misappropriation of our Intellectual Property Rights or violation or disclosure of Confidential Information, in the event of a dispute between the Parties relating to the Agreement, the Party raising the matter in dispute will notify the other in writing describing in sufficient detail the nature of the dispute. Each Party will then appoint or nominate one or more senior representatives to resolve the dispute. At the end of thirty (30) days, if no agreement has been reached between the Parties to resolve the dispute, either Party is free to initiate proceedings.

10.4 Commercial Computer Software. The Licensed Software and Services (including all components) are commercial in nature and developed solely at private expense and are "Commercial Computer Software" and "Commercial Computer Software Documentation." In accordance with Section 12.212 of the Federal Acquisition Regulations (FAR) and Sections 227.7202-1 through 227.7202-4 and DFARS 252.227-7014(a)(1) of the Defense Federal Acquisition Regulation Supplement (DFARS), any use, duplication or disclosure of the Licensed Software or Services (including all components) by the U.S. Government or any of its agencies will be governed by and subject to all of the terms, conditions, restrictions, and limitations of the Agreement. Use of the Licensed Software and Services (including all components) is an agreement by the U.S. Government that the Licensed Software and Services (including all components) include "commercial computer software" and "commercial computer software documentation" and constitutes acceptance of the rights and restrictions in the Agreement.

10.5 Notices. All notices made pursuant to the Agreement must be made in writing. Any written notice to be given or made pursuant to the provisions of the Agreement shall be sent postage prepaid by registered or recorded mail or reputable courier service, addressed to the other Party's address stated in the Order Form or as otherwise notified to the other Party (in the case of a notice to us, with a copy by email to KXLegal@kx.com) and shall be marked for the attention of "The Company Secretary". Unless otherwise provided in the Agreement, all notices shall be deemed as received five (5) days from proof of postage in accordance with this clause.

10.6 Assignment, Successors and Subcontractors. The Agreement shall be binding and inure to the benefit of the Parties and their respective permitted successors (as notified to us) and assignees. Subject to the next sentence, you will not assign, transfer or novate any of your rights nor delegate any of your obligations under the Agreement to any third party without our express written consent. You may assign this Agreement to any of your Authorised Affiliates for the purposes of internal reorganisation or to a successor to your business in the event of a reorganization or merger or the sale of your business or all or substantially all of your assets to a third party upon written notice to us conditioned upon (i) such successor business not being a competitor of ours (determined by us in our reasonable discretion) and (ii) Cloud Provider's acceptance of such assignment and the assignment of your related cloud subscription. We may assign, transfer or novate all or any our rights and obligations under the Agreement to any of our Affiliates for the purposes of internal reorganization or to a successor of our business in the event of the merger or the sale of our business (including a change of control) or all or substantially all of our assets to a third party provided that the assignee, transferee or novatee undertakes to you to be bound by and perform our obligations under the Agreement. Any attempted assignment without required approvals will be null and void and of no legal effect. We may subcontract all or part of the Services to third parties or Affiliates (subcontractors) and/or use Affiliates to perform the Services provided that we have a written agreement with them that contains industry standard confidentiality obligations and we remain responsible for breaches of the Agreement caused by our subcontractors and Affiliates and subject to the Data Processing Agreement referred to in clause 10.17 below.

10.7 Force Majeure. Neither Party will be liable for any failure or delay in performing their obligations (other than obligations to pay) where such failure or delay results from any cause which is beyond that Party's reasonable control including failure of utilities or the internet, fire, flood, earthquakes, collapse of buildings, explosion, acts of terrorism, acts of war, public health emergencies, governmental action, any law or any action taken by a government or public authority including imposing an export or import restriction, quota or prohibition that prevents or delays the provision of the Licensed Software or any of the Services. Dates or times by which each Party is required to render performance under the Agreement shall be postponed automatically to the extent and for so long that the Party is delayed or prevented from meeting them by such causes. We may terminate the Agreement and/or the provision of any Services on immediate written notice to you if we are not permitted to deliver such Services or to grant you access to the Licensed Software due to an embargo, trade sanction or other comparable restrictive measure.

10.8 Waiver. The failure or delay of either Party to insist upon strict performance of any provision of the Agreement, or to exercise any right or remedy to which it is entitled under or in connection with the Agreement shall not constitute a waiver thereof and no waiver of any breach of the Agreement shall operate as a waiver of any subsequent or continuing breach.

10.9 Entire Agreement and Amendment. Each Party acknowledges that in entering into this Agreement it does not rely on any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that the remedies for any claim for innocent or negligent misrepresentation based on any statement in this Agreement shall be limited to the remedies available for breach of contract. The Agreement may be amended or modified only in a written document (which may include the Order Form) and signed by authorized representatives of each Party.

10.10 Severability. If any provision or part-provision of the Agreement is found to be invalid, illegal, or unenforceable by a court of competent jurisdiction, such provision or part-provision shall be severed from the remainder of the Agreement, which will remain in full force and effect to the maximum extent permitted by law, given the fundamental intentions of the Parties. If any provision or part-provision of the Agreement is deemed deleted under the foregoing sentence, the Parties will negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

10.11 Equitable Relief. Each Party agrees that a breach or threatened breach by such Party of any of its obligations under clause 4 or, any unauthorized use by you of the Licensed Software or any Supplier Intellectual Property Rights, would cause the other Party irreparable harm and significant damages for which there may be no adequate remedy under law and that, in the event of such breach or threatened breach, the other Party will have the right to seek immediate equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

10.12 Third Party Rights. No person other than the Parties to the Agreement will have the right to enforce any term of the Agreement. In particular, a person who is not a Party to the Agreement will not derive the right to enforce any of the terms of the Agreement including, where the laws of England and Wales apply, by virtue of the Contracts (Rights of Third Parties) Act 1999 and the rights of any third party under that act are hereby expressly excluded.

10.13 Usage by Affiliates. Where the Order Form provides for usage of the Licensed Software by Authorised Affiliates or we otherwise consent in writing to allow Authorised Affiliates to use the Licensed Software (including via your online registration for the Licensed Software on the Marketplace), such usage shall be restricted to the Authorised Affiliates listed on the Order Form. You will be responsible and liable for any losses, costs, expenses, or damages incurred by, or claims received by, us as the result of the acts and/or omissions of your Authorised Affiliates. You agree that any act or omission by any such Authorised Affiliate that would be a breach of the Agreement if the Authorised Affiliate were a Party to the Agreement will be considered and treated as a breach by you. The rights of your Authorised Affiliates with respect to the Licensed Software will be no greater than your rights, and the obligations of your Authorised Affiliates with respect to the Licensed Software will be no less than your obligations. You will take all such steps as are necessary to ensure that your Authorised Affiliates comply with the terms and conditions of the Agreement to the same extent as you are obligated to comply with its terms and conditions.

10.14 Trade Control. You acknowledge that any Licensed Software (including its related technical data and services) may be deemed dual use and is subject to, without limitation, the export control laws and regulations of the United Kingdom, European Union, and United States of America ("**Trade Control Laws**"). You agree to fully comply with those Trade Control Laws in connection with the Licensed Software including where applicable assisting in obtaining any necessary governmental approvals, licenses and undertakings. You will not, and will not allow any third party, to use, export, re-export, or transfer, directly or indirectly, of any part of the Licensed Software in violation of any Trade Control Laws or to a destination subject to US, UN, EU, UK or Organisation for Security and Cooperation in Europe (OSCE) embargo, or to any individual or entity listed on the denied parties' lists. A statement on the Export Controls applicable to the Licensed Software, is available at the following website: [Export Statement - KX](#). Any dispute in relation to this clause 10.14 shall be governed in accordance with clause 10.2 unless Trade Control Laws determine otherwise. You acknowledge that we may not be permitted (and, in such an event, shall be excused from any requirement) to deliver or grant access to the Licensed Software, or perform support or services, due to an embargo, trade sanction or other comparable restrictive measure. You may not access or use the Licensed Software from countries where such use is prohibited by Trade Control Laws.

10.15 Compliance with laws and Anti-Bribery. We will perform our obligations under this Agreement in compliance with any laws applicable to us, without regard to your specific use of the Licensed Software and Services. You will use the Licensed Software and Services in compliance with all laws applicable to you. Each Party will comply with all Applicable Laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and the US Foreign Corrupt Practices Act 1977.

10.16 Order of Precedence. The order of precedence shall be as detailed in the Order Form (where relevant). The terms and conditions of the Agreement shall prevail notwithstanding any other terms and conditions of any purchase order or other ordering document submitted or purported to be relied upon by you.

10.17 Data Protection.

(a) Each Party agrees to comply with its applicable obligations under Data Protection Laws in relation to its processing of personal data under the Agreement. If, in the course of providing any Professional Services and/or Software Support Services, we are a processor of your personal data, the provisions of the [Data Processing Agreement](#) will apply. You acknowledge that we or any of our Affiliates may process any personal data that is collected by us in connection with registration for a subscription on the Marketplace or to receive Software Support Services, in accordance with the privacy notice (as amended from time to time) that can be found or linked on the designated support portal or that may otherwise be provided to you by us from time to time. You acknowledge that any Personal Data you make available to us or to Cloud Provider as part of your access to the Licensed Software (e.g. email addresses and contact details) may be shared between us and Cloud Provider for the purposes of fulfilling our obligations under this Agreement.

(b) As between the parties, you are solely responsible for: (1) all technical, administrative and organizational measures related to the security and integrity of the Cloud Provider environment; and (ii) securing and backing up your data which is processed by the Licensed Software.

10.18 Evaluation and Temporary Licenses. From time to time, we may offer additional copies of our proprietary software products to you on a temporary basis for reasonable amounts of usage for evaluation and trial use (collectively, "Evaluation Products") or alpha/beta/ preview features of your Licensed Software which are not yet available on general release ("Beta Features"). Your use of Evaluation Products and Beta Features is subject to any additional terms that we specify and is only permitted during the period which we designate (or, if not designated, until terminated in accordance with this Agreement). In addition, from time to time, we may provide you with additional copies of our proprietary software products or increase your usage metrics for the Licensed Software on a temporary basis. Your use of such additional products or increased usage metrics is only permitted during the period which we designate (or, if not designated, until terminated in accordance with the Agreement). Beta Features may or may not be included, and/or may be changed, in any general release version of the Licensed Software, at our entire discretion. You acknowledge that you are responsible for your own fees for access to and usage of the cloud services and infrastructure on which the Licensed Software is installed and which are payable directly by you to the relevant Cloud Provider during such evaluation period. EXCEPT AS OTHERWISE SET FORTH IN THIS CLAUSE OR AS OTHERWISE AGREED WITH YOU IN WRITING, THE TERMS AND CONDITIONS OF THE AGREEMENT FULLY APPLY TO THE USE OF SUCH PRODUCTS OR ADDITIONAL USAGE METRICS. NOTWITHSTANDING ANYTHING CONTAINED ABOVE, (I) THE SOFTWARE SUPPORT SERVICES SHALL NOT APPLY TO ANY EVALUATION PRODUCTS OR BETA FEATURES; (II) YOU WILL NOT USE ANY EVALUATION PRODUCTS OR BETA FEATURES IN PRODUCTION OR ANY BUSINESS CRITICAL SETTING; AND (III) OUR LIABILITY RELATING TO EVALUATION PRODUCTS, BETA FEATURES OR SOFTWARE PROVIDED ON A TEMPORARY BASIS FREE OF CHARGE, INCLUDING ANY SERVICES PROVIDED DURING A FREE EVALUATION PERIOD, WILL BE LIMITED TO FIVE THOUSAND US DOLLARS (US\$ \$5,000).

10.19 Reservation of Rights. Except for the limited rights and licenses expressly granted under the Agreement, nothing in the Agreement grants, by implication, waiver, estoppel, or otherwise, to you or any third party, any Intellectual Property Rights or other right, title, or interest in or to the Licensed Software, Services or Documentation.

10.20 Counterparts and Signature. By clicking "I accept" or by accessing or otherwise using the Licensed Software which you are licensing via the relevant plan/selection on the Marketplace, you are agreeing to be bound by this Agreement. In the event that the Agreement is entered into via an Order Form, the Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of the Agreement, but all the counterparts shall together constitute the same. Delivery of an executed counterpart of a signature page to an Order Form by email of a scanned copy, or execution and delivery through an electronic signature service (such as DocuSign), shall be effective as delivery of an original.

DEFINITIONS

Affiliate(s)	means with respect to any given Person, a Person that directly or indirectly Controls, is Controlled by, or is under common Control with the given Person. " <u>Control</u> " means, when used with respect to any Person, the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms " <u>Controlling</u> " and " <u>Controlled</u> " have meanings correlative to this.
Agreement	means the definition provided on the Order Form (where applicable) and if there is no Order Form, this Marketplace License Agreement together with your subscription order.
Ancillary Tools	has the meaning ascribed to it in clause 5(d) of the Professional Services Terms (where applicable).
Auditors	has the meaning ascribed to it in clause 1.2(d).
Applicable Laws	means local, foreign and international laws, rules, regulations, orders, directives, and other similar instruments including interpretations with the force of law that apply to the performance of the applicable Party hereunder.
API	means an application programming interface and accompanying or related Documentation, code, tools, executable applications, libraries, subroutines and other materials (and all derivative works or modifications thereof) that allows other software to communicate with or call on Licensed Software, including any access code, authentication keys or similar mechanisms to enable access of the APIs.
Authorised Affiliate	means those Affiliates listed in the Order Form or otherwise agreed by us in writing which are in existence at the date of the Order Form or our consent or subsequently agreed to in writing by us who are permitted to access and use the Licensed Software in accordance with the Agreement.
Authorised Representative	has the meaning ascribed to it in the Software Support Terms.
Business Hours	means the period from 9.00 am to 5.00 pm on any Business Day.
Business Days	means Monday to Friday excluding public holidays in the jurisdiction from where Professional Services are performed and if no Professional Services are performed, has the meaning given in the Software Support Terms.
Cloud Provider	means the cloud provider of the Marketplace through which you purchased your license to use the Licensed Software (being Microsoft, AWS or GCP).
Confidential Information	means (a) information, in any form, disclosed by a Party or its Affiliates (the "disclosing Party") to the other Party or its Affiliates (the "receiving Party") and which is marked or identified as confidential at the time of disclosure or otherwise that would be regarded as confidential by a reasonable business person under the circumstances of disclosure; and (b) the Licensed Software, Documentation and other Supplier Materials.
Customer Computer	means the Cloud Provider environment through which you purchased your license to use the Licensed Software with access controlled to ensure that only your (and, where applicable, your Authorised Affiliates') Employees or Contractors are able to access and use the Licensed Software.
Consulting Services	certain implementation, training, consulting, design and development services as further detailed in a Service Pack or Consulting Services Statement of Work (as applicable).
Contractor	means an independent contractor to you that has entered into a written agreement with you that obligates the Contractor to industry standard confidentiality obligations and in respect of whom you shall remain responsible.
Copyleft Materials	means materials subject to any license that requires as a condition of use, modification, or distribution thereof, that such materials, or materials combined or distributed with such materials, be (1) disclosed or

distributed in source code or similar form, (2) licensed for the purpose of making derivative works, or (3) redistributable at no charge.

Data Protection Laws	means any applicable data protection laws including, without limitation, the General Data Protection Regulation (EU) 2016/679 as it applies in the European Union ("GDPR"), the UK Data Protection Act 2018, the GDPR as it forms part of UK law by virtue of the European Union (Withdrawal) Act 2018 ("UK GDPR"), and any other applicable legislation in respect of privacy and/or processing Personal Data, each to the extent applicable to the activities or obligations of the parties under or pursuant to the Agreement, and as may be amended, supplemented or replaced from time to time. The terms " personal data ", " processing ", " data subject ", " controller ", and " processor " shall have the meaning given under the applicable Data Protection Laws.
Documentation	means our then-current technical and/or functional documentation for the applicable Licensed Software which is either made available at Documentation for KX products - Product documentation or delivered or made available to you in eye-readable form with the Licensed Software to assist in the use of the Licensed Software and as may be updated from time to time.
Employee	means any of your regular employees or workers who has entered into a written employment or other agreement with you that obligates them to industry standard confidentiality obligations.
Error	means the definition provided in the Software Support Terms.
Error Correction	means the definition provided in the Software Support Terms.
Fees	means the fees specified on the offer / plan / pricing page of the Marketplace for the Licensed Software or, where applicable, the fees for provision of the Licensed Software and/or Services as detailed in the Order Form (or otherwise chargeable in accordance with the Agreement).
Feedback	means bug reports, input, comments or suggestions from you, provided on a voluntary basis and without warranty, regarding our technology and/or the possible creation, modification, correction, improvement or enhancement of our software, products and/or services whether or not marked or designated by you as confidential, exclusive of your Confidential Information.
Initial Subscription Term	Means one year, unless a different term is agreed in writing in the Order Form or otherwise, in relation to the initial duration the license of any Licensed Software.
Infringement Claim	means third party claims, suits and/or proceedings brought against you or any of your Authorised Affiliates alleging that your or your Authorised Affiliates' use of the Licensed Software as permitted under the Agreement infringes any Intellectual Property Rights of a third party.
Intellectual Property Rights	means patents, utility models, rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in computer software and preparatory design materials, moral rights, database rights, and any other intellectual property rights, whether registerable or not, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection of a similar nature or having similar or equivalent effect to any of them which subsist or will subsist, now or in the future, in any part of the world.
License Restrictions	means those restrictions relating to the use of the Licensed Software set out in clause 1.2.
Licensed Software	means the software listed on the Order Form or for which you have purchased a license via the Marketplace (as applicable), in its compiled code form or if we provide any elements in source, in source code form, and all Versions, updates, enhancements and fixes provided by us to you pursuant to the

Agreement (including as part of the Software Support Services) and the License Keys therefor. The Licensed Software does not include New Products.

License Key	means a confidential security code or electronic file provided by us that enables the Licensed Software to be used by you on the Customer Computer.
Malicious Code	means any software, script, code, file, program, or other harmful or unwanted computer instructions that are designed to infiltrate, disrupt, damage, or gain unauthorized access to computer systems, networks, data, or software. This includes, but is not limited to, viruses, worms, spyware, adware, ransomware, Trojan horses, logic bombs, or any other similar malicious programs or code designed to impair the functionality, security, or performance of the software, hardware, or data.
Managed Services	means certain managed services identified as applicable in an Order Form or in your online subscription for the Licensed Software and as further detailed in the Managed Services Terms found here: https://kx.com/legal/managed-services-terms/
Marketplace	means the online marketplace through which you purchased the Licensed Software.
New Product	means our or any of our Affiliates' software product that either: (a) provides significantly different or added functionality from the Licensed Software; or (b) is of significantly different design than the Licensed Software even if the new software product includes some of the functionality of the Licensed Software (in whole or in part).
Operating Platform	means the operating system software as stated in the Documentation.
Order Form	means the document agreed and executed between the Parties, which sets out the Licensed Software and/or any Services to be provided by us to you and confirms the applicable terms and documents which will then form part of the Agreement in relation thereto. Where there is no Order Form, the terms of your subscription shall be those set out in your online subscription for the Licensed Software on the relevant Marketplace.
Permitted Use	means, in respect of any Licensed Software, the definition provided in the Order Form and if there is no Order Form, then as follows: you may access and use the Licensed Software via Cloud Provider's environment only and solely for your internal (a) business operations and (b) development and testing of the Licensed Software
Person	means a natural person, partnership (whether general or limited), limited liability company, trust, estate, association, corporation, custodian, nominee or any other individual or entity in its own or any representative capacity or any governmental authority.
Pre-Existing Materials	shall have the meaning ascribed to it in clause 5(a) of the Professional Services Terms.
Professional Services	means any Consulting Services and/or Managed Services to be provided by us as set out in the Order Form, and subject to the provisions of the Professional Services Terms and, in the case of the Managed Services, the Managed Services Terms.
Professional Services Terms	Means the Professional Services Terms available here: https://kx.com/legal/professional-services-terms-v4/
Renewal Subscription Term	has the meaning given in clause 8.1.
Services	means as applicable and detailed in an Order Form, the Software Support Services and/or Professional Services.

Software Support Services	means the software related support services to be provided by us as set out in the Order Form or at the point of your online subscription (as applicable) (and if no support level is stated, you shall be entitled to Silver support), and subject to the provisions of the Software Support Terms.
Software Support Terms	means the Software Support Terms available here: https://kx.com/legal/software-support-terms-v5/
Subscription Term	has the meaning given in clause 8.1.
Supplier Intellectual Property Rights	means the Intellectual Property Rights in: (i) the Licensed Software and Documentation; (ii) Supplier Materials which were developed or obtained by us or our Affiliates prior to or independently of the Agreement; (iii) Supplier Materials developed or obtained by us or our Affiliates in the performance of the Software Support Services or any Managed Services; and (iv) any inventions, customizations, enhancements, improvements, updates, derivative works and other modifications thereof.
Supplier Materials	means all software (in object and source code form), programs, tools, materials, information, concepts, designs, utilities, Ancillary Tools, processes, methodologies, database schema, APIs, dashboards, user interfaces, or any work product in generic format, or methodologies, that are our or our Affiliates' property.
Taxes	means all federal, state, dominion, provincial, or local sales, use, personal property, excise, withholding or other taxes, fees, or duties arising out of the Agreement or the transactions contemplated by the Agreement (other than taxes on our net income and on the payment of our employees' salaries).
Third Party Software	means third party software or third party open source software or components which are included with the Licensed Software and identified in the software bill of materials which will be made available to you at or before the point of download or provided during the performance of the Services, as applicable.
Trade Control Laws	Has the meaning provided in clause 10.14.
Usage Report	means the definition provided in the Software Usage Terms referenced on the Order Form or on the relevant Marketplace subscription page (as applicable).
Usage Metric	means the standard of measurement for calculating the fees due for the applicable Licensed Software as set forth in the Order Form or online subscription page on the Marketplace.
Usage Metric Limitations	means the limitations on use of the Licensed Software specified in the Order Form or at the point of your online subscription for the Licensed Software (as applicable), or as otherwise agreed in writing between the Parties.
User	means an identifiable individual, not necessarily named at the time of a license grant, designated by you as a user of the Licensed Software, regardless of whether or not the individual is actively using the Licensed Software at any given time. An individual shall only be designated as a User on the earlier of a) the date they are authorized by you to access the Licensed Software or b) the date they first use the Licensed Software.
Version	means the definition provided in the Software Support Terms.
Warranty Period	has the meaning ascribed to it in clause 5.1.

Rules of Interpretation.

In the Agreement, unless otherwise stated:

- a) the clause, section, paragraph, schedule and other headings in the Agreement are included for convenience only and shall have no effect on interpretation;
- b) a reference to any English (where English law applies) or to any New York (where New York law applies) action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any other jurisdiction, be deemed to include a reference to that which most nearly approximates to the English/New York (as applicable) equivalent in that jurisdiction;
- c) words in the singular include the plural and vice versa;
- d) any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- e) a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form (including email); and
- f) a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time and a reference to legislation includes all subordinate legislation made from time to time under that legislation.