

# KNIME Inc. US End User Subscription Agreement

## Preamble

This Agreement for KNIME Software Subscriptions becomes a legally binding contract between the customer ("Customer") and KNIME Inc. ("KNIME") when the Customer agrees to the terms in an electronic delivery method or procures the KNIME Software Product(s) ("Software"). If Customer refuses to accept the terms of this Agreement, Customer may not download, access, and/or use the Software. KNIME distributes the Software on a subscription basis. Customer is required to thoroughly and carefully read through the complete agreement before agreeing to the conditions specified here. These Terms combined with a KNIME invoice or KNIME order acknowledgement form the entire agreement between the Parties.

## 1. Subscription.

**1.1. Subscription Period.** The KNIME Software is offered to Customers on a Subscription basis. During the Subscription Period, as specified on a KNIME Invoice or KNIME Order Acknowledgement, KNIME shall make the Software available to Customer pursuant to the terms of this agreement. All rights not expressly granted to Customer are reserved by KNIME and its licensors. The Subscription Period shall be noted on KNIME's Invoice or Order Acknowledgement.

### 1.2. Software Usage Rights; Software Key and License Control Software

**1.2.1. Use of Software.** During the Subscription Period, Customer has: (a) a non-exclusive, revocable, non-transferable, limited license to install or access the Software at Customer's facility or at a Customer-controlled space within a third-party data center and (b) to use the Software, solely for Customer's own internal business purposes and limited to the Licensing Metric and Subscription Period for which Customer has paid the applicable fees.

**1.2.2. Software Key.** KNIME shall provide Customer with a Software Key to allow Customer access to the applicable Software after Customer's payment in full of the Fees shown on the KNIME Invoice.

**1.2.3. License Control Software.** Customer acknowledges that: (a) the Software includes License Control Software that locally records Licensing Metrics and permits KNIME and its authorized service providers, if applicable, the ability to monitor usage of the KNIME Software and (b) use of such License Control Software is fundamental to the business of KNIME.

**1.3. Technical Support.** During the Subscription Period, KNIME will use reasonable best efforts, by electronic communication at KNIME's discretion, to help Customer solve specific problems with installation or use of the Software. It is a generally accepted software industry standard that it may not be possible for KNIME to solve all problems or correct all errors in the Software. From time to time, KNIME may make available, and Customer agrees to use reasonable efforts to install, new releases, updates and corrective software. During ongoing software development, KNIME may add, change or delete individual components or functionality in new releases. Such software modifications shall be subject to the terms of this Agreement. If Customer chooses not to install the most current release of the Software, the level of technical support may diminish over time.

**1.4. Customer Responsibilities.** Customer shall: (a) be responsible for all of its end-users' compliance with this Agreement, (b) be solely responsible for the accuracy, integrity, and legality of Customer Data and the means by which it acquires, uses, and shares such Customer Data, (c) use the Software in accordance with this Agreement and with applicable laws, rules, regulations (including, without limitation, export, data protection and privacy laws, rules and regulations) and any Software documentation, and (d) notify KNIME immediately of any unauthorized use of, or access to, the Software or any account or password thereof. Customer agrees to defend, indemnify and hold KNIME and its Affiliates, and their officers, directors, employees, subcontractors and agents, harmless from any and all claims, damages, losses, liabilities, costs (including attorneys' fees and court costs) arising from or resulting from any act, omission or failure of Customer that violates or breaches any of the responsibilities of Customer set forth above.

**1.5. Restrictions.** Customer shall not, directly or indirectly: (a) sublicense, resell, rent, lease, distribute, market, commercialize or otherwise transfer rights, access or usage to the Software or any modified version or derivative work of the Software created by or for Customer; (b) provide the Software, or any modified version or derivative work of the Software created by or for Customer, on a timesharing, service bureau or other similar basis; (c) remove or alter any copyright, trademark or proprietary notice on or in the Software; (d) alter, modify, or create derivative work of, reverse engineer, decompile or otherwise attempt to discover the source code of any portion of the Software or any modified version or derivative work of the Software created for Customer; (e) copy any features, functions or graphics of the KNIME Software for any purpose other than what is expressly authorized in this agreement; or (f) modify any portion of the License Control Software.

## 2. Proprietary Rights.

2.1. KNIME Intellectual Property. KNIME or its licensors owns or has licenses in and to the Intellectual Property Rights comprising the KNIME Software or parts thereof and any modifications thereto, including, without limitation, any modifications created by or for Customer. This Agreement does not convey or transfer any ownership rights in or to the Software or any Intellectual Property Rights therein to Customer. KNIME's name, logo, trade names and trademarks are owned or licensed by KNIME, and no right is granted to Customer to use any of the foregoing except as expressly permitted by KNIME. KNIME reserves all rights, title, and interest in and to all copies of the KNIME Software.

## 3. Fees and Payment.

3.1. Fees. Customer shall pay all fees associated with the Subscription specified in the invoice. Except as otherwise provided, these fees will be: (a) fixed during the Subscription Period; (b) invoiced upon the begin of the Subscription Period; (c) based upon the Licensing Metric purchased, even if actual usage is lower; and (d) non-cancelable and non-refundable.

3.2. Renewal. Except as otherwise agreed upon, KNIME shall send an invoice approximately 30 days prior to the end of the then current Subscription Period, and the Customer's Subscription to the Software will automatically renew for one year terms unless Customer gives KNIME written notice within 14 days after the invoice was received by Customer. Any pricing or Licensing Metric changes for the renewal term will be reflected on the KNIME invoice. KNIME reserves the right to modify the fees in connection with License Term renewal.

3.3. Payment. Unless Customer automatically pays by credit card (or other applicable KNIME-approved automated-payment mechanism), fees are due net 30 days from the invoice date. Customer agrees to provide KNIME with complete and accurate billing and contact information.

3.4. Overdue Charges; Suspension of Subscription. Overdue amounts are subject to interest at 1.5% per month, or the maximum rate permitted by law, whichever is lower. Notwithstanding the foregoing, if the applicable charges are under reasonable and good faith dispute and Customer is cooperating diligently to resolve the dispute, KNIME will not exercise its rights set forth under this section. If Customer fails to cooperate to resolve a dispute or does not pay KNIME within 45 days from the KNIME invoice date, KNIME may in its sole discretion suspend access to the Subscription until payment in full is accepted.

3.5. Taxes. Customer shall be responsible for paying all taxes of any nature which become due with regard to software, technical support or any other good or service purchased from KNIME, except for taxes on KNIME's income, irrespective of which party may be responsible for reporting or collecting such taxes. In addition, Customer shall pay all import and export duties, government permit fees, software license fees, subscription fees, customs fees and similar fees levied as a result of the existence or operation of this Agreement and any penalties, interest, collection costs and withholding costs associated with any of the foregoing.

3.6. Reporting. Customer shall maintain accurate records (including, without limitation, the reports described above in Section 1.2.3) necessary to verify the Licensing Metric quantity. Upon KNIME's or its third party appointee's written request, Customer shall provide KNIME or its third party appointee with such records within ten (10) days. If Customer has utilized more Licensing Metric quantity than Customer has paid for, Customer shall immediately pay the applicable fees for such additional Licensing Metric, for the entire Subscription Period, in addition to reasonable costs incurred by KNIME associated with reviewing such records.

## 4. Term and Termination.

4.1. Term. This Agreement commences on the start date of the Subscription Period and continues until all Licensing Metric granted in accordance with this Agreement have expired or have been terminated.

4.2. Termination for Incurable Breach. This Agreement shall terminate immediately if Customer violates Section 1.5 of this Agreement.

4.3. Termination by Customer or KNIME. Either Party may terminate this Agreement prior to the end of a Subscription Period if the other Party: (a) materially breaches its obligations hereunder and, where such breach is curable, such breach remains uncured for thirty (30) days following written notice of the breach or (b) becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors. Upon termination or expiration of a Subscription, Customer must immediately cease any use of the Software and: (i) return to KNIME or (ii) destroy and certify destruction of all copies of the Software.

4.4. Surviving Provisions. Customer's obligation to make a payment of any outstanding, unpaid fees, the defined terms used in this agreement and the terms of Sections 1.4, 1.5, 2, 3, 4.3, 4.4, 5.2, 6, and 7 shall survive termination or expiration of this agreement.

## **5. Limited Warranties, Exclusive Remedies and Disclaimers.**

5.1. KNIME Limited Warranties. KNIME warrants that KNIME Software shall perform materially in accordance with the online user guide for the applicable KNIME Software. For any breach of this limited warranty, Customer's sole and exclusive remedy shall be to terminate this agreement pursuant to Section 4.3 and, notwithstanding anything to the contrary in Section 3.1 of this Agreement, have KNIME refund to Customer the pro rata unused portion of any pre-paid fees.

5.2. DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, KNIME SOFTWARE IS PROVIDED TO CUSTOMER STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. KNIME'S SUPPORT MAY BE SUBJECT TO LIMITATIONS OR ISSUES INHERENT IN THE USE OF THE INTERNET AND KNIME IS NOT RESPONSIBLE FOR ANY PROBLEMS OR OTHER DAMAGE RESULTING FROM SUCH LIMITATIONS OR ISSUES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES AND SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO CUSTOMER.

## **6. Limitation of Liability.**

6.1. LIMITATION ON ALL DAMAGES. EXCEPT FOR CUSTOMER'S BREACH OF SECTION 1.5 AND 3.6, IN NO EVENT SHALL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED IN THE AGGREGATE THE TOTAL AMOUNT PAID BY CUSTOMER TO KNIME UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE ACT OR OMISSION GIVING RISE TO THE CLAIM OR LIABILITY. THE FOREGOING SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTION 3.

6.2. DISCLAIMER OF CONSEQUENTIAL DAMAGES. EXCEPT FOR CUSTOMER'S BREACH OF SECTION 1.5 AND 3.6, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOSS OF USE OF THE SOFTWARE, SYSTEMS OR NETWORKS, DATA OR PROFITS, SAVINGS OR REVENUE OR FOR ANY INDIRECT, SPECIAL, COVER, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT (INCLUDING NEGLIGENCE OR OTHERWISE)), ARISING UNDER THIS AGREEMENT AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

KNIME DOES NOT WARRANT THAT THE FUNCTIONS OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## **7. General.**

7.1. Publicity. Neither KNIME nor Customer shall issue press releases or include the other's name and logo in customer or vendor lists without the prior consent of the other Party.

7.2. Export Compliance. Customer shall comply with the export laws and regulations of the United States as well as the country where the Software is delivered or used. Under these laws, the Software may not be sold, leased or transferred to embargoed countries, other restricted countries, restricted end-users, or for restricted end-users. Customer specifically agrees that the Software will not be used for activities related to weapons of mass destruction, including but not limited to activities related to the design, development, production or use of nuclear materials, nuclear facilities, or nuclear weapons, missiles or support of missile projects, or chemical or biological weapons.

7.3. U.S. Government Restricted Rights. The Software and documentation provided with the Products and Services are "commercial items" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end-users acquire the software and documentation with only those rights set forth in this Agreement. Contractor of KNIME-Branded Software and Products is KNIME Inc., 11801 Domain Boulevard, 3<sup>rd</sup> Floor, Austin, Texas 78758 USA.

7.4 Assignment. Customer may not assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of KNIME. Any attempted assignment in breach of this section shall be void. This Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns.

7.5. Relationship of the Parties. KNIME and Customer are independent contractors, and nothing in this agreement or any attachment hereto will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the parties.

7.6. No Third-Party Beneficiaries. There are no third party beneficiaries to this Agreement.

7.7. Choice of Law and Jurisdiction. This agreement will be governed by and construed in accordance with the laws of the State of Texas, USA, excluding its conflicts of law provisions. Customer and KNIME agree to submit to the personal and exclusive jurisdiction of the state and federal courts located in Austin, Travis County, Texas. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

7.8. Attorney's Fees. In any action related to this agreement, if any Party is successful in obtaining some or all of the relief it is seeking or in defending against the action, the other Party shall pay, on demand, the successful Party's reasonable attorneys' fees and reasonable costs.

7.9. Manner of Giving Notice. Notices regarding this Agreement shall be in writing and addressed to Customer at the address Customer provides in writing to KNIME, or, in the case of KNIME, addressed to KNIME Inc., Attn. General Counsel, 11801 Domain Boulevard, 3<sup>rd</sup> Floor, Austin Texas 78758 USA. Notices regarding the KNIME Software in general may be given by electronic mail to Customer's e-mail address on record with KNIME and such notice shall be deemed to have been delivered twelve (12) hours after sending.

7.10. Force Majeure. Neither KNIME nor Customer shall be liable to the other for any delay or failure to perform hereunder (excluding payment obligations) due to circumstances beyond such Party's reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (excluding those involving either Party's employees), service disruptions involving hardware, software or power systems not within either Party's reasonable control, and denial of service attacks.

7.11. Amendment and Waiver. No amendment or waiver of any provision of this Agreement shall be effective unless in writing and signed (either manually or electronically) by the authorized representatives of Customer and KNIME. Notwithstanding any language to the contrary therein, and except as set forth in Section 3.2, no terms stated in a purchase order or in any other order document shall be incorporated into this agreement, and all such terms shall be void. No failure or delay in exercising any right hereunder shall constitute a waiver of such right. Except as otherwise provided, remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.

7.12. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall be modified by the court and interpreted so as best to accomplish the objectives of the

original provision to the fullest extent permitted by law, and the remaining provisions shall remain in effect.

## 8. Definitions.

8.1. **"Affiliate"** means a company that is controlled by, under common Control with or controlling the Customer or KNIME during the period of such control. "Control" means ownership, directly or indirectly, of more than 50% of the voting securities that vote for the election of the board of directors or other managing body.

8.2. **"Customer Data"** means any data, information or material submitted by Customer to, or stored by Customer in, a data structure related primarily to a KNIME Software.

8.3. **"License Control Software"** means modules that record the number of authorized Licensing Metric, and provide KNIME (and authorized KNIME resellers where applicable) with the ability to monitor certain usage of the KNIME Software.

8.4. **"Licensing Metric"** means restrictions on User counts allowed to access or use the applicable KNIME Software or constraints on the machine the applicable KNIME Software can be installed on.

8.5. **"Intellectual Property Rights"** means any patents and applications therefore, copyrights, trademarks, service marks, trade names, domain name rights, trade secret rights, and all other intellectual property rights.

8.6. **"KNIME Software"** or **"Software"** means the KNIME commercial software (excluding any Third Party Software) which is installed by Customer or Customer's agent at Customer's premises or at a Customer-controlled space within a third party data center. For avoidance of doubt, neither the KNIME open source software nor any other open source software is covered by this Agreement.

8.7. **"Subscription Period"** means the period of time which Customer may access the applicable KNIME Software as specified in KNIME's invoice.

8.8. **"User"** means an individual employee, contractor or agent of the Customer and its Affiliates authorized by Customer to use the applicable KNIME Software for which a subscription has been procured and who has been given a user identification and password, solely for the purpose of Customer's operations. For avoidance of doubt, user accounts and passwords are specific to individuals, and under no circumstance may user accounts or passwords be shared among or by different users. For avoidance of doubt, all such Users may only utilize the Software for the Customer's own internal business purposes and for Customer's internal use only. No User may utilize the

Software to provide time-sharing, service bureau or rental or managed services or permit other individuals or entities to create internet links to the Software or frame or mirror the Software on any other server or wireless or internet-based device.

8.9. "**KNIME**" means KNIME Inc., 11801 Domain Boulevard, 3<sup>rd</sup> Floor, Austin Texas 78758 USA

8.10. "**Taxes**" means any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including VAT, GST, excise, sales, use or withholding taxes.

8.11. "**Third-Party Software**" means online, web-based applications and other software products that are developed by third parties and that may interoperate with the KNIME Software.