

KENESTO MASTER SOFTWARE SERVICE AGREEMENT

WELCOME TO KENESTO. PLEASE READ CAREFULLY THE FOLLOWING TERMS AND CONDITIONS (THE "TERMS", OR THE "TERMS OF USE") FOR USING OUR WEB-BASED AUTOMATED PROCESS SERVICE (THE "SERVICE").

THESE TERMS CONSTITUTE A BINDING AGREEMENT BETWEEN KENESTO CORP, ("WE", "US", "OUR" OR "KENESTO"), AND YOU – AN INDIVIDUAL OR A LEGAL ENTITY, IDENTIFIED BY THE DETAILS THAT YOU PROVIDED DURING THE REGISTRATION PROCESS ("YOU", "YOUR"). IF YOU DO NOT AGREE WITH THE TERMS, YOU MAY NOT USE THE SERVICE.

The Service. This agreement sets forth the terms and conditions under which we agree to license the Service. The Service is installed and maintained on Amazon Web Services We may replace the hosting services provider, in whole or in part, with the services of another hosting services provider, any time, and at our sole discretion.

We may at any time, and in our sole discretion, add, modify, discontinue, remove, or suspend any part of the Service, either temporarily or permanently, without notice and without liability to you. You hereby agree that such activities may occur at our sole discretion, and we may require you to agree to such changes before permitting you to continue to use the Service.

Maintenance and Availability. We will use commercially reasonable efforts to make the Service available 24 hours a day, 7 days a week, except for planned maintenance to the Service that we will conduct from time to time, and unscheduled maintenance performed outside business hours (09:00 AM – 06:00 PM (EST), Monday through Friday, hereinafter "business hours"). If the maintenance is likely to cause disruptions to the functionality of the Service or to your ability to access and use the Service, then we will notify you of such maintenance, within a reasonable time before it takes place.

Service availability may also be affected by planned and unscheduled maintenance by the hosting services provider. Service hosting maintenance may cause disruptions to the functionality of the Service or to your ability to access and use the Service. If possible, we will notify you of such maintenance, within a reasonable time before it takes place.

We will provide a support representative that will be available by email or phone or to your duly authorized and appointed system administrators, who have full access and permissions to administer your preferences, during business hours, excluding holidays. You may receive after hours support until midnight, if there is a critical error that prevents access to the system.

We will maintain a system-level backup of the data that authorized users store in the service data base ("customer data") sufficient to restore your data, by using the hosting services provider's services.

We implement standard information security tools and procedures to secure customer data, as provided by the hosting services provider. We further apply encryption and hashing measures to secure customer data transmission and the confidentiality of your access details. From time to time, we may upgrade and perform additional modifications to the Service. You may use all the upgraded and modified versions of the Service without extra payment during the term. Inconvenience and malfunctions may occur when introducing new versions or features and we will do our best to prevent them

Authorized use. Subject to payment of fees and any restrictions herein, we grant you a limited, non-exclusive, revocable, non-transferable without right to sub-license, right to permit authorized users to use the service during the term solely for the your internal business operations.

You may register any number of users, including employees, suppliers, customers, contractors, vendors, agents and consultants as you wish ("authorized users"). We will provide you a management interface, to obtain effective control over the authorized users. you agree and acknowledge that you are solely responsible for protecting the confidentiality and privacy of your authorized users log-in details as well as all data uploaded by them to the database and file storage space that we make available to you for the purpose of storing and managing such data

("service data base"), and you further acknowledge and agree that any such uploaded data will remain at all times subject to United States federal laws and regulation with respect to privacy and data protection.

Rules of conduct when using the Service. You may not use or have others use the Service, to provide the Service to third parties, including, without limitation, resell, license, lend or lease the Service to, or timeshare with, any third party, except as otherwise expressly permitted in this agreement.

When using the Service, you agree to: (i) abide by all applicable local and international laws, regulations and rules; (ii) take full account for all acts or omissions associated with authorized users' access and use of the Service; (iii) comply with any instructions and technical specifications provided by us; (iv) avoid any alteration or modification of any Service computer code; (v) refrain from interfering with, circumventing, manipulating, impairing or disrupting the operation, or the functionality of the Service.

You may not use the Service to knowingly transmit or send viruses, Trojan horses, worms, vandals, spyware and any other malicious applications, and unsolicited commercial communications, chain letters, or pyramid schemes. You may not upload executable files.

You may not attempt to reverse engineer, decompile or disassemble the Service's software code, work around any technical limitations in the Service, use any tool to enable features or functionalities that are otherwise disabled in the Service or make any attempts thereto.

Service configuration and Fees. The Service is subject to the payment of the then-current fees as posted on our website. The fees may be updated from time to time. You may review the current fees on our website at: www.kenesto.com.

The Service maintains a quota, as separately conveyed to you, which limits the number of processes you may execute each month without incurring additional charges. You will be permitted to execute processes in excess of your monthly quota, if you have opted-in to our overage program, under which you agree to pay the then-current fees for any excess use. You may at any time choose to opt-in to or opt-out of our overage program.

All fees are quoted in U.S. Dollars, unless expressly stated otherwise. You may pay the fees by using the methods of payments as available, published and updated from time to time on the Service, such as by a credit card or by using an online payment service.

You represent and warrant that any payment method that you have selected when using the Service will enable you to pay all fees and taxes in a timely manner and in compliance with the fees payable for your use of the Service

All payments will be made against duly issued monthly or other periodic invoices and will not include taxes unless required by law, if required by law. You are responsible for any use taxes, VAT, or any other taxes levied by your local taxing authorities for the use of our software unless we have already collected that tax.

A delay in your timely payment of any and all fees will constitute a material breach of the agreement and will bear both full linkage differentials and interest at a monthly rate of one percent (1%), cumulative month on the linked capital – all, without derogating from any other rights and remedies available to us under the applicable law.

Privacy. We respect your privacy. We will handle your personal information that you provide us or that we collect, including information pertaining to Authorized users, in accordance with our then-current [privacy policy](#), which is incorporated by reference to this agreement.

When using the Service, you will comply with all applicable privacy and data protection laws, rules and regulations, including, without limitation by: (i) obtaining any required consent from natural persons to the processing of their personal information by the Service and/or us on computer servers located in the United States, or elsewhere, as may be from time to time and subject to our discretion; (ii) obtaining any required consent from all authorized users, to the collection, processing and use of their personal information by the Service and/or us during the course of registration to and use of, the Service, insofar as such consent is required by any applicable privacy and data protection laws, rules and regulations; (iii) taking full and exclusive responsibility for the privacy and protection of any and all data, of any type, uploaded by your authorized users to the Service data base, whether due to your

request, for the use of the Service hereunder or for any other reason. You hereby undertake to indemnify and hold us harmless against any and all claims, demands or lawsuits brought by authorized users or by others on their behalf relating to uploaded data and/or the use of the Service under this agreement.

You acknowledge that we may use anonymous, statistical and aggregated data that is derived from customer data, for our own purposes and that in so far that such use requires consent from data subjects, you represent that you received the necessary consent.

Term of the agreement; Termination. Unless terminated earlier in accordance with the terms set forth in this agreement, the term of this agreement will be 1 year, starting from completion of the registration process (the “term”). We may suspend or terminate your access to the Service or block your future access to the Service, without notice, if you fail to comply with any of the terms of this agreement. In such event, you must cease using the Service and your license to use the Service is terminated. You may also stop using the Service at any time, or otherwise terminate your subscription hereunder, at which point your license to use the Service expires. Each party may terminate the agreement by sending the other party a termination notice, at least 30 days prior to the end of the term or any renewal term (if any). In such case, the agreement will be terminated at the end of the term or renewal term accordingly. You can send a termination notice to us through e-mail to: info@kenesto.com. Termination notices by us will be sent using any of the contact details that you provided during the registration process.

Your representations to us. You represent and warrant that: (i) you examined the Service and found it suitable to your needs; (ii) you are aware of and acknowledge the capabilities and limitations of the Service; (iii) you have all permissions and licenses, including under any applicable corporate policies, confidentiality and non-competition agreements, to upload customer data to the Service and use it through the Service.

COMMERCIAL VERSION: LIMITATION OF LIABILITY AND LIMITED WARRANTY. We warrant that the Service, if operated as directed and for purposes for which it was designed, will perform in substantial compliance with its specifications as indicated on our then-current specification sheet accessible on our web site at www.kenesto.com, provided that: (i) you use the Service under the customer service requirements indicated in our specification sheet; and, (ii) you use the Service in accordance with our instructions and this agreement. In the event that the Service does not perform in accordance with such specifications, we will, at our expense make necessary bug-fixing and modifications to correct such performance failure. If the Service is held to, or we believe it is likely to be held to infringe a copyright, patent or trade secret, we will have the right at our sole discretion and expense to (i) substitute or modify the Service so that it is non-infringing; or (ii) obtain for you a license to continue using the Service.

EXCEPT FOR THE WARRANTY SET FORTH ABOVE, THE SERVICE IS PROVIDED "AS IS" WITHOUT WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY (IF ANY) WARRANTIES, DUTIES AND CONDITIONS OF OR RELATED TO: MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, LACK OF VIRUSES, ACCURACY OR COMPLETENESS OF RESPONSES, RESULTS, WORKMANLIKE EFFORT AND LACK OF NEGLIGENCE. ALSO, THERE IS NO WARRANTY, DUTY OR CONDITION OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION OR NON-INFRINGEMENT

YOU ACKNOWLEDGE THAT THE SERVICE IS INHERENTLY COMPLEX AND MAY THEREFORE NOT BE COMPLETELY FREE OF ERRORS. YOU FURTHER ACKNOWLEDGE THAT THE PERFORMANCE OF THE SERVICE MAY BE AFFECTED BY ANY NUMBER OF FACTORS, INCLUDING WITHOUT LIMITATION, TECHNICAL FAILURE OF THE SERVICE, ACTS OR OMMISIONS OF THIRD PARTIES AND OTHER CAUSES REASONABLY BEYOND OUR CONTROL. WE WILL NOT BE LIABLE (WHETHER UNDER CONTRACT, TORT, INCLUDING NEGLIGENCE OR OTHERWISE) TO YOU, OR TO ANY THIRD PARTY FOR ANY LOSS OR DAMAGE, INCLUDING INDIRECT, SPECIAL CONSEQUENTIAL, PUNITIVE, OR OTHER DAMAGES WHATSOEVER, AND INCLUDING, WITHOUT LIMITATION, ANY LOSS OR DAMAGE TO BUSINESS EARNINGS, LOST PROFITS AND OR GOODWILL, SUFFERED BY ANY PERSON, ARISING FROM AND/OR RELATED TO DELIVERY, USE, PERFORMANCE OF OR INABILITY TO USE THE SERVICE AND/OR ANY OF ITS COMPONENTS, WHETHER FORESEEABLE OR NOT, EVEN IF WE ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT THAT, NOTWITHSTANDING THE TERMS OF THIS AGREEMENT, WE ARE FOUND LIABLE FOR DAMAGES

BASED ON ANY DEFECT OR NONCONFORMITY OF THE SERVICE, OUR TOTAL LIABILITY WILL NOT EXCEED THE ANNUAL FEES PAID TO US BY YOU.

To the greatest extent permitted by applicable law, you hereby release us and our shareholders, officers, employees and advisors from and against any and all demands, claims, actions, suits or proceedings, as well as any and all losses, liabilities, damages, costs, and expenses of any kind that arise from, out of, in connection with, or incident to, whether directly or indirectly, your use of the Service.

Intellectual property. All rights, title and interest, including copyrights, trademarks, trade names, service marks, trade secrets and other intellectual property rights, and any goodwill associated therewith, in and to the Service, including computer code, graphic design, lay-out and the user interfaces of the Service, and all derivatives, improvements and variations thereof, are and will remain at all times, owned by, or licensed to us.

The provisions of this section will survive the termination of this agreement.

Customer Data. Customer data will be and remain your sole and exclusive property. You provide us a license to use customer data for the sole and exclusive purpose of providing the Service, including a license to store, record, transmit, maintain, and display customer data only to the extent necessary to provide the Service. It is your sole responsibility to comply with the applicable laws and regulations related to the protection and use of the personal information in the customer data.

Except as expressly set forth herein, no license is granted by party to the other with respect the confidential information, the Service, or customer data. Nothing in this agreement will be construed to grant to either party any ownership or other interest, in the confidential information, Service, or customer data, except as explicitly provided in this agreement.

You agree that we may collect and store customer data on the service data base for the purposes of delivering the Service to you. You represent and warrant that, to the extent required, you have obtained all necessary rights and licenses to the data stored on the service data base for use as contemplated herein and that our use of the data stored on the service data base as set forth herein will not violate any intellectual property rights or privacy rights of any third party. We may aggregate non-identifiable customer data with non-identifiable anonymous meta-data from other Kenesto customers and third parties to create anonymous aggregated meta-data that does not identify any individual customer or the metrics or information pertaining to any customer or its authorized users. We will solely own all rights to aggregated data, and has the irrevocable right to maintain, store, use and disclose aggregated data.

The provisions of this section will survive the termination of this agreement.

Indemnification. You agree to indemnify and hold us (and our officers, directors, employees, agents, affiliates, and licensors) harmless from any claim, costs, losses, damages, liabilities, judgments and expenses (including reasonable fees of attorneys and other professionals), arising out of or in connection with any claim, action or proceeding ("claims") by a third party arising out of (i) your or authorized users' use of the service; (ii) your noncompliance with or breach of any of these Terms, or (iii) the unauthorized use of the service by any other person using your user information. At our option, you shall assume control of the defense and settlement of any claim subject to indemnification by you (provided that, in such event, we may at any time thereafter elect to take over control of the defense and settlement of any such claim, and in any event, you shall not settle any such claim without our prior written consent).

Non-Disclosure of confidential Information. You will maintain strict confidentiality of the payment details, any information regarding the service functionality, capabilities, structure, design and all other details related thereto, any of our business practices, tutorials and training material, and will not disclose them, or have them disclosed, directly or indirectly to any third party without our prior written permission.

We will maintain strict confidentiality of customer data and any of your business practices, and will not disclose them, or have them disclosed, directly or indirectly to any third party without your prior written permission. Notwithstanding the foregoing, you hereby agree and acknowledge that we may, wholly or partially disclose customer data, your business practices, other information (personal or otherwise) pertaining to you or to a third party, to the extent such disclosure is required in order to comply with a legal obligation including, orders, subpoenas,

decrees or request prescribed by a competent judicial, administrative or regulatory authority under any United States federal or state law.

This clause will survive the termination of the agreement.

Termination. If either party materially breaches any of its duties or obligations hereunder, and such breach is not cured, or the breaching party is not diligently pursuing a cure to the non-breaching party's sole satisfaction, within thirty (30) calendar days after written notice of the breach, then the non-breaching party may terminate this agreement.

Upon the expiration or termination of this agreement for any reason, you will pay us all outstanding amounts payable hereunder.

Upon expiration or earlier termination of this agreement we will provide you with a final export of the customer data and will certify the destruction of any customer data within our possession. The parties agree to work in good faith to execute the foregoing in a timely and efficient manner.

This Section will survive the termination of this agreement.

Compliance with Export Restrictions. You hereby agree and undertake that the Service will not be used directly or indirectly, by any third party that resides in any country or in any manner prohibited by the United States export laws and rules. You hereby represent and warrant that you are not incorporated or a citizen, or otherwise located within, one of the embargoed nations, including without limitation Iran, Iraq, Libya, Syria, Sudan, Cuba, and North Korea, or any other country as to which the United States government has placed an embargo against the shipment of products, which embargo is in effect during the term of this agreement.

General. Nothing herein will be deemed to preclude us from providing the Service to any other person.

We may use subcontractors to perform our duties, or any part thereof under this agreement. However, our right to subcontract any of the Service does not relieve us from any of our duties or obligations toward you under this agreement.

This agreement may not be assigned by you without our prior explicit written approval. We may assign our duties and obligations under this agreement if we organize the operation of the Service within a different framework, or through another legal structure or entity, or if we are acquired by, or merged into or with another entity. Any assignment in violation of this subsection is void.

This agreement and your use of the Service will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, U.S.A., without giving effect to any choice of law or conflict of law rules or provisions, whether Federal, or of the Commonwealth of Massachusetts or of any other jurisdiction, which would result in the application of the laws of a jurisdiction other than the Commonwealth of Massachusetts. You agree to resolve any dispute or claim that you may have against us and to submit to personal jurisdiction in the exclusive jurisdiction of state and federal courts of the District of Massachusetts.

In the event of any dispute or disagreement between the parties with respect to the interpretation of any provision of this agreement, or with respect to the performance of either party hereunder, our managers and your managers ("representatives") will meet, either physically, or online, for the purpose of resolving the dispute. In the course of these non-judicial dispute resolution procedures, documents used to resolve the dispute will be limited to essential, non-privileged information. All requests will be made in good faith and be reasonable in light of the economics and time efficiencies intended by the dispute resolution procedures. The representatives may mutually agree to appoint a neutral advisor to facilitate negotiations and, if requested by both parties, to render non-binding opinions. No formal proceedings for the judicial resolution of any dispute may be commenced until sixty (60) calendar days following initiation of negotiations under this Section or for such shorter period as the parties may mutually agree to in writing. Either party may then seek whatever remedy is available in law or in equity. The provisions of this Section will not apply to any dispute relating to the parties' obligations of non-disclosure and confidentiality as further described herein.

Neither party will be liable for delays or any failure to perform the Service or this agreement due to causes beyond its reasonable control. Such delays include, but are not limited to, fire, explosion, flood or other natural catastrophe, governmental legislation, acts, orders, or regulation, strikes or labor difficulties, to the extent not occasioned by the fault or negligence of the delayed party.

The terms of this agreement constitute the entire agreement between you and us with respect to the use of the Service and supersede any and all other agreements. No waiver, concession, extension, representation, alteration, addition or derogation from the agreement, or pursuant to the agreement, will be effective unless consented to explicitly and executed by both parties.

The agreement does not create in any way a partnership, joint venture, employment relationship, franchise, agency or any other similar relationship between the parties. Nothing in the agreement shall be interpreted or construed as creating or establishing any such relationship.

The agreement takes precedence over all documents, forms and policies incorporated thereto, unless specifically indicated in such documents that a certain provision is determined notwithstanding any of the provisions of the agreement.

Failure of a party to demand performance of any provision of the agreement will not constitute a waiver of any right under the agreement.

The section headings are included for convenience only and take no part in the interpretation, or construing of the agreement.

If any provision of the agreement is held to be illegal, invalid, or unenforceable by a competent court, then the provision shall be performed and enforced to the maximum extent permitted by law, and the remaining provisions of the agreement will continue to remain in full force and effect.

We may modify the terms of this agreement from time to time, as well as change, delete, discontinue, or impose conditions on any feature or aspect of the Service without prior notice to you, provided that it is not our intent that such changes substantially affect the rights granted to you in this agreement and for which consideration was paid by you. In case of material modification, the updated agreement will be posted on our website and will be accessible to you when you logon to the Service, at least thirty days before the updated agreement takes effect. When we deem appropriate, before using the Service again, we will ask you to accept the updated agreement. It is your responsibility to check this agreement periodically for changes. Your continued use of the Service after such amendment and notice constitutes your agreement to such changes.

We may contact you and send you notice through e-mail, fax messages or regular mail. We will use your details documented in our database for that purpose. You may contact us by using the 'contact' form on our website at: www.kenesto.com, or by using our contact details hereunder. All communications between us will be deemed as received after one business day.

Our contact details:

Address: 1050 Winter St. Suite 2700 Waltham, MA 02451

Telephone: 781-780-7400

E-mail: info@kenesto.com

Last updated on: May 29, 2012.