



## Trial and Community License Agreement

This Agreement is entered into between Kubeark and Customer (each a "**Party**", and together the "**Parties**") as of the date the last Party signs, or otherwise assents to the terms of, this Agreement ("**Effective Date**").

By signing or otherwise accepting this Agreement, the Customer signatory represents they have the capacity to represent the entity identified herein as the Customer and bind it to the terms of this Agreement.

Terms used with capital letters are defined in the last section of this Agreement or the body of the Agreement.

### 1. Agreement Governance

- (a) This Agreement applies to Services made available by Kubeark free of charge (except otherwise specified in writing), for trial purposes only, whether part of early access, preview programs or independent of any program, or for proofs of concepts or demos. This Agreement does not govern access to any paid Service. Specific services may be governed by additional or specific terms which may be accepted by the Customer before access.
- (b) This Agreement also applies to the Community Program, in accordance with the license provided hereinbelow.
- (c) License provided pursuant to this Agreement are not subject to any fees, except where Parties agree otherwise via orders or in writing, in which case the payment provisions in such orders will apply.

### 2. License and Intellectual Property

- (a) **Trial License.** Subject to the terms and conditions of this Agreement, Kubeark grants Customer, upon delivery of the access details and during the License Term, a limited, non-exclusive, non-sublicensable, non-transferable, worldwide right to use the Services made available with this Agreement, solely for their internal evaluation purposes and for the purpose of testing the suitability of the Services for their internal needs and in accordance with this Agreement.
- (b) **Community Program License.** Subject to the terms and conditions of this Agreement and notwithstanding the limited license above, Kubeark hereby grants Customers enrolled in the Community Program, a limited, non-exclusive, non-sublicensable, non-transferable, worldwide right to use the Services made available with this Agreement and in accordance with this Agreement.
- (c) **User Access.** Customer may allow its Affiliates and Users to access the Services solely within the limits of the license grant herein; provided that Customer will be liable for its Affiliates and Users' compliance with the terms of this Agreement, and will provide Kubeark, at its request, with detailed reports of all such Affiliates and Users.
- (d) **Third-Party Licenses.** The Platform may contain, and the Services may be used with, third-party components, including open-source software, which are the property of their respective owners. Notwithstanding anything to the contrary herein, use of such third-party components will be subject to the license terms and conditions applicable to them, to the extent required by the applicable licensor (which terms shall not restrict the license rights granted to Customer hereunder).
- (e) **Third-Party Services.** Customer bears the entire risk of using the Services in conjunction with Third-Party Services which are subject to their own terms and conditions. Customer is responsible for determining which Third-Party Services are accessed and connected to by Customer while using the Services, and for the use of such Third-Party Services. Kubeark does not control or own any Third-Party Services, and the access to and use of such Third-Party Services, including the availability and uptimes related to such Third-Party Services, is solely determined by the relevant third parties that control the Third-Party Services. Kubeark will not be liable for any downtime, discontinuation, or any other issues with, or caused by, the Third-Party Services that are outside Kubeark's reasonable control. Use and access to a Third-Party Service may require additional consents or that Customer agrees to an underlying license agreement with the third-party licensor.
- (f) **Intellectual Property.** This Agreement does not grant either Party any rights, by implication, waiver, estoppel, or otherwise, to the other Party's Intellectual Property and each Party owns and retains all Intellectual Property in their respective pre-existing tools, software, databases, methodologies, and documents. Kubeark, its Affiliates and their licensors own and retain all Intellectual Property to the Services and any other technology made available by Kubeark or its Affiliates, and Customer owns all Customer Data. All uses in this Agreement of the terms "sell," "sale," "resell," "resale," "purchase," "price," and the like mean the purchase or sale of a license under this Agreement.
- (g) **Feedback.** The Customer confirms that if it provides any suggestions or feedback to Kubeark, it does so voluntarily and Kubeark will be entitled to use such suggestions or feedback, in any way and for any purpose in relation to its services, and without any obligation towards the Customer (including, without limitation, any monetary compensation, or royalties of any kind).

- (h) **Independent Development, Residuals.** Parties agree that nothing in this Agreement will limit or restrict Kubeark's right to use any general information, ideas, concepts, know-how, processes, techniques, programming routines and subroutines, methodologies, processes, skills, or expertise which are retained in the unaided memory of its employees, contractors, or users. Nothing in this Agreement will be construed as a representation or inference that each Party will not develop or acquire products, for itself or others, that compete with the products, systems, or methods contemplated by the other Party's portfolio, provided that the Party has not done so in breach of this Agreement. Kubeark or its Affiliates may use data, technical information, usage data, and telemetry from Customer's use of the Platform for the purpose of develop or improve its product suite and services, improving resource allocation and support, internal demand and product planning, verification of security and data integrity, and identification of industry trends and developments, including creation of indices and anonymous benchmarking, and provide an enhanced product experience to Customer, provided that Kubeark will employ adequate techniques to ensure that any outputs thereof do not trace back to, or identify, the Customer or any living person.

### 3. Compliance

- (a) **Acceptable Use.** Customer will use the Services in accordance with this Agreement, and represents that it, its Users, and Affiliates will:
- (i) not circumvent any technological protection measures set to control access to the Services; will not exceed the number of allocated licenses and will not make copies of the Platform, unless as expressly permitted by Kubeark;
  - (ii) not use, and will not encourage or allow others to use, the Services (i) to inspect or analyze the Platform or the outputs for benchmarking or comparison purposes, (ii) for the purpose of designing, modifying, creating a derivative work or creating any program that performs functions similar to the functions performed by the Platform, (iii) to acquire any technical specifications and gain a competitive technological or business advantage, (iv) to misappropriate or infringe any rights or violate any laws or contracts, (v) to access, tamper with, or use non-public areas of, any systems of Kubeark, its Affiliates or their Users, (vi) unless as expressly authorised by Kubeark in writing, to perform any type of security testing, including penetration testing on the Platform.
  - (iii) not disassemble, decompile or reverse engineer the Platform or any portion of it, will not alter, adapt, merge, modify, translate, develop versions or derivative works, upgrade, improve or extend, features or functionalities of the Platform or otherwise derive source code therefrom or otherwise reduce them to human readable form, except to the extent expressly permitted under applicable law and if it is essential to do so for the purpose of achieving interoperability of the Platform with another software program, and provided that, Customer has first requested Kubeark to provide the information necessary to achieve such interoperability with at least 90 (ninety) days advance written notice and Kubeark has not made such information available;
  - (iv) not use the Platform for any purposes prohibited by US, EU or other applicable law, including any export control laws or in connection with the design, construction and/or operation of any system where the use or a failure of such system could result in a situation that threatens the safety of human life or severe physical harm or environmental or property damage (including, for example, use in connection with any military, nuclear, avionics, life support or other life critical application), being understood that the Platform is not fault tolerant and is not designed for such use and Kubeark expressly disclaims any liability or warranty for such high-risk use
  - (v) not remove, alter, modify or appropriate or use as their own, any proprietary markings included in the Platform;
  - (vi) obtain and maintain all authorizations and consents required to use Personal Data as contemplated in this Agreement;
  - (vii) not resell, sublicense, assign, transfer, rent, lease, lend or otherwise distribute the rights acquired under this Agreement, except as otherwise permitted in this Agreement.
- (b) **Export Control.** The Parties acknowledge that the Services may be subject to export control and sanctions laws including U.S. Export Administration Regulations administered by the U.S. Department of Commerce's Bureau of Industry and Security ("**BIS**") and economic sanctions administered by the U.S Department of the Treasury's Office of Foreign Assets Control ("**OFAC**"), European Commission regulations, United Nations Security Council resolutions, and other similar national or international regulations (collectively "**Export Laws**"). Customer agrees to comply with all Export Laws related to Customer's access to and use of the Services. Customer represents and warrants that it is not (i) located, organized, or resident in a country or territory that is subject to a U.S. trade embargo (currently, Crimea, Cuba, Iran, North Korea, and Syria); or (ii) identified on, or owned or controlled by any party identified on, any applicable sanctions or restricted party list, including the Specially Designated Nationals and Blocked Persons List, Foreign Sanctions Evaders List, and Sectoral Sanctions Identifications List, administered by OFAC, and the Entity List, Denied Persons List, or Unverified List, administered by BIS. Customer agrees that it will not export,

re-export or otherwise transfer the Services, or use the Services to disclose, transfer, download, export, or re-export, directly or indirectly, any Customer Data, to any country, entity or other party that is ineligible to receive such items under the Export Laws. Customer acknowledges that the Services may not be available in all jurisdictions and that Customer is solely responsible for complying with the Export Laws in its access to, and use of, the Services. Customer acknowledges that Kubeark may cease to provide the Services if Kubeark determines that Customer has violated any of the representations in this section and Customer agrees to promptly notify Kubeark in writing if its status under any of these representations changes.

- (c) **Audit.** Kubeark may, at its expense, verify that Customer's use, access, installation, or deployment of the Platform comply with the terms of this Agreement. Additionally, no more than once every twelve (12) months, Kubeark may perform the verifications onsite, either directly or by appointing a subcontractor, and Customer agrees to provide all the required assistance and support. If the verification discloses a non-conformity Customer will immediately address it.
- (d) **Confidentiality.** This section supersedes any applicable non-disclosure agreement between the Parties with respect to use of the Services hereunder. Throughout the term of this Agreement Parties or their Affiliates or Users may exchange information deemed to the discloser as confidential, irrespective of the form or manner of disclosure, or if it's marked as, or reasonably considered, confidential, including without limitation, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and including the existence of, as well as the terms and conditions of, this Agreement and any order placed hereunder ("**Confidential Information**"). Confidential Information is deemed to exclude any information that (i) is or becomes public, through no fault of the recipient; (ii) was rightfully acquired by or already known to the recipient without an existing confidentiality obligation; or (iii) is independently developed by the recipient without the use of discloser's Confidential Information. The receiver will treat the Confidential Information with no less than reasonable care and will not use or disclose Confidential Information to anyone, except to its Users, advisors, or consultants, who need to know it for the purposes of performing this Agreement, or to its potential investors, provided that they are bound by confidentiality obligations at least as restrictive as in this section. The receiving Party may disclose Confidential Information: (i) under a written and signed permission document from the disclosing Party; (ii) as necessary to comply with applicable law, a valid order of a court of law or governmental body, or with mandatory rules of an equivalent binding authority after using reasonable efforts to provide advance notice of such disclosure to the disclosing Party.
- (e) **Anti-Corruption.** In relation to the transactions under this Agreement, each Party confirms that it has not taken and will not take any action, directly or indirectly, in violation of applicable anti-corruption or anti-bribery laws (collectively, "**Anti-Corruption Laws**"). In connection with this Agreement, Customer will not, directly, or indirectly, offer, promise, authorize, accept, or solicit any illegal or improper bribe, kickback, payment, gift, or thing of value. Customer will promptly notify Kubeark in writing of any suspected breach of Anti-Corruption Laws in connection with this Agreement and will cooperate with Kubeark's review or investigation in relation therewith.

#### **4. Disclaimer and Warranty Exclusions.**

- 4.1. Disclaimer.** Customer acknowledges that (A) the Platform may (i) substantially differ from commercially released versions and may be subject to changes or may be discontinued at any time; (ii) have different standards of security, privacy, availability, accessibility or reliability and could have functionality defects or blocker(s); (iii) receive automatic updates, which may not be prevented; (iv) be subject to specific limitations, as indicated by Kubeark; and (B) that (i) Kubeark is under no obligation to provide any, (ii) Company may change or discontinue the Platform at any time without notice, (iii) Company advises, as a best practice, to frequently back-up the data before installing or accessing the Platform and to take precautions as to avoid any loss of data when the Platform will no longer be available, and (iv) in case of any preview Platform components, Customer may only use "dummy data", is not permitted to use any production real data (including Personal Data) in conjunction with the Platform and Kubeark disclaims any liability towards the Customer or any third-party, in respect of Customer's breach of this obligation. Kubeark may allow the Customer to use production real data (including Personal Data) for specific trial licenses, proof of concepts or other evaluation engagements.
- 4.2. Warranty Exclusions.** The Services are provided on an "AS-IS" and "AS AVAILABLE" basis. To the maximum extent allowed by the applicable law, neither Kubeark, nor its Affiliates, licensors, or their personnel, make any warranty of any kind (express, implied, statutory, or otherwise) and Kubeark specifically disclaims all warranties, including merchantability, fitness for a particular purpose or non-infringement or ability of the Platform to integrate or interoperate with other software or services or perform uninterrupted or error-free. Each Party disclaims all liability for Third-Party Services.

## 5. Indemnification

- (a) **Customer Indemnification.** Customer will defend Kubeark, at its expense, against any claim, action, or legal proceeding, made against Kubeark by a third-party non-affiliated with Kubeark arising out of, or in connection with, Customer Data or Personal Data, the alleged infringement of the third party's Intellectual Property, or Customer's use of the Services in violation of this Agreement and will indemnify Kubeark against any damages finally awarded to Kubeark by a court of competent jurisdiction, or settlement amounts agreed to in writing by Customer, in the limits set out in this Agreement.
- (b) **Conditions.** A Party's obligations to defend and indemnify ("**Indemnifying Party**") are contingent on the Party seeking defense ("**Indemnified Party**") to (i) promptly notify the Indemnifying Party of any claim in writing; (ii) cooperate with the Indemnifying Party in the defense of the claim; (iii) grant the Indemnifying Party sole control of the defense or settlement of the claim (provided that the **Indemnifying Party** shall not enter into any settlement that admits liability on behalf of the Indemnified Party or imposes any obligations on such Indemnified Party other than cessation of use of the infringing Platform); (iv) not make any admissions about the claim without the Indemnifying Party's prior written consent, and (v) take all reasonable measures to mitigate the damages. The remedies in this section (*Defense of Claims*) are sole and exclusive remedies of the Indemnified Party and sole liability of the Indemnifying Party with respect to an IP Claim.
- (c) **Exclusions.** Kubeark will have no liability for any claim arising from: (i) use of the Services in breach of the Agreement; (ii) modification of the Services by anyone other than Kubeark; (iii) failure by Customer to install the latest updated version of the Platform, as instructed by Kubeark, to avoid infringement, or security vulnerabilities or malfunctions; (iv) Third-Party Services, products or materials or their combination with the Services, if the latter would not be infringing without this combination.
- (d) **Remedies.** If a claim alleges that the Platform might infringe the Intellectual Property of a third party, or if in Kubeark's judgment, such a claim may arise, Kubeark may, at its option: (i) procure the right for Customer to continue using the Platform under the terms of the Agreement; (ii) replace/modify the impacted components to avoid the alleged infringement; or (iii) terminate Customer's license to the relevant Platform component and refund the associated prepaid and unused Fees.

## 6. Limitation of Liability

- (a) **DAMAGES EXCLUSION.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAWS, NEITHER PARTY WILL BE LIABLE FOR ANY SPECIAL, INDIRECT, MORAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES, THE USE OR INABILITY TO USE THE SERVICES, COMPUTER MALFUNCTION OR FAILURE, SERVER DOWN TIME, FAILURE OF THE SERVICES TO OPERATE WITH ANY OTHER PROGRAMS, LOSS OF PROFITS, REPUTATION, USE, OR REVENUE, LOSS OR CORRUPTION OF DATA, OR INTERRUPTION OF BUSINESS. UNDER NO CIRCUMSTANCES MAY KUBEARK OR ITS AFFILIATES BE LIABLE FOR ANY CLAIMS THAT MAY BE ASSERTED, GRANTED OR IMPOSED AGAINST, ARISING FROM, OR IN CONNECTION WITH THIRD PARTY SERVICES.
- (b) **LIABILITY CAP.** EXCEPT FOR ACTS OF FRAUD OR WILLFUL MISCONDUCT, DAMAGES RESULTING FROM DEATH OR BODILY INJURY ARISING FROM GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, INDEMNIFICATION FOR DAMAGES RESULTING FROM BREACH OF THIRD-PARTY INTELLECTUAL PROPERTY, THE MAXIMUM AGGREGATE LIABILITY OF EACH PARTY FOR ALL DAMAGES (INDIVIDUALLY AND TOGETHER) UNDER OR RELATING TO THIS AGREEMENT WILL NOT EXCEED THE HIGHER OF (I) FEES PAID TO KUBEARK UNDER THIS AGREEMENT FOR THE RELEVANT PLATFORM COMPONENT IN THE 12 (TWELVE) MONTHS BEFORE THE INITIAL CLAIM GIVING RISE TO SUCH DAMAGES OR (II) ONE THOUSAND (1,000) USD.
- (c) **Applicability.** The foregoing will apply only to the extent permitted under the applicable law, regardless of whether the claim arises from contract or tort and regardless of the theory of liability, but will not limit payment obligations under this Agreement, and irrespective of whether the other Party has been advised of the possibility of such damage might incur. The Agreement allocates the risks between Kubeark and Customer, and the Fees reflect this allocation of risk and limitations of liability.

## 7. Term and Termination

- (a) **Term.** Except as otherwise provided in writing by Kubeark and subject to termination as provided below, this Agreement will continue for a term of 1 (one) year from the Effective Date and will automatically extend for additional 1 (one) terms, unless either Party sends notice of non-renewal to the other Party with 30 (thirty) days in advance; provided that license terms for Services under the Community Program or for trial or preview are limited to the terms expressly provided by Kubeark before Customer enrollment.
- (b) **Termination.** This Agreement may be terminated as follows:
  - (i) **Convenience.** Either Party may terminate this Agreement and any orders made hereunder immediately upon written notice to the other Party. The Customer may terminate use of the Services at any time.



- (ii) **Material Breach.** Either Party may terminate this Agreement, immediately upon written notice to the other, if the other Party has made a material breach hereunder.
- (iii) **Illegality.** Either Party may terminate this Agreement, immediately upon written notice to the other Party (i) when, due to the applicable law or on account of a regulator’s or similar body’s decision or ordinance, it becomes unlawful or illegal to it to continue the performance of this Agreement, including but without limitation, as a result of any export control obligations; or (ii) if such other Party commences or has commenced against them bankruptcy or dissolution proceedings, has a receiver appointed for a substantial part of its assets, is unable to pay its invoices or loans when due, or ceases to operate in the ordinary course of business; or (iii) if currency repatriation provisions or other currency restrictions are imposed by any government body which prevent or restrict the ability of Customer to make any net payments to Kubeark as required in this Agreement.
- (iv) **Change of Control.** Kubeark may terminate this Agreement, with 30 (thirty) days written notice, in case of a change of control as prescribed in the Change of Control section.
- (c) **Effect of Termination.** Upon termination of this Agreement the Service(s) will immediately terminate and Customer must, at its expense remove and delete all copies of the Platform or other components provided by Kubeark under this Agreement. Customer acknowledges that, except as otherwise provided under this Agreement, it will not be entitled to a refund of any Fees, if any, paid hereunder after the commencement of Services or any renewal thereof.

**8. Governing Law and Dispute Resolution**

- (a) **Settlement.** Parties agree to settle amicably any dispute arising out of or relating to this Agreement before initiating any claim, within 90 (ninety) days from the date either Party receives a dispute notice from the other.
- (b) **Governing Law and Venue.** This Agreement is governed by the laws indicated below, depending on Customer’s headquarters, and without regard to conflicts of law provisions; for the purpose of this Agreement “**North America**” will be construed to include Canada, Mexico, United States of America, and all organized, incorporated, or unincorporated territories of the United States of America. The United Nations Convention on Contracts for the International Sale of Goods (CISG) and the Uniform Computer Information Transactions Act (UCITA) do not apply to this Agreement. Parties hereby accept the exclusive jurisdiction of the competent courts of the venue indicated below and irrevocably waive any objection and defense (including, any defense of an inconvenient forum) which either may have to the bringing or maintenance of any such claim. **THE PARTIES KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO TRIAL BY JURY IN ANY CLAIM UNDER OR IN CONNECTION WITH THIS AGREEMENT.**

Customer HQ	Kubeark Entity	Governing Law & Venue
North America	KUBEARK, Inc., 1209 Orange Street, Wilmington, New Castle, 19801, Delaware	New York law, New York, State of New York, USA
Rest of the world	KUBEARK SRL, SKY TOWER Building, 246 Calea Floreasca, 1st floor, 1st District, Bucharest, Romania, tax no. 45781670	Romanian law, Bucharest, Romania

**9. General**

- (a) **Personal Data.** Customer acknowledges that the Services do not require any Personal Data and should minimize use thereof, in accordance with the applicable data protection laws. Kubeark disclaims any liability with respect to use by the Customer of any protected health information, as regulated by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and cardholder data or sensitive authentication data, as defined by Payment Card Industry Data Security Standard, while using the Services. Where Kubeark acts as processor on behalf of the Customer, it will process Personal Data in accordance with the data processing agreement available here: <https://kubeark.io/> (or successor website). Customer hereby agrees that Kubeark may share contact details of Customer’s representatives with Kubeark channel partners for the purpose of promoting and selling Kubeark offerings to Customer. Personal Data will be handled in accordance with the privacy policy available here: <https://kubeark.io/> (or successor website).
- (b) **Support.** Kubeark will provide support and maintenance during the applicable License Term in accordance with the support terms provided by Kubeark. Additional support offerings may be subject to additional Fees, as communicated by Kubeark.
- (c) **Entire Agreement and Order of Precedence.** This Agreement with all references herein is the entire understanding between Kubeark and Customer with respect to the subject matter of this Agreement and





supersedes any prior written or oral agreement between the Parties with respect to such subject matter. Unless otherwise prescribed hereunder, any amendment to this Agreement will be made in writing and will be signed by authorized representatives of the Parties. Any terms or conditions submitted to Kubeark do not form part of this Agreement and are void, unless specifically amended in writing and signed by the authorized representatives of the Parties. A conflict between the terms of this Agreement will be settled per the following order of precedence: (i) Order accepted by the Parties, (ii) additional terms for new features/functionalities, and (iii) this instrument. If any provision hereof is or becomes illegal, invalid, or unenforceable for any reason, all other provisions of this Agreement will remain in full force and effect.

- (d) **Force Majeure.** Except for any payment obligations, neither Party is liable for failure to perform its obligations under this Agreement to the extent delayed, prevented, restricted, or interfered with as a result of any causes beyond its reasonable control, including acts of God, terrorism, labor action, fire, flood, earthquake, failure of third-party providers, denial of service attacks, malicious conduct, utility failures, power outages, governmental acts, orders, or restrictions.
- (e) **Assignment.** Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, transferred, delegated, or otherwise disposed of by either Party without the prior written consent of the other Party, not to be unreasonably withheld or delayed. Notwithstanding the foregoing, Kubeark may, without the prior consent of Customer, assign, transfer, delegate or otherwise dispose of, this Agreement, or any of its rights, interests, or obligations hereunder to any of its Affiliates.
- (f) **Change of Control.** Customer must notify Kubeark within 30 (thirty) days prior to it or its Affiliate (i) being acquired by, selling substantially all of its assets to, merging with, or changing its Control in favor of, a direct competitor of Kubeark, or (ii) changing its main object of activity into a business competing Kubeark.
- (g) **Notices.** Unless otherwise provided herein, notices under this Agreement must be sent by e-mail, with a suggestive subject, to the addresses listed below (or notified in writing) and will be effective on the next business day after being sent. Notices on updates, security fixes, vulnerabilities, and other technical information, will be sent to the Customer e-mail address(es) enrolled for those purposes in Kubeark’s database. Notices on Orders and invoices will be sent to the e-mail addresses listed in the Order. In lack of a valid Customer e-mail address, Kubeark can use an e-mail address publicly available, or any email addresses previously used in communication with Kubeark.

To Kubeark	To Customer
Legal notices: <a href="mailto:legal.notices@kubeark.com">legal.notices@kubeark.com</a>	E-mail address of the business account contact or used to register to Kubeark services
Privacy: <a href="mailto:privacy@kubeark.com">privacy@kubeark.com</a>	

- (h) **Publicity.** Customer authorizes Kubeark to publicly identify it as a customer and include the Customer's name, trademarks, and logo on Kubeark's website and other promotional and marketing materials.
- (i) **Waiver and Reservation of Rights.** Failure to exercise, or delay in exercising, any right, power, or remedy under this Agreement shall not operate as a waiver, and any single or partial exercise of any right or remedy will not prevent any further or other exercise of any the same or other right or remedy. Any rights and remedies prescribed in this Agreement are cumulative and not exclusive of any others provided by law. Any waiver of any breach of this Agreement shall not be deemed to be a waiver of any subsequent breach. Kubeark reserves all rights not expressly granted under this Agreement. Nothing here creates a legal partnership, joint venture, agency, or employment relationship between Customer and Kubeark or their Affiliates.
- (j) **Applicable Language.** This Agreement is made in the English language only, which language will be controlling in all respects, and all versions hereof in any other language will not be binding on the Parties. Unless otherwise required by the applicable law, all communications, and notices to be made or given pursuant to this Agreement and any dispute resolution (including, but not limited to, any court proceeding, legal notices, motions, discovery, etc.) will be in the English language only.
- (k) **Counterparts.** This Agreement may be executed in two or more counterparts or electronically, and each of the counterparts or electronic copies will be deemed an original and together will constitute one and the same instrument. Each Party agrees that their electronic signatures, whether digital or encrypted, are intended to authenticate this writing and to have the same force and effect as handwritten ink signatures. Electronic signature means any electronic symbol or process attached to or logically associated with a record and executed and adopted by a Party with the intent to sign such record, including facsimile or e-mail electronic signatures.
- (l) **Survival.** The following sections will survive non-renewal or termination of this Agreement for any reason Intellectual Property, Feedback, Independent Development, Residuals, Failure to Pay, Acceptable Use, Export Control, Confidentiality, Warranty Exclusions, Limitation of Liability, Governing Law and Dispute Resolution, Publicity, Waiver and Reservation of Rights, Applicable Language, Survival, in addition to any other provisions that, by their content, are intended to survive the performance, non-renewal or



termination of the Agreement (whether or not expressly stated).

## 10. Defined Terms

**"Affiliate"** means any entity that directly or indirectly Controls, is Controlled by, or is under common Control with a Party; **"Control"** means the direct or indirect control of greater than 50% of the voting rights or equity interests of a company or the power to direct or cause the direction of the management and/or business strategy of that company.

**"Agreement"** means this end user license agreement, together with any other reference herein.

**"Community Program"** means the program offering the free community version of the Platform and other Services (as applicable) to individuals, non-profit organizations, and to small companies that, together with all the other companies in their group of companies, do not exceed 50 (fifty) employees or USD 4 million in annual revenue (alternative conditions).

**"Customer"** means the entity signing, or otherwise accepting the terms of, this Agreement.

**"Customer Data"** means data shared by Customer with Kubeark for the purpose of using the Platform or imported by Customer into the Platform.

**"Intellectual Property"** means any patents, rights to inventions, copyright and related rights, trademarks, registered designs, trade secrets, trade names and domain names, rights in computer software and in databases, content, know-how, look and feel, and any other intellectual property rights or rights of a similar nature, in each case whether registered or unregistered, and including all rights to file for protection, applications and rights to apply for and be granted renewals or extensions of such rights, as well as the rights to claim priority therefrom, and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**"License Term"** means the applicable duration of the license to use the Platform, which, unless otherwise stipulated in writing by Kubeark, is twelve (12) months.

**"Personal Data"** means information related to an identified or identifiable living person as defined by the applicable data protection laws.

**"Platform"** means each and any Kubeark platform components, including any software or on-premise components provided therein, any development kits, protection mechanisms, plugins, connectors, extensions, scripts or any other software made available to Customer, including during support or pursuant to warranty obligations, all new releases, versions, modifications, updates, patches, improvements, enhancements, or similar derived works thereto, any complete or partial copies or derived works, or any Intellectual Property related to all of the foregoing, but excluding Third-Party Services.

**"Services"** means Platform, Professional Services, or other services provided by Kubeark to Customer, as may be reflected in an Order.

**"Third-Party Services"** means any third-party applications, cloud service endpoints, data services, software, application programming interfaces, and content which may be accessed or used with or within the Services.

**"Users"** means either Party's employees, representatives, and contractors.

**"Kubeark"** means the licensor entering into this Agreement, as described in the body of this Agreement.