

## TERMS AND CONDITIONS

**These Terms and Conditions (the “Agreement”) are effective the earlier of (1) any access or use of any services or software by Customer or (2) when this Agreement is accepted by clicking “I AGREE” or a similar button or check box referencing the Agreement (“Effective Date”). The Agreement is made by and between Kinetica DB, Inc. with an office at 901 N. Glebe Road, Suite 700 Arlington, VA 22203, (“Kinetica”) and you or the entity or organization that you represent (“Customer” or “you”). IF CUSTOMER DOES NOT AGREE WITH THE TERMS OF THIS AGREEMENT CUSTOMER SHOULD NOT USE THE SERVICES.**

### 1. DEFINITIONS

“**Free Services**” means Kinetica services or functionality that may be made available to Customer to try at its option at no additional charge which is clearly designated as “free tier,” beta, pilot, limited release, developer preview, non-production, evaluation, or by a similar description.

“**Customer**” means in the case of an individual accepting this Agreement on his or her own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which such individual is accepting this Agreement.

“**Customer Data**” means electronic data and information submitted by or for Customer to the Services.

“**Documentation**” means all specifications, user manuals, and other materials relating to the Services and provided or made available by Kinetica to Customer, as may be modified by Kinetica from time to time.

“**Malicious Code**” means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

“**Professional Services**” means training, migration or other professional services that Kinetica furnishes to the Services.

“**Services**” means the products and services that are ordered by Customer through Kinetica's online purchasing portal, or provided to Customer free of charge (as applicable) or under a free trial, and made available online by Kinetica, as described in the Documentation. “Services” exclude Professional Services.

### 2. Kinetica RESPONSIBILITIES

**2.1 Provision of Services.** Kinetica will (a) make the Services available to Customer pursuant to this Agreement and Documentation, (b) provide applicable Kinetica standard support for the Services to Customer at no additional charge, and/or upgraded support if purchased, (c) use commercially reasonable efforts to make the online Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which Kinetica shall give advance electronic notice), and (ii) any unavailability caused by circumstances beyond Kinetica’s reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Kinetica employees), Internet service provider failure or delay, or denial of service attack, and (d) provide the Services in accordance with laws and government regulations applicable to Kinetica’s provision of its Services to its customers generally (i.e., without regard for Customer’s particular use of the Services), and subject to Customer’s use of the Services in accordance with this Agreement and the Documentation.

**2.2 Protection of Customer Data.** Kinetica will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, as described in the Documentation. Those safeguards will include, but will not be limited to, measures designed to prevent unauthorized access to or disclosure of Customer Data (other than by Customer). Upon request by Customer made within 30 days after the effective date of termination or expiration of this Agreement, Kinetica will make Customer Data available to Customer for export or download as provided in the Documentation. After such 30-day period, Kinetica will have no obligation to maintain or provide any Customer Data, and as provided in the Documentation will thereafter delete or destroy all copies of Customer Data in its systems or

otherwise in its possession or control, unless legally prohibited. Customer shall not provide Kinetica with any sensitive or highly confidential information as part of Customer Data, including, without limitation, information subject to heightened privacy restrictions, or medical or financial privacy laws.

**2.3 Kinetica Personnel.** Kinetica will be responsible for the performance of its personnel (including its employees and contractors) and their compliance with Kinetica’s obligations under this Agreement, except as otherwise specified in this Agreement.

**2.4 Free Services.** From time to time, Kinetica may make Free Services available to Customer at no charge. Customer may choose to try such Free Services or not in its sole discretion. Free Services may be subject to additional terms and conditions that will be made known to Customer at the time the Free Services are made available. ANY DATA CUSTOMER LOADED OR ENTERED INTO FREE SERVICES AND ANY CUSTOMIZATIONS MADE TO FREE SERVICES BY OR FOR CUSTOMER WILL BE PERMANENTLY LOST UPON THE TERMINATION OF THE CUSTOMER SUBSCRIPTION, UNLESS CUSTOMER ENTERS INTO A NEW SUBSCRIPTION (PAID OR FREE) TO THE SERVICES AND MIGRATES THEIR DATA BEFORE THE END OF THE FREE SERVICES PERIOD. NOTWITHSTANDING THE “REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS” SECTION AND “INDEMNIFICATION” SECTION BELOW, FREE SERVICES ARE PROVIDED “AS-IS” WITHOUT ANY WARRANTY AND KINETICA SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO FREE SERVICES UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE KINETICA’S LIABILITY WITH RESPECT TO THE SERVICES PROVIDED DURING THE FREE SUBSCRIPTION SHALL NOT EXCEED \$1,000.00. KINETICA MAY STOP OFFERING FREE SERVICES AT ANY TIME WITHOUT LIABILITY TO CUSTOMER.

**2.5 Professional Services.** Kinetica will perform Professional Services as described in a separate order or statement of work, which may identify additional terms or milestones for the Professional Services. Customer will give Kinetica timely access to Customer Materials reasonably needed for Professional Services, and Kinetica will use the Customer Materials only for purposes of providing Professional Services. Subject to any limits in an Order or Statement of Work, Customer will reimburse Kinetica’s reasonable travel and lodging expenses incurred in providing Professional Services. Customer may use code or other deliverables that Kinetica furnishes as part of Professional Services only in connection with Customer’s authorized use of the Service under this Agreement.

### 3. USE OF SERVICES

**3.1 Subscriptions.** Unless otherwise provided in the applicable Documentation, (a) Services are purchased as subscriptions for the term stated in the applicable online purchasing portal, (b) subscriptions for Services may be added during a subscription term at the same pricing as the underlying subscription pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions. Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Kinetica regarding future functionality or features.

**3.2 Usage Limits.** Services may be subject to usage limits specified in

Documentation or stated in the applicable online purchasing portal. If Customer exceeds a usage limit, Kinetica may work with Customer to seek to reduce Customer's usage so that it conforms to that limit. If, notwithstanding Kinetica's efforts, Customer is unable or unwilling to abide by a contractual usage limit, Customer will pay any invoice for excess usage in accordance with the "Invoicing and Payment" section below.

**3.3 Customer Responsibilities.** Customer will (a) be responsible for its users' compliance with this Agreement and the Documentation, (b) be responsible for the accuracy, quality and legality of Customer Data, the means by which Customer acquired Customer Data, Customer's use of Customer Data with the Services, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services, and notify Kinetica promptly of any such unauthorized access or use, (d) use Services only in accordance with this Agreement and the Documentation and applicable laws and government regulations. Any use of the Services in breach of the foregoing by Customer or its users that in Kinetica's judgment threatens the security, integrity or availability of Kinetica's services, may result in Kinetica's immediate suspension of the Services, however Kinetica will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to any such suspension.

**3.4 Usage Restrictions.** Customer will not (a) make any Service available to anyone other than Customer and its users, or use any Service for the benefit of anyone other than Customer, (b) sell, resell, license, sublicense, distribute, rent or lease any Service, or include any Service in a service bureau or outsourcing offering, (c) use a Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Service, (f) attempt to gain unauthorized access to any Service or its related systems or networks, (g) permit direct or indirect access to or use of any Services in a way that circumvents a usage limit, or use any Services to access, copy or use any of Kinetica intellectual property, (h) modify, copy, or create derivative works of a Service or any part, feature, function or user interface thereof, (i) frame or mirror any part of any Service, other than framing on Customer's own intranets or otherwise for its own internal business purposes or as permitted in the Documentation, (j) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile a Service or access it to (1) build a competitive product or service, (2) build a product or service using similar ideas, features, functions or graphics of the Service, (3) copy any ideas, features, functions or graphics of the Service, or (4) determine whether the Services are within the scope of any patent.

**4. THIRD-PARTY PRODUCTS AND SERVICES.** Kinetica or third parties may make available third-party products or services and implementation and other consulting services. Any acquisition by Customer of such products or services, and any exchange of data between Customer and any third party provider, product or service is solely between Customer and the applicable third party provider. Kinetica does not warrant or support third party products or services, whether or not they are designated by Kinetica as "certified" or otherwise. Kinetica is not responsible for any disclosure, modification or deletion of Customer Data resulting from access by such third party services or its provider.

## **5. FEES AND PAYMENT**

**5.1 Fees.** Customer will pay all fees associated with the Services as set forth on Kinetica's website or the applicable online ordering portal. Except as otherwise specified herein, (i) fees are based on Services subscriptions purchased, (ii) payment obligations are non-cancelable and fees paid are non-refundable.

**5.2 Invoicing and Payment.** Customer will provide Kinetica with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to Kinetica. If Customer provides credit card information to Kinetica, Customer authorizes Kinetica to charge such credit card for all Services purchased for the initial subscription term and any renewal subscription term(s) as set forth in the "Term of Purchased Subscriptions" section below. Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form or the

applicable online ordering portal. If Kinetica permits the purchase of Services by a method other than a credit card Kinetica will invoice Customer in advance. Invoiced fees are due net 30 days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information to Kinetica and notifying Kinetica of any changes to such information.

**5.3 Overdue Charges.** If any invoiced amount is not received by Kinetica by the due date, then without limiting Kinetica's rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) Kinetica may condition future subscription renewals and Order Forms on payment terms shorter than those specified in the "Invoicing and Payment" section above.

**5.4 Suspension of Service and Acceleration.** If any charge owing by Customer under this or any other agreement for services is 30 days or more overdue, (or 10 or more days overdue in the case of amounts Customer has authorized Kinetica to charge to Customer's credit card), Kinetica may, without limiting its other rights and remedies, accelerate Customer's unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Services until such amounts are paid in full, provided that, other than for customers paying by credit card or direct debit whose payment has been declined, Kinetica will give Customer at least 10 days' prior notice that its account is overdue, in accordance with the "Manner of Giving Notice" section below for billing notices, before suspending services to Customer.

**5.5 Payment Disputes.** Kinetica will not exercise its rights under the "Overdue Charges" or "Suspension of Service and Acceleration" section above if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

**5.6 Taxes.** Kinetica's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its purchases hereunder. If Kinetica has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, Kinetica will invoice Customer and Customer will pay that amount unless Customer provides Kinetica with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Kinetica is solely responsible for taxes assessable against it based on its income, property and employees.

## **6. PROPRIETARY RIGHTS AND LICENSES**

**6.1 Reservation of Rights.** Subject to the limited rights expressly granted hereunder, Kinetica, its affiliates, and its licensors reserve all of their right, title and interest in and to the Services, including all of their related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

**6.2 License by Customer to Kinetica.** Customer grants Kinetica, its affiliates and applicable contractors a worldwide, limited-term license to host, copy, use, transmit, and display any Customer Data, each as appropriate for Kinetica to provide and ensure proper operation of the Services and Professional Services, and associated systems in accordance with this Agreement. Subject to the limited licenses granted herein, Kinetica acquires no right, title or interest from Customer or its licensors under this Agreement in or to any Customer Data. Customer acknowledges that Kinetica will collect metadata about the Customer Data and Customer's use of the Services and hereby grants Kinetica the right to do so in order to provide the Service to the Customer as well as to use aggregate information based on the collected metadata or usage data as long as Customer is not identified and no Customer Data is used in identifiable form.

**6.3 License by Customer to Use Feedback.** Customer grants to Kinetica and its affiliates a worldwide, perpetual, irrevocable, royalty-free license to use, distribute, disclose, and make and incorporate into its services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or its users relating to the operation of Kinetica's or its affiliates' services.

## **7. CONFIDENTIALITY**

**7.1 Definition of Confidential Information.** "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the

other party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Customer includes Customer Data; Confidential Information of Kinetica includes the Services, and the terms and conditions of this Agreement (including pricing). Confidential Information of each party includes business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without knowledge of any breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party. For the avoidance of doubt, the non-disclosure obligations set forth in this “Confidentiality” section apply to Confidential Information exchanged between the parties in connection with the evaluation of additional Kinetica services.

**7.2 Protection of Confidential Information.** As between the parties, each party retains all ownership rights in and to its Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its affiliates, legal counsel and accountants without the other party’s prior written consent, provided that a party that makes any such disclosure to its affiliate, legal counsel or accountants will remain responsible for such affiliate’s, legal counsel’s or accountant’s compliance with this “Confidentiality” section. Notwithstanding the foregoing, Kinetica may disclose the terms of this Agreement to a contractor to the extent necessary to perform Kinetica’s obligations under this Agreement, under terms of confidentiality materially as protective as set forth herein.

**7.3 Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party’s Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

## **8. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS**

**8.1 Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.

**8.2 Kinetica Warranties and Remedies.** Kinetica warrants that during an applicable subscription term (a) this Agreement and the Documentation will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, (b) Kinetica will not materially decrease the overall security of the Services, (c) the Services will perform materially in accordance with the applicable Documentation, (d) Kinetica will not materially decrease the overall functionality of the Services, and (e) any Professional Services will be provided in a professional and workmanlike manner. Kinetica will use reasonable efforts to correct a verified breach of these warranties reported by Customer. If Kinetica fails to do so within 30 days after Customer’s warranty report, then either party may terminate

the Agreement as it relates to the non-conforming Service or Professional Services, in which case Kinetica will refund to Customer any pre-paid, unused fees for the terminated portion of the applicable Services subscription term or for the non-conforming Professional Services, as applicable. To receive these remedies, Customer must report a breach of warranty in reasonable detail within 30 days after discovering the issue in the Services or 30 days after delivery of the relevant Professional Services. These procedures are Customer’s exclusive remedies and Kinetica’s sole liability for breach of these warranties.

**8.3 Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. FREE SERVICES ARE PROVIDED “AS IS,” AND AS AVAILABLE EXCLUSIVE OF ANY WARRANTY WHATSOEVER. CUSTOMER DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREEc.

## **9. MUTUAL INDEMNIFICATION**

**9.1 Indemnification by Kinetica.** Kinetica will defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that any Service infringes or misappropriates such third party’s intellectual property rights (a “**Claim Against Customer**”), and will indemnify Customer from any damages, attorney fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a settlement approved by Kinetica in writing of, a Claim Against Customer, provided Customer (a) promptly gives Kinetica written notice of the Claim Against Customer, (b) gives Kinetica sole control of the defense and settlement of the Claim Against Customer (except that Kinetica may not settle any Claim Against Customer unless it unconditionally releases Customer of all liability), and (c) gives Kinetica all reasonable assistance, at Kinetica’s expense. If Kinetica receives information about an infringement or misappropriation claim related to a Service, Kinetica may in its discretion and at no cost to Customer (i) modify the Services so that they are no longer claimed to infringe or misappropriate, without breaching Kinetica’s warranties under “Kinetica Warranties” above, (ii) obtain a license for Customer’s continued use of that Service in accordance with this Agreement, or (iii) terminate Customer’s subscriptions for that Service upon 30 days’ written notice and refund Customer any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply if (I) the allegation does not state with specificity that the Services are the basis of the Claim Against Customer; (II) a Claim Against Customer arises from the use or combination of the Services or any part thereof with software, hardware, data, or processes not provided by Kinetica, if the Services or use thereof would not infringe without such combination; (III) a Claim Against Customer arises from Free Services; or (IV) a Claim against Customer arises from Customer’s breach of this Agreement.

**9.2 Indemnification by Customer.** Customer will defend Kinetica against any claim, demand, suit or proceeding made or brought against Kinetica by a third party arising from (a) Customer’s use of the Services in an unlawful manner or in violation of the Agreement, or (b) any Customer Data or Customer’s use of Customer Data with the Services (each a “**Claim Against Kinetica**”), and will indemnify Kinetica from any damages, attorney fees and costs finally awarded against Kinetica as a result of, or for any amounts paid by Kinetica under a settlement approved by Customer in writing of, a Claim Against Kinetica, provided Kinetica (i) promptly gives Customer written notice of the Claim Against Kinetica, (ii) gives Customer sole control of the defense and settlement of the Claim Against Kinetica (except that Customer may not settle any Claim Against Kinetica unless it unconditionally releases Kinetica of all liability), and (iii) gives Customer all reasonable assistance, at Customer’s expense. The above defense and indemnification obligations do not apply if a Claim Against Kinetica arises from Kinetica’s breach of this Agreement.

**9.3 Exclusive Remedy.** This “Mutual Indemnification” section states the

indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any third-party claim described in this section.

## 10. LIMITATION OF LIABILITY

**10.1 Limitation of Liability.** IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER AND ITS AFFILIATES HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT CUSTOMER'S AND ITS AFFILIATES' PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.

**10.2 Exclusion of Consequential and Related Damages.** IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

## 11. TERM AND TERMINATION

**11.1 Term of Agreement.** This Agreement commences on the date Customer first accepts it and continues until all subscriptions hereunder have expired or have been terminated.

**11.2 Term of Purchased Subscriptions.** The term of each subscription shall be as specified in the applicable online portal. Renewal of promotional or one-time priced subscriptions will be at Kinetica's applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which subscription volume or subscription length for any Services has decreased from the prior term will result in repricing at renewal without regard to the prior term's per-unit pricing.

**11.3 Termination.** A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

**11.4 Refund or Payment upon Termination.** If this Agreement is terminated by Customer in accordance with the "Termination" section above, Kinetica will refund Customer any prepaid fees covering the remainder of the subscription term of all Services after the effective date of termination. If this Agreement is terminated by Kinetica in accordance with the "Termination" section above, Customer will pay any unpaid fees covering the remainder of the subscription term of all Services to the extent permitted by applicable law. In no event will termination relieve Customer of its obligation to pay any fees payable to Kinetica for the period prior to the effective date of termination.

**11.5 Surviving Provisions.** The sections titled "Free Services," "Fees and Payment," "Proprietary Rights and Licenses," "Confidentiality," "Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Refund or Payment upon Termination," "Surviving Provisions" and "General Provisions" will survive any termination or expiration of this Agreement, and the section titled "Protection of Customer Data" will survive any termination or expiration of this Agreement for so long as Kinetica retains possession of Customer Data.

## 12. GENERAL PROVISIONS

**12.1 Export Compliance.** The Services, other Kinetica technology, and derivatives thereof may be subject to export laws and regulations of the

United States and other jurisdictions. Kinetica and Customer each represents that it is not on any U.S. government denied-party list. Customer will not permit any user to access or use any Service in a U.S.-embargoed country or region or in violation of any U.S. export law or regulation.

**12.2 Anti-Corruption.** Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.

**12.3 Entire Agreement and Order of Precedence.** This Agreement is the entire agreement between Kinetica and Customer regarding Customer's use of Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. The parties agree that any term or condition stated in a Customer purchase order or in any other Customer order documentation is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable online portal, (2) this Agreement, and (3) the Documentation. Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement. **Kinetica may amend the terms of this Agreement upon thirty (30) days' notice by giving notice to Customer of the amendment either directly or by posting the new terms on its website. Customer's continued use of the Services after such period will signify Customer's acceptance of the new terms.**

**12.4 Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.

**12.5 Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.

**12.6 Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

**12.7 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

**12.8 Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination, Kinetica will refund Customer any prepaid fees covering the remainder of the term of all subscriptions for the period after the effective date of such termination. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**12.9 Notices.** Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, or (c) except for notices of termination or an indemnifiable claim ("Legal Notices"), the day of sending by email. Billing-related notices to Customer will be addressed to the relevant billing contact designated by Customer, and Legal Notices to Customer will be addressed to Customer and be clearly identifiable as Legal Notices. All other notices to Customer will be addressed to the relevant Services system administrator designated by Customer.

**12.10 Governing Law.** This Agreement, and any disputes arising out of or related hereto, will be governed exclusively by the internal laws of the State of California, without regard to its conflicts of laws rules or the United Nations Convention on the International Sale of Goods.

- 12.11 Venue.** The state and federal courts located in San Mateo County, California will have exclusive jurisdiction over any dispute relating to this Agreement, and each party consents to the exclusive jurisdiction of those courts.
- 12.12 Counterparts.** This Agreement may be executed electronically and in counterparts.