

KENSU PROOF OF CONCEPT AGREEMENT

This Proof of Concept Agreement ("Agreement") is made as of _____, 2023 ("Effective Date") between Kensu, Inc., a Delaware corporation, with offices at 353 Kearny Street, San Francisco, CA 94108 ("Kensu") and _____ with offices at _____ ("Customer").

CUSTOMER:	KENSU INC.
Individual Signing: [print name]	Individual Signing: [print name]
Signature:	Signature:
Title:	Title:
Signing Date:	Signing Date:
Customer Address For Notifications:	Kensu Inc. Address For Notifications: 353 Kearny Street San Francisco, CA 94108

1. DEFINITIONS.

"Affiliate" means, with respect to a party, any entity which directly or indirectly Controls, is Controlled by, or is under common Control with such party and for clarity, Customer includes its Affiliates.

"Ancillary Software" means software licensed by Kensu to Customer as an agent and that is deployed on machines operated by or for Customer to facilitate operation of the Products.

"Confidential Information" has the meaning set forth in Section 9.

"Control" means ownership or control, directly or indirectly, of more than 50% of the voting interests of the subject entity.

"Customer Data" means data, text, and the like that Customer inputs and/or loads into the Products.

"Data Protection Laws" means all applicable legislation with respect to the processing of Personal Data, including but not limited to the California Consumer Privacy Act and the European General Data Protection Regulation (2016/679).

"Documentation" means the description of the Products licensed to by Customer contained in the Products descriptions found at <https://www.kensu.io/product/features> or its successor website.

"Fee" means the consideration defined in the Order to be paid by Customer for the Products licensed by Kensu.

"Order" means an order for the Products signed by Kensu.

"Products" mean any Kensu cloud solution and/or on-premise software programs (in object code format) and the Ancillary Software licensed by Kensu to Customer, together with all Updates, as further described in the Documentation and in an Order.

"Support" has the meaning set forth in Section 8.

"Taxes" means any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, sales, use or withholding taxes.

"Term" means the term applicable to each Order for Products, or if no such term period is defined, twelve (12) months, commencing on the Effective Date.

"Updates" means all Products updates and enhancements that Kensu generally makes available at no additional charge to its customers of the version of the Products licensed hereunder who are current in payment of applicable Fees.

"Users" means Customer's and its Affiliates' employees, agents, contractors, and consultants who are authorized by Customer to use the Products.

2. TERMS FOR THE PRODUCTS. Subject to the terms of the Agreement, Kensu grants Customer and its Affiliates a non-exclusive, non-transferable (except to a successor in interest as permitted hereunder) license to access, use, and install (only for the portions of the Products that are available for download and/or on-premise installation as determined by Kensu) the Products listed under an Order during the Term. Customer's right to use the Products is limited to the tier and other restrictions contained in an Order and the Documentation.

3. CUSTOMER RESPONSIBILITIES RELATING TO USE OF THE PRODUCTS.

3.1 As between the parties, Customer is responsible for, (i) all activities conducted under its User logins, and (ii) obtaining and maintaining any Customer equipment and any ancillary software and/or services needed to connect to, access, install (only for the portions of the Products that are available for download and/or on-premise installation as determined by Kensu), or otherwise use the Products.

3.2 Customer shall use the Products solely for its internal business purposes, in compliance with applicable law, and shall not: (a) resell, sublicense (except, if and when applicable, to its authorized Affiliates listed in the Order), lease, time-share or otherwise make the Products available to any third party; (b) process, send, or store infringing or unlawful material using the Products; (c) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the Products or the data contained therein; (d) modify, copy or create derivative works based on the Products; (e) do any "mirroring" or "framing" of any part of the Products, or create Internet links to the Products which include log-in information, user names, passwords, and/or secure cookies; (f) reverse engineer the Products; (g) propagate any virus, worms, Trojan horses, or other programming routine intended to damage any system or data; (h) access or use the Products for the purpose of building a competitive product or service or copying its features or user interface; or (i) use the Products, or permit it to be used, for purposes of product evaluation, benchmarking or other comparative analysis intended for publication without Kensu's prior written consent.

3.3 Notwithstanding the grant in Sections 2, 3.1 and 3.2, Customer and its Affiliates acknowledge that the Products includes or may include some software components that are licensed to Customer and its Affiliates under "free software" or "open source" licenses which, among other rights, permit the user to copy, modify and redistribute certain programs, or portions thereof, and/or have access to the source code for such components ("Free Software Licenses"). Kensu shall provide a list of open source components for a particular version of the Products upon Customer's request. To the extent stated in any applicable Free Software License, the terms of such licenses will apply in lieu of the terms of Sections 2, 3.1 and 3.2. To the extent the terms of any Free Software License prohibit any of the restrictions in this Agreement with respect to such components, such restrictions will not apply to such components.

3.4 From time-to-time, Kensu may provide certain portions of the Products as new, beta-only features ("Beta Features"). Beta Features will be identified to Customer in an Order or Products log-in or landing page, or will otherwise be identified to Customer. Beta Features are provided without any warranties or service levels and Kensu has no liability to Customer for the Beta Features only.

4. OWNERSHIP.

4.1 Customer shall retain all ownership rights in and to all Customer Data passing through or generated by the Products (including the Ancillary Software) and Customer's Confidential Information. Kensu shall have and retain all ownership rights in the Products and all work developed or created by Kensu during the course of providing Support to Customer (if any). Kensu hereby grants Customer a royalty-free, fully paid-up, nonexclusive, license to use the foregoing on the same terms and conditions as the Products.

4.2 Kensu shall own any suggestions, enhancement requests, recommendations, or other feedback provided by Customer or its Users relating to the operation of the Products.

4.3 No license, right or interest in any Kensu or Customer's trademark, copyright, intellectual property right, trade name or service mark is granted hereunder.

5. FEES.

5.1 The Fees and currency for the Products are as stated in an Order, along with any other volume/metric limitations set forth therein. Unless otherwise stated in the applicable Order, Fees for the initial Term are due and payable upon the date of electronic delivery of the Products by Kensu and are payable to Kensu, as applicable. Fees for any renewal Terms are due in accordance with the above, except that they are due on the effective date of the renewal. Fees

may be paid by wire (without deduction for any wire fees) or by check to Kensu using Kensu's instructions.

5.2 Upon execution of this Agreement, payment obligations are non-cancelable and, except as expressly provided in this Agreement, upon payment, all payments made by Customer are non-refundable. All undisputed Fees due hereunder shall be due and payable within thirty (30) days of receipt of invoice. Any payment not received from Customer by the due date may accrue (except for amounts then under reasonable and good faith dispute) late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid. Failure to make payments in accordance with this Section may result in suspension of Customer's ability to access or use the Products until payment is made. In the event Customer issues purchase orders in its normal course of business, Customer shall provide Kensu with a purchase order upon execution of this Agreement, or if Customer does not provide Kensu with such purchase order, Customer authorizes Kensu to accept this Agreement in lieu of a purchase order.

5.3 Customer is responsible for monitoring Customer's use of the Products. If Customer is aware that its use of the Products is found to be greater than the number of tier restrictions licensed hereunder, Customer shall notify Kensu of such excess use. Kensu will invoice Customer for the additional Fees for the period commencing on the date of excess use through the remainder of the Term, and the unpaid Fees shall be payable in accordance with Section 5.1.

5.4 Unless otherwise provided, the Fees do not include any Taxes. Customer is responsible for paying all Taxes, including, but not limited to sales, use, GST, and VAT taxes, associated with its purchases hereunder, excluding Taxes based on Kensu's net income or property. If an invoice includes Taxes, Customer is responsible for such Taxes, unless Customer provides a valid tax exemption certificate authorized by the appropriate taxing authority upon execution of this Agreement. Taxes not included on an invoice shall be the responsibility of the Customer to remit to the appropriate tax authorities as necessary.

5.5 Kensu may remotely review Customer's use of the Products, and on Kensu's written request, Customer will provide reasonable assistance to verify Customer's compliance with the Agreement, and access to and use of the Products. Without limiting the generality of the foregoing, if Kensu determines that Customer has exceeded its permitted access and use rights to the Products, Kensu will notify Customer and within 30 days thereafter Customer shall either: (a) disable any unpermitted use, or (b) purchase additional subscriptions commensurate with Customer's actual use.

6. SUPPORT. Kensu shall provide standard Support via e-mail.

7. WARRANTIES.

7.1 Each party represents and warrants that (i) it has the legal power to enter into and perform under this Agreement; and (ii) it shall comply with all other applicable laws in its performance hereunder.

7.2 Kensu warrants to Customer that the Products will substantially conform in all material respects to the Documentation ("Products Warranty"). The Products Warranty does not apply when: (a) the Products have been modified by any party other than Kensu; or (b) the Products have been improperly used and/or installed in a manner other than as authorized under the Agreement to the extent such modification(s) or improper installation cause the Products to be nonconforming. As Customer's sole and exclusive remedy and Kensu's entire liability for any breach of the foregoing warranty, Kensu will repair or replace any nonconforming Products so that it operates as warranted.

7.3 EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER

IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. KENSU DOES NOT WARRANT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE.

8. PATENT AND COPYRIGHT INDEMNITY.

8.1 Kensu shall defend, indemnify and hold Customer harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ("Claims") made or brought against Customer by a third party alleging that the use by Customer of the Products as contemplated hereunder infringes the U.S. and/or European intellectual property rights of such third party, provided that Customer (a) promptly gives written notice of the Claim to Kensu; (b) gives Kensu sole control of the defense and settlement of the Claim (provided that Kensu may not settle any Claim unless it unconditionally releases Customer of all liability); and (c) provides to Kensu, at Kensu's cost, all reasonable assistance.

8.2 Kensu may, at its sole option and expense: (i) procure for Customer the right to continue using the Products under the terms of this Agreement; (ii) replace or modify the Products to be non-infringing without material decrease in functionality; or (iii) if the foregoing options are not reasonably practicable, terminate the license for the Products and refund Customer to refund the prepaid Fees for the remainder of the then-current Term after the date of termination.

8.3 Kensu shall have no liability for any Claim to the extent the Claim is based upon (i) the use of the Products in combination with any other product, service or device not furnished, recommended or approved by Kensu, if such Claim would have been avoided by the use of the Products, without such product, service or device; or (ii) Customer's use of the Products other than in accordance with this Agreement.

8.4 The provisions of this Section 8 set forth Kensu's sole and exclusive obligations, and Customer's sole and exclusive remedies, with respect to infringement or misappropriation of third party intellectual property rights of any kind.

9. CONFIDENTIALITY.

9.1 As used herein, "Confidential Information" means all confidential and proprietary information of a party ("Disclosing Party") disclosed 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, including the terms and conditions of this Agreement (including pricing and other terms reflected under this Agreement), the Products, Documentation, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to Disclosing Party; (ii) was known to Receiving Party prior to its disclosure by Disclosing Party without breach of any obligation owed to Disclosing Party; (iii) was independently developed by Receiving Party without breach of any obligation owed to Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to Disclosing Party.

9.2 Receiving Party shall not disclose any Confidential Information of Disclosing Party for any purpose outside the scope of this Agreement, except with Disclosing Party's prior written consent. Receiving Party shall protect the confidentiality of Disclosing Party's Confidential Information in the same manner that it protects the confidentiality of its own confidential information of like kind (but in no event using less than reasonable care). Notwithstanding the foregoing, Kensu may use, for its business purposes, data

generated by the use of the Products in anonymized format. Receiving Party shall promptly notify Disclosing Party if it becomes aware of any actual or reasonably suspected breach of confidentiality of Disclosing Party's Confidential Information.

9.3 If Receiving Party is compelled by law to disclose Confidential Information of Disclosing Party, it shall provide Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if Disclosing Party wishes to contest the disclosure.

9.4 Upon any termination of this Agreement, the Receiving Party shall continue to maintain the confidentiality of the Disclosing Party's Confidential Information as long as it remains confidential and, upon request, return to the Disclosing Party or destroy (at the Disclosing Party's election) all materials containing such Confidential Information.

10. DATA PROTECTION. Kensu will process all personally identifiable information in accordance with Data Protection Laws.

11. LIMITATION OF LIABILITY.

11.1 IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE SUBSCRIPTION FEES PAID TO KENSU DURING TWELVE (12) MONTHS PRIOR TO WHEN THE CLAIM ACCRUED. IN THE EVENT CUSTOMER HAS LICENSED PRODUCTS FOR EVALUATION PURPOSES WHERE NO FEES ARE DUE, THE LIMITATION OF LIABILITY IN THE PREVIOUS SENTENCE SHALL BE \$10,000. EACH PARTY'S AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY FOR THE EXCLUSIONS, SHALL NOT EXCEED THREE (3) TIMES THE FEES PAID TO KENSU DURING TWELVE MONTHS PRIOR TO WHEN THE CLAIM ACCRUED.

11.2 IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12. TERM AND TERMINATION.

12.1 This Agreement commences on the Effective Date and continues until all licenses granted in accordance with this Agreement have expired or have been terminated. Upon termination, Customer shall not be permitted to use the Products, Ancillary Software, Updates, and Documentation and Customer shall uninstall the Products (where applicable) and the Ancillary Software.

12.2 A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach of this Agreement when such breach is incurable or, when it is curable, if such breach remains uncured at the expiration of such period; (ii) immediately upon written notice if the other party becomes the subject of a bankruptcy, insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding; and (iii) as otherwise provided herein.

12.3 The parties' rights and obligations under Sections 4, 5, 7.3, 8, 9, 11, 12.3, 12.4, and 13 shall survive termination of this Agreement.

12.4 Within thirty (30) days after termination of this Agreement, Customer shall certify in writing to Kensu that all copies of the Products (where applicable), Ancillary Software, Updates, and Documentation in any form, including partial copies within modified versions, have been destroyed or returned to Kensu. Customer will also have the right to request a copy of the Customer Data for a

period of thirty (30) days after termination, after which point, Kensu shall delete such Customer Data (to the extent it is not prohibited from doing so by Data Protection Laws).

13. General

13.1 The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created hereby. There are no third party beneficiaries to this Agreement.

13.2 Notices shall be in writing, sent using a recognized private mail carrier or the United States Postal Service and effective on proof of delivery.

13.3 Each party may include the other's name and logos in its customer or vendor lists.

13.4 No amendment or waiver of any provision of this Agreement shall be effective unless in writing and signed by Customer and Kensu. To the extent of any conflict between this Agreement and any other attachment or document incorporated by reference, this Agreement shall prevail unless expressly stated otherwise. Notwithstanding any language to the contrary therein, no terms stated in a purchase order or in any other order document (other than an Order or statement of work mutually executed expressly incorporated herein) shall be incorporated into this Agreement, and all such terms shall be void. This Agreement, which includes all documents referenced herein, Orders, statements of work and attachments hereto, represents the entire agreement of the parties, and supersedes all prior or contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter.

13.5 No failure or delay in exercising any right hereunder shall constitute a waiver of such right. Except as otherwise provided, remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions shall remain in effect.

13.6 Neither party shall be liable to the other for any delay or failure to perform hereunder (excluding payment obligations) due to an event, such as a natural disaster, actions or decrees of governmental bodies or communications line failure, which (i) hinders, delays or prevents a party in performing any of its obligations, and (ii) is beyond the control of, and without the fault or negligence of, such party, and (iii) by the exercise of reasonable diligence such party is unable to prevent or provide against ("Force Majeure Event").

13.7 Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety, without consent of the other party, to its successor in interest in connection with a merger, reorganization, or sale of all or substantially all assets or equity not involving a direct competitor of the other party. Any attempted assignment in breach of this Section shall be void. This Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

13.8 Each party agrees to comply fully with all applicable regulations of the United States Department of Commerce and with the United States Export Administration Act, as amended from time to time, and with all applicable laws and regulations of other jurisdictions with respect to the importation and use of the Products.

13.9 If Customer is a company formed in Europe as demonstrated by a formation document filed with the applicable European entity,

this Agreement will be governed exclusively by the internal laws of Belgium (without regard to its conflicts of laws rule) and any dispute shall be resolved in the courts located in Brussels, Belgium. If Customer is a company formed outside of Europe, this Agreement shall be governed exclusively by the internal laws of the state of California (without regard to its conflicts of laws rule) and any dispute shall be resolved in the courts located in San Francisco County. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.