

# Terms of Service.

Version: 13.0 (10 January 2025)

These Terms of Service (the “**Terms**”) set out the rules under which Kentico Group companies provide to their customers the service Xperience by Kentico, a cloud-based digital experience platform (the “**Service**”).

These Terms form part of the agreement between the company from the Kentico Group that submitted the Quote (as defined below) to the customer during the procedure described in the section "Conclusion of the Agreement" hereof (the “**Provider**”), and the customer to whom the Quote was submitted (the “**Customer**”; the Provider and the Customer hereinafter the “**Parties**”). In the case that the Parties have entered or will enter into a separate written agreement on provision of the Service, such agreement shall apply in lieu of these Terms.

Kentico Group is formed by the company Kentico software s.r.o. with its registered office at Nové Sady 996/25, 602 00 Brno, Czech Republic, ID No.: 269 30 943, registered in the Commercial Register maintained by the Regional Court in Brno, File No: C 46072, and its subsidiaries. For the purposes of these Terms, any other company, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Kentico software s.r.o. is also considered to be a part of Kentico Group.

## The Service

Up-to-date detailed specification of the Service and its functions (the “**Service Specification**”) is available online at the Xperience Documentation page (<https://docs.kentico.com>) which provides information and technical documentation about the Service for its users.

From time to time, at the sole discretion of the Provider, any feature of the Service may be changed, including inter alia modifying current functions, adding new functions, and even canceling current functions. The Provider will endeavor to avoid changes that are incompatible with the Customer’s current use of the Service, especially canceling current functions without a substitute. If, despite the previous sentence, any such change becomes necessary, the Provider shall notify the Customer about such change in advance, if possible.

The Service is cloud-based and the Customer accesses and uses it through its user accounts on the Service Portal, which is accessible online at [xperience-portal.com](https://xperience-portal.com) (the “**Service Portal**”).

## Subscription Plans

The Service is available in various subscription plans (the “**Subscription Plans**”) specified in the pricelist available online at <https://www.kentico.com/pricing> (the “**Pricelist**”). The extent and features of the provided Service and the limits on the extent to which the Customer is entitled to use the Service depend on the chosen Subscription Plan.

The Parties may agree on a custom Service subscription based on any existing Subscription Plan. The specificities of the custom Service subscription will be agreed upon in the Quote (as defined below). In the case where the custom Service subscription is provided for a definite time period, after this period lapses, the provision of the Service shall continue according to the

Subscription Plan, on which the custom Service subscription was based, unless otherwise agreed.

If the current settings of the Service allow it, the Customer may also be enabled to use certain additional features or services intended for use together with the Service or to use the Service to an increased extent (the “**Additional Services**”).

## **Conclusion of the Agreement**

Prior to the conclusion of the agreement between the Parties, the Provider submits to the Customer a draft Xperience by Kentico Quote (the “**Quote**”) based on the Customer’s requirements. The Quote sets out the variable parameters under which the Service shall be provided to the Customer, and usually includes in particular (i) the chosen Subscription Plan or custom Service subscription agreed between the Parties, (ii) the agreed Additional Services, if any, (iii) the date from which the Service shall be provided (the “**Service Start Date**”), (iv) the period for which the Service shall be provided (the “**Subscription Term**”), and (v) any other specific terms of provision of the Service agreed between the Parties. If any deviations from the rules set forth in these Terms are specified in the Quote, the Quote takes precedence over these Terms with regard to such deviations.

As soon as the Customer accepts the Quote and pays the Fee (as specified below) for the first Subscription Term, the Provider will create a user account on the Service Portal for the Customer (unless the Customer's user account has already been created previously, for example for the purposes of Free Access (as defined below) and provide the Customer with login information for this user account.

In order to use the Service, the Customer needs to review and accept these Terms by clicking the “I accept” button in its user account or using other similar mechanism provided. By acceptance of these Terms, the agreement on provision of the Service (the “**Agreement**”) is concluded between the Parties under the terms specified in the Quote, these Terms and other documents referred to in these Terms (in this order of precedence).

The Service shall be provided to the Customer in the latest version available at the date of conclusion of the Agreement from the date of acceptance of these Terms by the Customer unless a later Service Start Date is specified in the Quote, in which case the Service shall be provided from that Service Start Date. If the Service Start Date is not specified in the Quote, the Service Start Date shall be the date of acceptance of these Terms by the Customer.

By accepting the Quote and/or these Terms, the Customer confirms that the Customer is of legal age (in case he/she is a natural person) and otherwise eligible to enter into the Agreement and to use the Service. If any third person acts on behalf of the Customer while accepting the Quote and/or these Terms, such person by accepting them confirms that he/she is entitled to do so on behalf of the Customer.

## **User accounts**

Access to the Service is possible only via user accounts. User accounts enable its users to access and use the Service. The Customer is responsible for maintaining the security and confidentiality of all user accounts, including all passwords and user accounts’ details used to

access the Service. The Customer is responsible for all use of the user accounts, including use of the user accounts by others.

A single user account can only be used by one single user. Signing into the Service from a single user account shared by multiple users is prohibited.

## **Use of the Service**

The Customer may use the Service solely for collecting, organizing, managing and collaborating on content or tracking customer data, behavior and providing a personalized experience. The Customer may not use the Service beyond the limitations described in this Terms, the Service Specification, the Pricelist, and the Quote (if applicable).

Unless otherwise provided for in the Service Specification, the Pricelist or the Quote (if applicable), the Service can be used only by the Customer for its own projects, by the Customer's subsidiaries for their own projects, and by the Customer's implementation provider for the Customer's or Customer's subsidiaries' projects. For the purposes of this provision, a "subsidiary" means any other entity in which the Customer owns directly at least 50% of the outstanding equity interests or shares. Any act or omission by a subsidiary or an implementation provider shall be deemed the act or omission of the Customer for all purposes of the Agreement and the Customer shall be liable therefore in the same manner as if such act or omission were the act or omission of the Customer.

If the Customer is a Kentico partner (in this paragraph the "**Partner**") and has ordered the Service for the needs of their customers' projects, the Service may be used for the projects of the Partner's customers to the maximum extent specified in the Quote. Any act or omission by a Partner's customer shall be deemed the act or omission of the Partner for all purposes of the Agreement and the Partner shall be liable therefore in the same manner as if such act or omission were the act or omission of the Partner.

The Customer shall not use the Service in a manner that could cause harm to the Service or affect its use by other parties, including but not limited to:

- any attempts at gaining unauthorized access to the Service, actions preventing other authorized persons' access to the Service, or enabling/permitting third parties to access or use the Service under the Customer's name (with the above exceptions)
- misusing the Service for attempts at gaining unauthorized access to any other services, data, accounts, or networks by any means
- accessing or using the Service through any automated processes or services unless the procedure of the automated access is described in the Service Specification, such as robots, search modules, or a regular download of the information stored with the Provider, or other third parties, in the cache
- using the Service to dispatch, disseminate, or deliver any unsolicited mass or promotional emails (i.e., spam)
- using the API of the Service in any way other than the use described in the Service Specification
- transmitting viruses, worms, Trojan horses, or anything which may prevent, impair, or adversely affect the operation of the Service.

The Customer is responsible for complying with all applicable laws and regulations of the country from where it uses the Service and shall ensure it has all necessary permission and consent in place in relation to its use of the Service.

The Customer agrees that the Provider can monitor users' behavior and collect data related to the use of Service to ensure continuous Service improvement and to verify the compliance of the use of Service with the agreed terms. Such data shall contain information regarding the frequency of use of individual parts of the Service and error logs. The collected data shall not contain any particular data created by the Customer, personal data, sensitive data or data on the activities of particular users with the exception of collected data screened for, or assessed as, Illegal Content (as defined below). Method of collection and a detailed specification of the collected data are contained in the Service Specification. The Provider is entitled to change the scope and method of collection of the data unilaterally. Any such change shall be noted in the Service Specification.

The Service comes with certain limitations on the extent to which the Customer is entitled to use the Service as stated for the applicable Subscription Plan and the Customer in the Service Specification, the Pricelist, or the Quote. The Provider may, at its sole discretion, allow the Customer to exceed the limitations applicable to the Customer in order to use the Service to a greater extent for a trial period of 30 days during one Subscription Term. If the Customer's actual use of the Service exceeds the limitations applicable to the Customer for a longer period of time, the Provider will contact the Customer with an accordingly updated Quote. If the Customer does not accept the updated Quote, he is obliged to immediately stop using the Service to the extent exceeding the limitations applicable to the Customer. If the Customer does not do so, the Provider is entitled to take any corrective action in relation to the Customer, including, but not limited to, throttling the Service API or otherwise limiting the use of the Service, temporarily suspending the Service, or terminating the provision of the Service. The Customer is obliged, at the Provider's request, to regularly make available to the Provider the log files relevant for the assessment of the extent of use of the Service by the Customer.

The Provider reserves the right to limit, suspend or terminate the Customer's use of the Service for serious reasons, in particular if the Customer (i) uses the Service contrary to this section hereof, (ii) is in default with payment of the Fee (as defined below) or any other payment under the Agreement or (iii) otherwise breaches the Agreement. The Customer shall indemnify and hold harmless the Provider from any harmful activity attributable to the Customer. The provisions of these Terms regarding the limitation, suspension or termination of the Customer's use of the Service due to the presence of Illegal Content are not affected.

## **Content**

The Customer is solely responsible for all the content it enters, uploads, or distributes in using the Service (the "**Content**"), and, as between the Parties, the Customer retains all right, title, and interest to any intellectual property rights to this Content.

The Customer shall not use the Service or allow the Service being used to store or disseminate any information that, in itself or in relation to an activity, including the sale of products or the provision of services, is not in compliance with law of the European Union or the law of any member state thereof which is in compliance with law of the European Union, irrespective of the precise subject matter or nature of that law (the "**Illegal Content**"). The Customer shall not

use the Service for any of the following activities and such activities are deemed to be Illegal Content:

- unlawful activities, such as child pornography, illegal gambling, crime, copyright infringement, trademark rights infringement, and/or a breach of other intellectual property laws, sale of goods or services which violates consumer protection laws, sale of non-compliant or counterfeit products, illegal offer of accommodation services or illegal sale of live animals
- providing or enabling access to the Service to any person from a country on which an embargo has been imposed
- making threats, stalking, defamation, fraud, humiliation, bullying, or intimidation aimed at any person for any reason whatsoever, illegal hate speech or terrorist content and unlawful discriminatory content
- invasion of any person's privacy by unlawful attempts at obtaining, gathering, storing, or publishing of the person's private information or attributable personal information such as private photos, passwords, account information, credit card numbers, addresses, or other contact information without such person's knowledge and consent
- deliberately abusing minors or their interests or gathering attributable personal information about any minor.

If the Provider, based on a third party notification or from its own activities, obtains knowledge or awareness that the Content contains items or information that the Provider considers to be Illegal Content, the Provider is entitled to:

- restrict the visibility of the Content or its part including removal of the Content or disabling access to the Content; and/or
- limit, suspend or terminate the Customer's use of the Service whole or in part, including suspension or termination of the Customer's user account.

Such actions of the Provider does not violate these Terms and the Customer has no right to compensation, damages, discount or other claims as a result of restriction of the Service caused by these actions, even if a court or other competent authority subsequently decides or it is otherwise subsequently established that the relevant items or information did not constitute Illegal Content. The Provider does not take any restrictive measures against the Illegal Content other than those stated above.

The Provider allows any individual or entity to notify it of the presence of Illegal Content on the Service in the manner described on the Provider's website. The Provider will administer the submitted notifications in compliance with the applicable legal regulation, namely the EU Regulation 2022/2065 (Digital Services Act). If an Illegal Content is detected, the Provider will proceed pursuant to the Digital Services Act and take the appropriate restrictive measures stated above. The Provider does not use automated tools for detecting, identifying or addressing Illegal Content.

The Customer is obliged to make regular backups of its Content outside the Service. If any of the Customer's Content is lost or damaged within the Service, the Provider will exert reasonable effort to help the Customer to restore the Content from a Service backup, if a Service backup is available, which shall be the Customer's sole and exclusive remedy for lost or damaged Content. The Provider shall not be responsible for any loss, damage, or disclosure of the Content

and the Customer is not entitled to any compensation, damages or other claims as a result of such loss, damage or disclosure.

Any Content entered or uploaded into the Service will be stored and made available to the Customer upon written request for 30 days following the termination of the Agreement. After the expiration of the 30-day period, the Content will be irrecoverably deleted, unless agreed otherwise. This provision shall not be affected by termination of the Agreement.

## **Service Availability**

Unless a Service Level Agreement according to the section “Service Level Agreement (Guaranteed Service Availability)” hereof is provided to the Customer as an Additional Service, the provisions of this section “Service Availability” apply.

The availability of the Service is monitored on the Status Page available online at <https://status.xperience-portal.com/>.

Subject to the Provider’s rights to limit, suspend or terminate the provision of the Service in the cases set forth in these Terms, the Provider will use commercially reasonable endeavors to ensure that the Service is available at all times. However, the Provider does not provide any guarantee for the availability of the Service and the Customer is not entitled to any compensation, damages or other claims as a result of the unavailability or limited availability of the Service.

The Provider will use commercially reasonable endeavors to announce any downtime caused by maintenance at least 10 days in advance on the Status Page.

The Customer hereby declares that it has been advised by the Provider in a clear and understandable manner of the necessary technical and software equipment and network connection to access and use the Service prior to entering into the Agreement.

The Provider shall provide the Customer with updates to the Service necessary to ensure its operation in accordance with this Agreement. If a defect in the Service occurs during the term of the Agreement, i.e. the Service does not operate in accordance with this Agreement, the Customer shall provide the Provider with reasonable assistance necessary to verify whether the defect in the Service was caused by inadequate technical or software equipment of the Customer or its network connection to access the Service. The Customer acknowledges that if the Customer rejects to provide the Provider with required reasonable assistance, the burden of proof regarding the occurrence of the defect in the Service passes to the Customer.

## **Billing**

The Customer shall pay the Provider the fee specified in the Quote for the provision of the Service and Additional Services (the “**Fee**”).

The Fee specified in the Quote applies only to the first Subscription Term, unless otherwise explicitly stated in the Quote. The Provider is entitled to unilaterally and repeatedly increase the Fee for the following Subscription Terms. The Provider shall notify the increased Fee to the Customer always no later than 30 days prior to the start of the following Subscription Term. The increased Fee shall then apply starting from such following Subscription Term. If the

Customer does not agree with the increased Fee, the Customer is entitled to terminate the Agreement by written notice served to the Provider within 15 days of delivery of the notice of the increased Fee under the terms set out with respect to the Changes in the section "Changes" hereof.

The Fee shall always be paid in advance for the entire Subscription Term. In the event of a Subscription Term longer than 1 year, the Parties may agree in the Quote to divide the Fee for such Subscription Term into annual installments (the "**Annual Installments**").

The Fee and other payments under the Agreement will be payable on the basis of invoices issued by the Provider. Unless otherwise agreed between the Parties, the invoices shall be due 14 days from the date of issue. Any payment to the Provider is payable by bank transfer to the Provider's account specified in the invoice. The payment is deemed to have been paid by crediting it to the Provider's account specified in the invoice.

The Provider will invoice the Fee for the first Subscription Term (or the first Annual Installment if the Fee is divided into Annual Installments) after acceptance of the Quote by the Customer. Payment of the Fee for the first Subscription Term (or the first Annual Installment) is a condition for creating a user account of the Customer on the Service Portal and starting the provision of the Service, as stated in the section "Conclusion of the Agreement" hereof.

If the term of this Agreement is extended by another Subscription Term pursuant to the section "Term of the Agreement" hereof, the Provider will invoice the Fee for the following Subscription Term before the start of this following Subscription Term.

If the Fee is divided into Annual Installments, the Provider will invoice the Annual Installments always before the beginning of the year of provision of the Service to which the relevant Annual Installment relates. The amount of the Annual Installment specified in the Quote applies only to the first year of provision of the Service, unless otherwise explicitly stated in the Quote. The Provider is entitled to unilaterally and repeatedly increase the Annual Installments for the following years of provision of the Service. The Provider shall notify the increased Annual Installment to the Customer always no later than 30 days prior to the start of the following year of provision of the Service. The increased Annual Installment shall then apply starting from such following year of provision of the Service. If the Customer does not agree with the increased Annual Installment, the Customer is entitled to terminate the Agreement by written notice served to the Provider within 15 days of delivery of the notice of the increased Annual Installment under the terms set out with respect to the Changes in the section "Changes" hereof.

The Provider is entitled to limit, suspend or terminate the Customer's use of the Service if the Customer is in default with payment of any Fee or other payment under the Agreement. Such limitation or suspension shall not relieve the Customer of any payment obligations. There shall be no reduction or deduction of the Fees due to the Service not being provided during the time where the Customer is in default of payment and the Provider exerts its right to limit or suspend the Service in accordance with sentence 1 above.

## **Term of the Agreement**

The Agreement shall commence on the date of the Agreement and shall continue for the duration of the Subscription Term specified in the Quote. If the Subscription Term is not specified in the Quote, the Subscription Term shall be one year from the Service Start Date.

Unless either Party notifies the other Party at least 30 days prior to the expiration of the current Subscription Term that it does not want to extend the term of the Agreement, the Agreement automatically extends for the following Subscription Term (the following Subscription Term starts from the day immediately following the last day of the previous Subscription Term and its length is one year, unless it is explicitly stated in the Quote that the term of the Agreement will be automatically extended by another period). The previous sentence applies accordingly to the following Subscription Terms, i.e., the term of the Agreement may be automatically extended repeatedly. If the term of the Agreement is automatically extended, the Service will be in the following Subscription Term provided in the same extent in which it was provided at the end of the previous Subscription Term (including ordered Additional Services etc.).

The Customer may terminate the Agreement by written notice immediately if (i) the Service Level Agreement according to the section “Service Level Agreement (Guaranteed Service Availability)” hereof is being provided to the Customer as an Additional Service, and at the same time (ii) the Actual Service Availability (as defined below) is less than 95 % during any calendar month.

The Provider has right to terminate the Agreement for whatever reason or without stating the reason by giving a written notice to the Customer. The notice period is 3 (three) months and commences on the first day of the month following delivery of the notice to the Customer.

The Provider may terminate the Agreement by written notice immediately if the Customer breaches the Agreement and/or the terms of use of the Service in any way, in particular if the Customer is in default with the payment of the Fee or any other payment under the Agreement for more than 14 days.

If the Customer terminates the Agreement due to its breach by the Provider or if the Provider terminates the Agreement by giving the three months’ notice, the Provider shall return to the Customer the unused portion of the Fee previously paid by the Customer, corresponding to the period from the effective date of termination of the Agreement to the end of the relevant prepaid period. If the Provider terminates the Agreement due to its breach by the Customer by giving the immediate notice, the unused part of the Fee shall not be returned.

## **Support Services**

The Provider shall provide the Customer with support services for using the Service (the “**Support Services**”). The level of the Support Services is specified in the Pricelist, the Service Specification, and the Quote (if applicable) and depends on the Subscription Plan.

The Customer shall fully cooperate with the Provider when receiving the Support Services.

The Customer is strongly recommended to use all the Support Services available to the Customer, especially during the Service implementation. Not using the Support Services by the Customer may result into inappropriate implementation of the Service, in which case the results obtained from the use of the Service by the Customer may not be optimal. For the avoidance of any doubt, the Parties agreed that the Customer is solely liable for the Service implementation, regardless whether the Support Services were used (unless otherwise agreed).

The Customer is recommended to implement the hotfixes and updates of the Service on regular basis. Notwithstanding the previous sentence, the Customer is obliged to implement the updates



of the Service at least once a year, always by 31st October of the given year. If the Customer does not implement the hotfixes and updates of the Service as set out in the previous sentence, the Provider is not obliged to provide full Support Services and, as a solution to fix product related technical issue reported by the Customer, the Provider may only offer an update to a newer version of the Service. The obligation of the Customer to pay the Fee in full amount is not affected by not providing the full Support Services as set out in the previous sentence, nor is the Customer entitled to any damages.

### **Service Level Agreement (Guaranteed Service Availability)**

If the Service Level Agreement is provided to the Customer as an Additional Service, the provisions of this section apply.

The Provider understand that availability is important to the Customer and is confident in the ability to deliver a high level of availability of 99.9%.

“Availability” is defined as when the Service services running the Customer’s production environment are capable of receiving, processing and responding to requests. Specifically, this comprises the application instance, database, (running in Microsoft Azure or other service Provider deems suitable), access to the Xperience Portal and the deployment API(s) (if available).

To the Actual Service Availability (as defined below) of the Service are also counted:

a. unavailability periods of the production environment due to the fault of the Customer and/or its users, or force majeure (including but not limited to flood, riot, fire, judicial or governmental action, labour disputes, act of God, or any other causes beyond the control of Provider);

b. unavailability periods of the production environment that are caused by deployments initiated by the Customer and/or its users, e.g. an update with breaking changes or database modifications;

c. unavailability periods of up to three hours in total per calendar month caused by the maintenance of the Service, including but not limited to, delivering new functionalities, important fixes and improvements in Service performance and stability (the “**Maintenance**”), provided that at least one of the following conditions is met:

- the Maintenance was announced by the Provider at least 10 days in advance to the Customer and on the Status Page available online at: <https://status.xperience-portal.com/>; or
- the stability or security of the Service is severely endangered, in which case the Maintenance may be conducted immediately without prior notice.

Non-standard third party integrations and custom code are excluded from this Service Level Agreement and the Provider assumes no liability for their availability. The Customer is advised to refer to the SLAs of the chosen integrated services.

The Actual Service Availability is calculated as ([total time in minutes during which the Service is available in the given calendar month] + [total time in minutes during which the Service is

not available due to reasons specified under letters a. to c. above in the given calendar month]) / (total number of minutes in the given calendar month) x 100.

If the Actual Service Availability is lower than 99.9% in any calendar month in which the Service is provided to the Customer, the Customer will be entitled to a corresponding Fee Discount (the “**Discount**”). The Discount will be calculated on the basis of the amount of the Fee paid by the Customer for the relevant calendar month (the “**Monthly Fee**”). Unless follows otherwise from the Quote, the Monthly Fee will be calculated as the Fee for the entire relevant Subscription Term divided by the number of months in that relevant Subscription Term. The amount of the Discount will be calculated pursuant to the following formula:  $(99.9\% - [\text{Actual Service Availability}\%]) \times \text{Monthly Fee}$ . For example, if the Monthly Fee amounts to US \$1000 and the Actual Service Availability is 89.9%, the Discount shall be US \$100 ( $[99.9\% - 89.9\%] \times 1000$ ).

The Customer shall claim the Discount by email to the e-mail address sales@kentico.com within 30 days of the end of the calendar month for which the Discount is claimed, otherwise the right for the Discount will expire irrevocably. The discount that the Customer claimed in time and rightfully will be deducted from the Customer's payment of the Fee for the following Subscription Term. If the term of the Agreement is not extended by another Subscription Term, the Provider shall return the Discount to the Customer by bank transfer within 30 days of the expiration of the Subscription Term for which the Discount was claimed.

The Discount is the sole and exclusive compensation for the Customer for the non-compliance with the guaranteed availability of the Service. In addition to the Discount, the Customer is not entitled to any other compensation, damages or any other remedy as a result of unavailability of the Service.

## **Free Access and Beta Releases**

For the purposes of time-limited evaluation, the Provider may provide the Customer free of charge and for a limited period of time with (i) free or trial access to the Service (the “**Free Access**”) or (ii) access to “beta” or other early-stage versions, integrations, or other features of the Service or their downloads for the purposes of on-premise installation (the “**Beta Releases**”). The Free Access and Beta Releases are optional for the Customer to use. Customer may use the Free Access and the Beta Releases (including their on-premise installations) only for the period and purposes specified by the Provider when they are provided to the Customer. The Provider is entitled to terminate the Customer's use of Free Access or Beta Releases at any time at its discretion.

The Provider will not provide the Customer with Support Services in relation to the Free Access or the Beta Releases. The following derogations from the terms hereof apply to the Free Access of the Service:

a. on each website (each page of the website), which is administered with the use of the Service, the following shall be displayed:

- the Provider’s logo “Powered by Xperience by Kentico” containing a hypertext link to the Provider’s website currently under the following link <https://www.kentico.com>, the size of which shall be determined by the Provider, or

- text reading “Powered by Xperience by Kentico” containing a hypertext link to the Provider’s website currently under the following link <https://www.kentico.com>, the size of which shall be determined by the Provider;

b. the Customer shall not remove any logos or other marks of the Provider from the Service.

The Free Access and the Beta Releases cannot be used for commercial purposes, unless otherwise explicitly agreed between the Parties. The Customer is obliged to contact the Provider on the email address [sales@kentico.com](mailto:sales@kentico.com), once the Customer decides to move from the Free Access or the Beta Releases and start using the Service commercially. The Customer is obliged, at the Provider's request, to regularly make available to the Provider the log files relevant for the assessment of the extent of use of the Service by the Customer.

Customer agrees that the Free Access and the Beta Releases are provided on an ‘as is’ and ‘as available’ basis without any warranty, support, maintenance, storage, SLA or indemnity obligations of any kind. Customer acknowledges and agrees that Service provided under the Free Access and the Beta Releases may not be complete or fully functional and may contain bugs, errors, omissions and other problems for which the Provider will not be liable. Accordingly, any use of the Free Access and the Beta Releases are at Customer’s sole risk.

## **Personal data processing**

As a result of providing the Service and fulfilling other obligations under the Agreement, the Provider may process, on the Customer’s behalf, personal data (as defined in the General Data Protection Regulation [Regulation (EU) 2016/679] [“**GDPR**”]) which the Customer will enter, upload, or distribute in using the Service (“**Personal Data**”).

If the Provider processes any Personal Data on the Customer’s behalf when performing its obligations under the Agreement, the Customer is the data controller and the Provider is the data processor (eventually the Customer is the data processor and the Provider is the sub-processor) for the purposes of the GDPR, or any successor legislation to the GDPR (“**Data Protection Legislation**”) (where data controller and data processor have the meanings as defined in the Data Protection Legislation). The Customer hereby authorizes the Provider to process the Personal Data according to the conditions stipulated in this section hereof.

The Provider may process any Personal Data of any data subjects (e.g., Customer’s customers, partners, or employees) which the Customer will enter, upload, or distribute in using the Service. The nature and purpose of processing the Personal Data follows from the Agreement and includes, without limitation, storage of the Personal Data using the cloud computing service and access, gathering, storing, using, sorting or combining, blocking, and disposal of the Personal Data by the Provider’s personnel to the extent necessary for the provision of the Service according to the Agreement. The Provider shall process the Personal Data solely for the purposes of fulfilling its obligations under the Agreement.

The Personal Data may be transferred or stored outside the European Union or the country where the Customer and the users of the user accounts are located in order to carry out the Service and the Provider’s other obligations under the Agreement. Such transfer will be carried out in compliance with the Data Protection Legislation.

The Customer shall fulfill all obligations arising out of their role as a data controller according to the Data Protection Legislation, or, in the case where the Customer is a data processor, fulfill all obligations arising out of their role as a data processor and ensure that the data controller fulfills all obligations arising out of their role as a data controller. The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Provider for the duration and purposes of the Agreement so that the Provider may lawfully use, process and transfer the Personal Data in accordance with the Agreement on the Customer's behalf.

In relation to any Personal Data processed in connection with the performance of the Provider's obligations under the Agreement, the Provider shall:

- a. process the Personal Data only for the purposes of fulfilling its obligations under the Agreement and on the documented instructions of the Customer issued in accordance with the Agreement unless the Provider is required to process personal data by the laws of any member state of the European Union or by the laws of the European Union applicable to the Provider. Where the Provider is relying on the above-mentioned laws as the basis for processing of the Personal Data, the Provider shall promptly notify the Customer of this before performing the processing required by these laws, unless these laws prohibit the Provider from so notifying the Customer. The Customer shall give instructions to the Provider regarding processing of the Personal Data mainly through its use of the Service, by email, by placing support requests, or the instructions may follow directly from the Agreement. The Provider shall notify the Customer in case, in the Provider's opinion, any of the Customer's instruction violates the Data Protection Legislation or other data protection legislation of a relevant member state of the European Union;
- b. taking into account the nature of the processing, upon the Customer's written request, assist the Customer by appropriate technical and organizational measures, insofar as this is possible, for the fulfillment of the Customer's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of the GDPR;
- c. upon the Customer's written request, assist the Customer in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR (e.g., security, breach notifications, impact assessments) taking into account the nature of processing and the information available to the Provider;
- d. notify the Customer without undue delay on becoming aware of a personal data breach;
- e. maintain complete and accurate records and information to demonstrate their compliance with this section hereof;
- f. ensure that their personnel authorized to process the Personal Data are subject to contractual or statutory obligation of confidentiality;
- g. upon the Customer's written request, provide the Customer with all information necessary to prove compliance with this section hereof, and
- h. upon the Customer's written request, enable audits, including inspections, carried out by an independent auditor authorized by the Customer and assist with these audits. The Customer needs to notify to the Provider the intention to carry out the audit and identity of the authorized

auditor in advance and enable the Provider to raise objections against the identity of the authorized auditor. The audit will be carried out in time adequate to the extent of the audit and capacities of the Provider, agreed upon by the Parties. Prior to the audit, the authorized auditor shall enter into a non-disclosure agreement with the Provider or prove that they are subject to a statutory obligation of confidentiality.

Taking into account the state of the art, the costs of implementation, and the nature, scope, context, and purposes of processing of the Personal Data as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall implement appropriate technical and organizational measures to ensure a level of security of the Personal Data appropriate to the risk. Detailed information on the Provider's technical and organizational measures is provided in the Provider's privacy policy (available online on the Provider's website, currently under the following link: <https://www.kentico.com/privacy-policy>).

In the case where the Provider provides the Customer with any assistance or cooperation according to this section of the Agreement (especially pursuant to letters b, c, g, or h above), the Customer shall pay to the Provider corresponding charges according to the Provider's price list valid at the time of the respective activity, upon the Provider's request.

The Provider shall process the Personal Data under the Agreement for the duration of storage of the data in the Service, or, at the latest, until the termination of the Agreement. After the termination of the Agreement, the Parties shall proceed according to the section "Content" hereof.

The Customer consents to the Provider appointing third-party processors of Personal Data under the Agreement including but not limited to Microsoft Corporation (a cloud computing services provider), Cloudflare (a global Content Delivery Network (CDN) provider), Auth0, eventually including their subcontractors, and affiliated companies of the Provider. The Provider confirms that it has entered or will enter with the third-party processors into written agreements imposing on the third-party processors the appropriate data protection obligations under the Data Protection Legislation. In the case where the Provider appoints any third-party processor, the Provider shall proceed in accordance with sec. 28 (2 and 4) of the GDPR. In the case where any third-party processor is seated outside the European Union, the Provider shall ensure any Personal Data will be transferred to such processor in accordance with the Data Protection Legislation, especially to provide appropriate safeguards in relation to the transfer. As between the Customer and the Provider, the Provider shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this section hereof.

The Provider uses the Microsoft Corporation as a cloud computing services provider ("**Microsoft Azure Services**"). Therefore, any data entered, uploaded, or distributed in using the Service will be processed by the Microsoft Corporation or its subcontractors (a list of the subcontractors is available at [https://aka.ms/Online\\_Serv\\_Subcontractor\\_List](https://aka.ms/Online_Serv_Subcontractor_List)) with the use of Microsoft Azure Services. By entering into the Agreement, the Customer agrees with the above-mentioned means of processing the data when using the Service.

Microsoft Azure Services are provided under the licensing terms of Microsoft Corporation, namely, but not limited to, the Online Services Terms (OST) available at <https://www.microsoft.com/en-us/Licensing/product-licensing/products.aspx> ("**Microsoft Licensing Terms**"). When providing the Service to the Customer, the Provider is bound by the obligations specified in this section hereof to the extent the Microsoft Corporation is bound by

the Microsoft Licensing Terms when providing Microsoft Azure Services to the Provider. In the case of any change in such terms, the Provider's obligations to the Customer shall be changed accordingly to correspond to the amended Microsoft Licensing Terms, in which case, the Parties will proceed in accordance with the section "Changes" hereof.

The Provider reserves the right to change unilaterally the cloud computing services provider, replace any other third-party processor of the Personal Data or engage a new one, in which case, the section "Changes" hereof will apply accordingly. In such a case, the Provider will ensure the level of data protection under the new cloud computing services will be commensurate with Microsoft Azure Services.

## **Privacy policy**

The Provider may process personal data of the Customer (in case she/he is a natural person) and personal data of persons acting on behalf of the Customer in connection with the performance of the Agreement. The Provider will process such personal data for the sole purpose of performing the Agreement. Detailed information on how the Provider will process such personal data is provided in the Provider's Privacy policy available online, <https://www.kentico.com/privacy-policy>.

The Customer is obliged to ensure that the personal data specified in the previous paragraph is handed over to the Provider in accordance with the Data Protection Legislation and that the respective data subjects are informed that their personal data is handed over to the Provider and for what purpose.

## **Publicity and marketing**

The Provider reserves for itself and for other companies from the Kentico Group the right to reference the Customer as a client and display the Customer's logo and name on their websites and other promotional materials for marketing purposes. Any display of the Customer's logo and trademarks shall be in compliance with the Customer's branding guidelines. In case the Customer does not agree to such use of the logo and/or name, the Provider must be notified in writing. Except this provision, neither Party will use the name or trademarks of the other Party or refer to the other Party in any form of publicity or press release without such Party's prior written approval.

## **Intellectual property**

The Service, including, but not limited to, logos, graphics, trademarks, service marks, technology, whether patentable or unpatentable, copyrights, trade secrets, know-how, documentation, text, software, etc., is the Provider's intellectual property, which is owned by, or validly licensed to, the Provider. The use of the Service grants the Customer no right or license to reproduce or otherwise use such intellectual property, except to the extent necessary for the Customer's use of the Service under the terms of the Agreement.

To the extent that the Customer is entitled to use the Provider's intellectual property according to the previous paragraph, this right is granted as non-exclusive, time-limited for the duration of the Agreement and without authorization to transfer, assign or sub-license such right, whether wholly or partially, to a third party (except for the permitted use of the Service by

Customer's subsidiaries and implementation provider as specified in the section "Use of the Service" hereof).

Except to the extent necessary for the Customer's use of the Service under the terms of the Agreement, the Customer is not permitted to copy, modify, republish, display, or distribute all or any part of the Provider's software or documentation. Nor is the Customer permitted to reverse compile, disassemble, or reverse engineer such software or make use of such software or documentation to build a product or service.

### **Third-Party Software**

The Service contains computer programs and computer graphics that are made by a third party and are subject to third-party rights (the "**Third-Party Software**"). The Third-Party Software is governed by the licensing terms of the relevant third parties. A list of Third-Party Software is included in the Software Specification or on the Provider's **Community** portal available at <https://community.kentico.com/documentation/third-party-software-licenses>. The Provider may amend this list at any time. The Provider declares that, to his knowledge, the Service does not violate any such third-party rights.

### **Liability**

The Customer acknowledges being sufficiently acquainted with the Service and the Service Specification prior to the conclusion of the Agreement and fully aware of Service's functionalities. The Customer is solely responsible for determining whether the Service is fit for Customer's intended use of the Service. The Customer acknowledges, that the Service is not suitable for use in operating environments susceptible to large-scale or serious damage and that defects in the Service may appear during the use of the Service.

The Customer shall use its best efforts to prevent any damage to Customer or its Content, systems, documents, etc., caused due to defects in the Service (e.g., thorough and comprehensive testing of Service functionality before the Service is released into common use within the Customer's business or a business of other third persons, including testing of interoperability of the Service with other computer programs or other components). The Customer shall be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Provider's data centers, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the Internet.

The Provider bears no liability for the functionality of the Customer's data network, public data networks, hardware and software running on it, and the backing up of the data. The Customer shall ensure that its network and systems comply with the relevant specifications provided by the Provider from time to time. The Provider bears no liability for the state of other programs used by the Customer or for any potential interference by third parties with other programs used by the Customer.

Except as expressly and specifically provided in the Agreement:

a. the Customer assumes sole responsibility for results obtained from the use of the Service by the Customer, and for conclusions drawn from such use. The Provider shall have no liability for any damage caused by errors or omissions in any information, instructions, or scripts



provided to the Provider by the Customer in connection with the Service, or any actions taken by the Provider at the Customer's direction;

b. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Agreement.

The Service is provided to the Customer on an “as is” basis.

To the fullest extent permitted by applicable law, the Parties agree that the Provider’s liability for damages, including the loss of profits, that may arise for the Customer due to a breach of the Provider’s obligations hereunder, or due to defects in the Service, shall be limited to the maximum cumulative amount of US \$10. The Provider shall in no case be liable for any damages exceeding this limit. The limitation above does not extend to damage caused by the Provider to a natural person on his/her natural rights or caused intentionally or through gross negligence.

The Agreement is concluded solely between the Provider and the Customer and does not give rise to any obligations, debts or liability of any other company from the Kentico Group.

**Jurisdiction**

The Agreement, as well as rights and obligations arising from or in connection with it, shall be governed by the law specified below (the "**Governing Law**") without regard to the choice of law rules.

Each Party irrevocably agrees that the courts specified below shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims) (the "**Competent Courts**").

The Parties agree that the Governing Law and the Competent Courts are determined pursuant to the identity of the Provider specified in the Quote, as follows:

<b>Provider</b>	<b>Governing Law</b>	<b>Competent Courts</b>
Kentico Software CZ s.r.o. ID No. 03902803	Law of the Czech Republic	Courts of the Czech Republic in Brno
Kentico Software, LLC, 15 Constitution Drive, Suite 2G, Bedford, NH, 03110, USA	Law of the State of New Hampshire	Federal courts of the United States of America located in the State of New Hampshire or the courts of the State of New Hampshire
Kentico Software Limited company no. 07584637	Law of England and Wales	Courts of England and Wales
Kentico Software Pty Ltd, Level 4, 83 Mount St, North Sydney, New South Wales 2060, Australia	Law of State of New South Wales in the Commonwealth of Australia	Municipal Court in Sydney



Kentico Software GmbH Commercial reg. no.HRB 32869	Law of the Federal Republic of Germany	Courts of Neuss, Germany
--	---	--------------------------

## **Severability**

If any part of the Agreement is found to be invalid under any applicable statute or rule of law, then the Agreement shall remain in full force and effect. Further, when possible, a court shall give effect to the intention of the invalid provision to the fullest extent possible within the law.

## **Full agreement**

The Agreement (consisting of the documents specified in the section “Conclusion of the Agreement” hereof) represents full and complete agreement of the Parties and replaces all prior agreements or understandings. For the avoidance of doubt, the Parties explicitly agree that for the purposes of provision and use of the Service under the Agreement, no terms published on the Provider’s website are binding, unless expressly referred to in the Agreement.

For the avoidance of any doubt, in the case where the Parties have entered or enter into a separate written agreement on provision of the Service, such agreement prevails.

## **No partnership or agency**

Nothing in the Agreement is intended to or shall operate to create a partnership between the Parties, or authorize either Party to act as an agent for the other, and neither Party shall have the authority to act in the name of or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability, and the exercise of any right or power).

## **Assignment**

The Customer may not transfer, assign or delegate the Agreement as a whole or any of the Customer’s rights and obligations arising from the Agreement in any manner without the prior consent of the Provider. The Customer agrees that the Provider is entitled to transfer, assign or delegate the Agreement as a whole or any of the Provider’s rights and obligations arising from the Agreement to a third party without any further consent of the Customer being required.

## **Communication of the Parties**

Any notification under these Terms shall be deemed to have been made if sent by email to the following email address:

- to the email address sales@kentico.com, in the case of notification by the Customer to the Provider,
- to the email address of any of the contact persons that the Customer has communicated to the Provider in any way, in the case of notification by the Provider to the Customer.

The Customer is obliged to notify the Provider without undue delay of any change in their contact persons and/or their contact details.

## **Changes**

The Parties may agree anytime to change the parameters of the Service or the extent of provided Additional Services. In such a case, the Provider shall submit to the Customer a new Quote and the Parties will proceed accordingly pursuant to section “Conclusion of the Agreement” hereof.

These Terms and other documents referred to in these Terms, as well as the other Provider’s policies regarding the Service may be unilaterally changed by the Provider at any time to a reasonable extent (the “**Change**”). Publication of the Change on the Service Portal shall be considered sufficient notice of such Change. If the Customer does not agree with the Change, the Customer is entitled to terminate the Agreement by written notice served to the Provider within 15 days of the publication of the Change on the Service Portal or from the notification of the Change to the Customer in another way. In that case, the Agreement terminates at the time agreed upon by the Parties or, at the latest, 30 days after the Provider was served with the termination notice. For the avoidance of any doubt, the Customer is obliged to pay a proportional share of the fees for using the Service until the termination of the Agreement becomes effective. Continued use of the Service after the 15-day period to serve the notice constitutes the Customer’s acceptance of such Change.