



Terms of Use

THESE TERMS OF USE ARE A BINDING AGREEMENT BETWEEN YOU AND KUBEARK (EACH A "PARTY" AND TOGETHER THE "PARTIES") AND GOVERN YOUR USE OF OUR SERVICES. FROM THE MOMENT YOU ACCESS THE SERVICES WE ASSUME YOU HAVE ACCEPTED THE TERMS, SO MAKE SURE TO READ IT BEFOREHAND. BY ACCEPTING THE TERMS, YOU REPRESENT THAT YOU HAVE THE CAPACITY TO LEGALLY BIND ANY ENTITY YOU MAY HAVE ENROLLED ON BEHALF OF (AS FURTHER DETAILED BELOW).

We've attributed specific definitions to some of the words we use and, while we've created a section at the end to define them, some are also defined in the body of the Terms.

1. Governance

- (a) TO USE THE SERVICES, YOU MUST BE AT LEAST 16-YEARS OLD AND HAVE FULL CAPACITY TO ENTER INTO A CONTRACT ACCORDING TO YOUR COUNTRY OF RESIDENCE; OTHER RESTRICTIONS MAY BE APPLICABLE TO SPECIFIC SERVICES. IF YOU USE THE SERVICES FOR YOUR PERSONAL PURPOSES, YOU ARE DEEMED THE CUSTOMER. IF YOU SIGN ON FOR OUR SERVICES ON BEHALF OF YOUR EMPLOYER/SIMILAR CONTRACTOR (FOR INSTANCE, BY USING YOUR BUSINESS E-MAIL AT REGISTRATION), KUBEARK ASSUMES YOU HAVE THE RELEVANT POWER AND CAPACITY TO DO SO, YOUR EMPLOYER/SIMILAR CONTRACTOR WILL BE DEEMED THE CUSTOMER AND REFERENCES TO "YOU" WILL INCLUDE BOTH YOU AS INDIVIDUAL AND THE CUSTOMER.
- (b) Unless otherwise expressly conveyed by Kubeark, these Terms apply only to free Services made available by Kubeark and which are not subject to other licensing terms.
- (c) We reserve the right to make changes to the Services or the Terms without notice. We will notify you of material changes by display on our website or within the Services and the updated Terms will be effective within 30 (thirty) days from the notification date or as otherwise specified in the notification. If you continue to use the Services after any change has taken effect, Kubeark assumes that you have agreed with said change. Your only remedy for dissatisfaction hereunder is to stop using the Services.
- (d) For any legal notices, you may write to us at legal.notices@kubeark.com. We will contact you at your registration e-mail or other e-mail we find in public sources. A notice will be considered received the next business day after being sent in the country of destination.

2. License and Intellectual Property

- (a) **License to Use.** Kubeark hereby agrees to provide you the right to use the Services, under a limited, non-exclusive, non-transferable, non-sublicensable and revocable license, in accordance with these Terms and the associated documentation.
- (b) **User Access.** You may only allow your Affiliates and users, to use the Services solely for your direct beneficial business purposes, limited to the license scope hereunder, provided that you will be liable for their compliance with these Terms and, upon request you will provide Kubeark with details and use reports of all such users.
- (c) **Dependencies.** If you use the Services in conjunction with third-party data, products, services, platforms, etc., then you must comply with the terms and conditions required by such third-party providers, and you will be carrying the entire risk to such use. Specifically, the Services may contain, or may be enjoined by, third party components including open-source code, which are subject to their own terms and conditions, to the extent required by the applicable licensor (which terms shall not restrict the license rights granted to you hereunder).
- (d) **Intellectual Property.** These Terms does not grant either Party any rights, implied or otherwise, to the other Party's Intellectual Property. Each Party retains the Intellectual Property over its own Content and Confidential Information. Except for any rights reserved to third parties, Kubeark retains all rights, title and interest, including any Intellectual Property in the Services, including without limitation any integrations, code, patches, materials, data, know-how, background Intellectual Property, workflows, or similar assistance otherwise provided to Customer.
- (e) **Customer Content.** You hereby grant Kubeark, without any compensation, a worldwide, unrestricted, perpetual, non-exclusive, transferable, irrevocable, sub-licensable, royalty-free, fully paid-up license to use, copy, modify, create derivative works of, distribute, publicly perform, or display, make, have made, import, export, copies of your Content for the purpose of providing the Services. You hereby acknowledge that you carry the entire liability to, and are responsible for, having in place all needed safeguards to protect the integrity of your Content. Depending on the Service, you and other users may have access to each other's Content, as further evidenced within the applicable Service. We advise you, as a best practice, to frequently back-up your Content before installing or accessing the Services on your device(s) and to take precautions as to avoid any loss when the Services will no longer be available.
- (f) **Feedback.** You acknowledge that if you provide any suggestions or feedback to Kubeark, you do so voluntarily and Kubeark will be entitled to use any of it, in any way and for any purpose in relation to its business, without any



consideration owned to you. Kubeark is not bound by any confidentiality duty with respect to such feedback, except for an obligation not to publicly identify you as the source of the feedback.

- (g) **Independent Development, Residuals.** Parties agree that nothing in these Terms will limit or restrict Kubeark's right to (i) develop directly or indirectly any components that may be similar or may perform similar to any of your Intellectual Property generated pursuant to usage of the Services, (ii) develop or acquire products, for itself or others, that compete with the products, systems, or methods developed by the you, subject to confidentiality obligation hereunder, and (iii) 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 Kubeark's employees. Kubeark or its Affiliates may use data, technical information, usage data, and telemetry from your use of the Services 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 you an enhanced product experience, provided that Kubeark will employ adequate techniques to ensure that any outputs thereof do not trace back to, or identify, you or any living person.

3. Compliance

- (a) **Acceptable Use.** You will, and will cause your users to, use the Services in accordance with these Terms, and you hereby represent that you, your 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 Services may be subject to export control regulations administered by the U.S. Department of Commerce's Bureau of Industry and Security ("**BIS**") or the U.S Department of the Treasury's Office of Foreign Assets Control ("**OFAC**"), under European Commission regulations, or United Nations Security Council resolutions, and other similar national or international regulations ("**Export Controls and Sanctions**"). You hereby agree to comply with all Export Controls and Sanctions related to access to and use of the Services. You represent and undertake that you and your users (i). are not named on any Export Controls and Sanctions list of restricted parties, including, but not limited to, the Specially Designated Nationals and Blocked Persons List, the Foreign Sanctions Evaders List, or the Sectoral Sanctions Identifications List, maintained by OFAC, or the Entity List, Denied Persons List, or Unverified List, maintained by BIS (collectively, the "**Prohibited Party Lists**") (ii). are not located, organized, or resident in any of the then-current countries and territories subject to U.S. trade embargoes (currently, Crimea, Cuba, Iran, North Korea, and Syria) (each an "**Embargoed Country**"); (iii). are not 50 percent or more owned or controlled by, or acting on behalf of, one or more parties identified on a Prohibited Party list;

(iv). will not knowingly use, export, reexport, import, sell, provide, release or transfer the Services (or any result therefrom) directly or indirectly, to any Embargoed Country, any person or entity identified on a Prohibited Party List, or to a person or entity 50 percent or more owned or controlled by, or acting on behalf of, one or more parties identified on a Prohibited Party List, or otherwise in violation of any Export Controls and Sanctions, (v). will not engage in activities that would cause us or our Affiliates to be in violation of Export Controls and Sanctions, and (vi). will not use or provide the Services for any purposes prohibited under applicable law, including, without limitation, to support any nuclear, chemical, or biological weapons proliferation, or missile technology. You acknowledge that Kubeark may cease to provide the Services if Kubeark determines that you have violated any of the representations in this section and you agree to promptly notify Kubeark in writing if your status under any of these representations changes.

- (c) **Audit.** If you are a business, company, or organization, Kubeark may, at its expense, verify that your use, access, installation, or deployment of the Services comply with the Terms. Upon request, you will provide Kubeark with details and use reports of all your users. Additionally, no more than once every 12 (twelve) months, Kubeark may perform the verifications onsite, either directly or by appointing a sub-contractor, and you agree to provide all the required assistance and support. If the verification discloses a non-conformity, you will immediately address it. If there are any underpaid fees for payable Services which exceed 5% of the regular value thereof, then you will also pay for the audit costs.
- (d) **Confidentiality Obligations.** Either Party or its Affiliates may exchange Confidential Information with the other Party or its Affiliates for the purpose of the Terms. The recipient will treat the Confidential Information with no less than reasonable care and will only use the Confidential Information for the purpose and for the duration of the relationship under the Terms. The recipient may only disclose Confidential Information: (i) under a written and signed permission document from the discloser, or as necessary to comply with applicable law or valid order of a court of law or other governmental body, only if the recipient promptly notifies the discloser of the required disclosure and takes measures or provides assistance to prevent or limit the disclosure or (ii) to its Affiliates, employees, agents, investors or professional advisors, who need to know the Confidential Information for the purposes of these Terms and who are bound by confidentiality obligations at least as restrictive as in this section. Kubeark may disclose your Confidential Information without notice only if it reasonably believes necessary to protect the rights or safety of Kubeark, its customers, partners, or the public. For the avoidance of doubt, the Services are considered Confidential Information of Kubeark.
- (e) **Report Abuse.** If you believe in good faith that any Content available in the Services infringes your or a third party's copyright, you may ask us to remove or block access to such Content, by sending us an e-mail with the details mentioned below.
- "Report Abuse Copyright Infringement" in the subject of the e-mail
 - a description of the copyrighted work(s) claimed to have been infringed
 - a description of the material you claim to be infringing or the subject of the infringing activity, and information that could allow us to locate the material in our products or services
 - the following statements "I hereby declare that use of the material in the manner presented above is not authorized by the copyright owner, its agent, or the law" and "I hereby represent that this notification is accurate and, under penalty of perjury, that I am, or I am authorized to act on behalf of, the owner of an exclusive right that is allegedly infringed in the material"
 - your name, address, telephone number and email address
 - a physical or electronic signature of the copyright owner or a person authorized to act on the owner's behalf

If we find the allegations to be correct, we may remove the offending material and warn the user who posted it. The Digital Millennium Copyright Act ("DMCA") provides recourse for copyright owners who believe that material appearing on the internet infringes their rights under U.S. copyright law. If you'd like to check it out, the DMCA is available on the U.S. Copyright Office website at <http://www.copyright.gov/legislation/dmca.pdf>. Please consult your legal advisor before filing a notice, noting there can be penalties for false claims under the DMCA.

4. Warranties and Indemnification

- (a) **NO WARRANTIES.** THE SERVICES ARE PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS AND CUSTOMER BEARS THE ENTIRE RISK AS TO THE USE OF THE SERVICES AND ANY CONTENT. NEITHER KUBEARK, NOR ITS AFFILIATES, LICENSORS, SUPPLIERS, THEIR OFFICERS, EMPLOYEES OR AGENTS ("**KUBEARK PARTIES**"), MAKE ANY WARRANTY OF ANY KIND (EXPRESS, IMPLIED, STATUTORY OR OTHERWISE) IN RELATION TO SERVICES AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, KUBEARK SPECIFICALLY DISCLAIMS ALL WARRANTIES, INCLUDING AVAILABILITY, SERVICE UPTIME, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OR ABILITY OF THE SERVICES TO INTEGRATE OR INTEROPERATE WITH OTHER TECHNOLOGIES. UNPLANNED SYSTEM OUTAGES MAY OCCUR AND KUBEARK DOES NOT WARRANT THE SERVICES WILL RUN UNINTERRUPTED OR ERROR FREE. KUBEARK DISCLAIMS ALL LIABILITY FOR HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY LICENSOR OR ANY THIRD-PARTY CONTENT.

- (b) **Content Warranty Disclaimer.** Kubeark cannot scrutinize all Content and cannot guarantee it will be free of (i). malware, contaminants, code, scripts, routines that may (a) harm your machine or systems, or (b) remove, transfer, disclose or alter any information therein, or (ii). materials you may find objectionable or inappropriate. Kubeark disclaims any responsibility or liability related to third-party Content (including yours, for which you are solely liable) and reserves the right to remove it for any reason, such as for breach of the Terms. Depending on the Service, you and other users may have access to each other's Content.
- (c) **Your Warranties.** You represent and warrant at all times that: (i) you have all necessary rights and title to enter into the Terms and to perform your obligations hereunder; (ii) you and your users will use the Services in strict accordance with the Terms and the applicable legislation; (iii) you have obtained all rights, permissions and/or consents necessary for the lawful use of your Content (including any Personal Data) as prescribed in these Terms and the operation of the Services, including and without limitation, in relation to any third-party software or products you may use in conjunction thereof (iv) no part of your Content infringes or otherwise conflicts with any third-party rights.
- (d) **Indemnification.** You will indemnify Kubeark, its Affiliates, and their employees, contractors, vendors, or partners ("**Kubeark Parties**"), defend, and hold them harmless, against any losses, damages, fines and expenses (including attorneys' fees and costs) arising out of, or relating to any claims based on, (i). your, and your users' use or attempted use of the Services in violation of the Terms; (ii). your violation of the applicable law or rights of any third party; or (iii). your Content, including without limitation any claim of infringement or misappropriation of Intellectual Property or other proprietary rights.

5. Limitation of Liability

- (a) **EXCLUSIONS.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL ANY KUBEARK PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, MORAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, THE USE OR INABILITY TO USE THE SERVICES OR ANY CONTENT, COMPUTER MALFUNCTION OR FAILURE, SERVER DOWN TIME, FAILURE OF THE SERVICES TO OPERATE WITH OTHER PRODUCTS OR SERVICES, LOSS OF PROFITS, REPUTATION, USE OR REVENUE, LOSS OR CORRUPTION OF DATA, OR INTERRUPTION OF BUSINESS, regardless of whether the Kubeark Party was aware of the likelihood of such damages occurring, and whether such liability is based on contract, tort, negligence, strict liability, products liability or otherwise. For the avoidance of any doubt, under no circumstances may any Kubeark Party be liable for any claims of any kind and nature that may be asserted, granted, or imposed against, directly or indirectly, arising from, or in connection with, your Content, your use of Personal Data, your failure to comply with the Terms, or use of your account.
- (b) **Limitation of Damages.** Your exclusive remedy against any Kubeark Party, for each and all claims, actions, proceedings and damages (individually and together), arising out of, or in connection with, the Terms, and including where the warranty exclusions above are not valid or permitted under the applicable law, is limited up the higher of (i) 100 (one hundred) USD or (ii) the value of the consideration you paid for the 12 (twelve) months prior to the loss or breach giving rise to the claim. These limitations and exclusions apply even if this remedy doesn't fully compensate you for any losses and even if Kubeark knew or should have known about the possibility of the damages or the likelihood of their occurrence.

6. Term and Termination

- (a) **Term.** The Terms is effective from the date you access or install the associated Services for the entire duration of the license term indicated by Kubeark and until terminated in accordance herein. Upon termination you must delete all copies or any output of the Services, at your expense.
- (b) **Termination for convenience.** You may stop using the Services and terminate your account at any time, however this will not relieve you of any obligation to pay any outstanding fees (if applicable). We may change or discontinue, or terminate your use of, the Services at any time; provided that with respect to paid Services, we will provide you with reasonable notice in advance.
- (c) **Material termination.** We may immediately, and without notice, terminate, suspend your right to use and access the Services, or delete your account, if: (i). we have a reasonable suspicion that you have breached or attempted to breach these Terms or the applicable law; (ii). provision of the Services is deemed unlawful or infringes any third-party right; (iii). if applicable, you fail to pay the Services fees in due time; (iv). there has been an extended period of inactivity in your free account, or as otherwise regulated under any specific terms.

7. Governing Law and Dispute Resolution

- (a) **Settlement.** As a prior condition for any claim, Parties agree to settle amicably any dispute arising out of or relating to this Agreement within ninety (90) 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

- (c) **Statute of Limitation.** To the extent permitted by applicable law, any cause of action arising out of or related to the use of the Services, or the Terms must be filed within 1 (one) year after such cause of action arose, and any cause of action which is not filed within such period will be precluded by this provision is permanently barred.

8. General

- (a) **Fees and Payment.** Certain Services may be subject to a fee, as provided in specific terms or as part of the Service sign-up process. Unless otherwise expressly agreed by Kubeark, all payments are due 30 (thirty) days from the date of the invoice. Should you fail to pay, Kubeark may collect the fees using alternative collection mechanisms. Kubeark reserves the right to change its fees at any time at its sole discretion. Any change will be effective immediately upon publication through the relevant Services or in their Specific Terms. Except as expressly permitted by Kubeark in writing or as explicitly stated as part of the sign-up process for a Service or in a specific arrangement, Kubeark will not provide refunds or vouchers for any Services.
- (b) **Personal Data.** Access to the Services may require that you share some Personal Data. We will use your Personal Data for the purpose of performance under the Terms, as further described in the Privacy Statement available on our website. If use of Personal Data is necessary within certain Services and, to the extent such Personal Data is disclosed to, accessed by, or stored by, Kubeark as a processor on your behalf, under the GDPR, a data processing agreement (DPA) will be executed between the Parties.
- (c) **Data Disclaimer.** Kubeark takes privacy very seriously and hereby requests that you minimize the use of Personal Data and that you avoid using Personal Data regulated by sectorial legislation or that requires certain certifications that we do not possess or formalities that we cannot ensure. You are responsible for assessing compliance and comply with the data protection laws applicable to you when using the Services, including, without limitation, informing, and where relevant, obtaining the consent of data subjects, in accordance with the GDPR and other applicable privacy laws.
- (d) **Support and Maintenance.** Generally, we do not provide strict support and maintenance levels for free Services; exceptions are expressly communicated, either in the Service itself or on our website. Cloud Services are maintained through regular automatic updates, which you may not impede or disable.
- (e) **Entire Terms and Order of Precedence.** These Terms are the entire understanding between the Parties with respect to the subject matter hereof and supersede any prior understandings or agreements with respect to such subject matter. Any URL references will include successor URLs. In case of inconsistencies between the Terms and any specific terms, the latter will prevail with respect to the appropriate Services and in the limits of the conflict. Kubeark, its licensors and their Affiliates reserve all rights not expressly granted in the Terms. Kubeark Affiliates, its licensors and their Affiliates are third-party beneficiaries of the Terms and are entitled to enforce them.
- (f) **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.
- (g) **Assignment.** You may not assign or otherwise transfer these Terms or your rights and obligations under the Terms, in whole or in part, without Kubeark's written consent and any such attempt will be void. Kubeark may transfer its rights under these Terms to a third party, in which case these Terms will be updated and made available on the Kubeark website.
- (h) **Change of Control.** You must notify us with 30 days prior to you or your Affiliates (i). being acquired by, selling substantially all of the assets to, merging with, or changing the control in favour of, a direct competitor of ours, or (ii). changing your main object of activity into a business competing with us.
- (i) **Publicity.** If you're a legal entity, you hereby grant Kubeark a transferable, sub-licensable, royalty-free, non-exclusive, worldwide, valid for the entire duration of the rights, license to copy, host, store, distribute, publicly perform, display, incorporate into other works and otherwise use your trademarks, service marks and logos in our



marketing materials, for the purpose of promoting our Services and events. Subject to these Terms and solely subject to compliance with the trademark policies communicated by Kubeark, you may use the appropriate Kubeark names, logos and trademarks to identify Kubeark as your service provider. You must promptly cease any use of Kubeark trademarks identified by Kubeark as problematic. You also agree not to contest the validity of ownership of any Kubeark trademarks. All goodwill arising from use of a Party's trademarks inures to that Party alone.

- (j) **Waiver and Reservation of Rights.** Failure to exercise, or delay in exercising, any right, power or remedy under these Terms 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 these Terms are cumulative and not exclusive of any others provided by law. Any waiver of any breach of these Terms shall not be deemed to be a waiver of any subsequent breach. Kubeark reserves all rights not expressly granted under these Terms. Nothing here creates a legal partnership, joint venture, agency, or employment relationship between Customer and Kubeark or their Affiliates.
- (k) **Applicable Language.** These Terms are 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.
- (l) **UNUSUAL CLAUSES.** YOU HEREBY EXPRESSLY ACKNOWLEDGE AND ACCEPT THE PROVISIONS OF THE AGREEMENT, INCLUDING AND WITHOUT LIMITATION TO FOLLOWING SECTIONS AND THE CLAUSES CONTAINED THEREIN: Governance, License and Intellectual Property, Compliance, Warranties and Indemnification, Limitation of Liability, Governing Law and Dispute Resolution, General.
- (m) **Survival.** Any and all provisions that, by their content, are intended to apply beyond, the performance, non-renewal or termination of the Terms will survive any termination hereunder (whether or not so expressly stated).

9. Defined Terms

"**Affiliate**" is an entity that directly or indirectly controls, is controlled by, or is under common control with another entity; "**control**" means control of more than 50% of the voting rights or equity interests of an entity.

"**Confidential Information**" means information shared by a Party (the "**discloser**") with the other Party (the "**recipient**") which will be deemed confidential if it's marked confidential or would normally under the circumstances be considered as such and does not include information that is independently developed by the recipient, rightfully given to the recipient by a third party without any confidentiality obligations or becomes public through no fault of the recipient.

"**Content**" means text, images, videos, documents, audio, code, scripts, or other information of a person or entity.

"**Customer**" or "**you**" means any individual, or a company or organization that has, accesses, or directs the use of, an account with Kubeark, or is testing or using the Services; where applicable, "**your users**" means your Affiliates and employees or equivalent contractors.

"**Intellectual Property**" means all rights and intellectual property rights, including rights in, arising out of, or associated with: works of authorship; databases; inventions; trademarks, service marks, logos, symbols, trade dress, trade names, and other indicia of origin, whether registered or unregistered, and the goodwill associated therewith, confidential information and trade secrets; rights of attribution and integrity and other moral rights of an author; rights in, arising out of, or associated with a person's name, voice, signature, photograph, or likeness, including without limitation rights of personality, publicity or similar rights; rights in, arising out of, or associated with domain names; and any similar rights regulated in laws arising in any jurisdiction in the world.

"**Personal Data**" means information related to an identified or identifiable natural person as defined by, as applicable, Regulation (EU) 2016/679 (GDPR), or any other laws on the protection of personal data.

"**Services**" means Kubeark's services, including, but not limited to, software applications, websites, forums, courses, or trainings, any improvements, updates and patches thereto, any associated documentation (excluding any publicity or marketing materials) and any Kubeark Content, made available by Kubeark subject to these Terms, being understood that paid Services will be subject to their specific terms and conditions.

"**Terms**" means these Terms and Conditions, any specific terms applicable to certain Services, any policies made available by Kubeark with respect to the use of the Services, any other references therein, all as made available on our website or within the applicable Service, and as amended by Kubeark from time to time.

"**Kubeark**"/"**we**"/"**us**"/"**our**" means the entities described below in the Terms, dependent on your location, and their Affiliates.