

Kubecost General Terms and Conditions

STACKWATCH, INC. DBA KUBECOST ("KUBECOST") PROVIDES THE PRODUCTS (AS DEFINED BELOW) SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THESE KUBECOST GENERAL TERMS AND CONDITIONS (THIS "AGREEMENT" OR THE "TERMS") AND ON THE CONDITION THAT CUSTOMER ACCEPTS AND COMPLIES WITH THEM. PLEASE READ THESE TERMS CAREFULLY. BY CLICKING "I ACCEPT", BY EXECUTING OR SUBMITTING ANY ORDER FORM (AS DEFINED BELOW), OR BY ACCESSING OR USING THE KUBECOST PRODUCT(S) IN ANY MANNER, CUSTOMER (AS DEFINED BELOW): (A) ACKNOWLEDGES THAT IT HAS READ, UNDERSTANDS, AND AGREES TO BE BOUND BY THESE TERMS AND BY SUCH OTHER TERMS, CONDITIONS, POLICIES, AND DOCUMENTS THAT MAY BE INCORPORATED HEREIN BY REFERENCE, INCLUDING, WITHOUT LIMITATION, THE STACKWATCH PRIVACY POLICY, AVAILABLE AT [HTTPS://WWW.KUBECOST.COM/PRIVACY](https://www.kubecost.com/privacy); (B) AFFIRMS THAT YOU ARE AT LEAST 18 YEARS OF AGE (OR HAVE REACHED THE AGE OF MAJORITY IN THE JURISDICTION WHERE YOU RESIDE); AND (C) IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF A COMPANY OR OTHER ORGANIZATION, REPRESENT AND WARRANT THAT YOU HAVE THE ORGANIZATIONAL AND LEGAL AUTHORITY TO ACCEPT THESE TERMS ON SUCH COMPANY'S OR OTHER ORGANIZATION'S BEHALF AND TO BIND SUCH COMPANY OR ORGANIZATION.

1. SCOPE AND DEFINITIONS

- 1.1 **Scope.** These Kubecost General Terms and Conditions shall apply to the licensing of the Kubecost Products, as ordered by Customer in the applicable Order Form. Kubecost provides Kubernetes monitoring Products.
- 1.2 **Definitions.** Capitalized terms not otherwise defined shall have the meaning set forth in this section.
 - 1.2.1 **"Acceptance Date"** means the date on which Customer signs the Order Form.
 - 1.2.2 **"Affiliate"** means any individual, corporation, partnership, or business entity that controls, is controlled by, or is under common control by an entity with an ownership of more than 50% of the voting shares.
 - 1.2.3 **"Agreement"** means, collectively, these Kubecost General Terms and Conditions and the Order Form executed by the parties.
 - 1.2.4 **"Authorized User"** means a Customer employee or contractor who is authorized by Customer to use the Product on behalf of Customer.
 - 1.2.5 **"Customer"** means the company defined in the Order Form, which orders the Product and/or to whom, pursuant to an Order Form, the Kubecost Software is licensed to and/or whose Authorized Users accesses and uses the Kubecost Cloud.
 - 1.2.6 **"Customer Data"** means any data, code, information, or other content that is made available, by or on behalf of Customer or any Authorized User, for upload to or access, analysis, or processing by the Product.
 - 1.2.7 **"Customer System"** means any on-premise, private cloud, or other installation environment system, or application owned, operated, licensed or managed by Customer or its Affiliate on which the applicable Kubecost Product is installed or connected with.
 - 1.2.8 **"Documentation"** means Kubecost's published user documentation that describe the design, functions, operation, or use of the Product ordinarily made available to all its customers.
 - 1.2.9 **"Fee"** means any fees which Customer is required to pay in accordance with this Agreement and the Order Form.
 - 1.2.10 **"Kubecost Cloud"** means any Product made available by Kubecost to Customer as SaaS under the Order Form.
 - 1.2.11 **"Kubecost Software"** means any software provided by or on behalf of Kubecost in executable code form to Customer pursuant to an Order Form, including such software's components as well as all available technology adapters with respect thereto as defined in the Order Form.

- 1.2.12 **“Kubecost Properties”** means the Kubecost Cloud, Kubecost Software and Documentation, including all copies, portions, extracts, selections, arrangements, compilations, adaptations, modifications and improvements thereof, and all derivative works of any of the foregoing.
- 1.2.13 **“Intellectual Property Rights”** means any worldwide common law and statutory rights, whether arising under the applicable law or any other state, country, jurisdiction, government, or public legal authority, associated with (i) patents, utility models, and invention disclosures and applications therefor, (ii) trade secrets, know-how and proprietary information, (iii) copyrights, works of authorship, copyrights registrations and applications thereof; (iv) trademarks, service marks, designs and other designations of source, (v) industrial designs, (vi) all rights in databases and data collections, (vii) all moral and economic rights of authors and inventors, however denominated, (viii) rights to apply for, file for, certify, register, record, or perfect any of the foregoing, and (ix) any similar or equivalent rights to any of the foregoing (as applicable).
- 1.2.14 **“Order Form”** means the Order Form for Kubecost Software licenses and/or Kubecost Cloud, or any other document as agreed by the parties, specifying the options chosen by Customer for the Product as well as Fees and additional conditions.
- 1.2.15 **“Product”** means each of the Kubecost Software and the Kubecost Cloud to the extent provided by Kubecost to Customer pursuant to an Order Form and associated APIs.
- 1.2.16 **“Support”** means support services in connection with the Product under the respective support plan indicated in the Order Form.
- 1.2.17 **“Term”** means the duration of the license subscription for the Product and the Support as set forth in the applicable Order Form.

2. OWNERSHIP

- 2.1 **Ownership of Intellectual Property.** Kubecost retains all rights, title, and interest, including all Intellectual Property Rights, in and to the Kubecost Properties. Customer retains all rights, title, and interest in and to the Customer Data. Customer may not remove, alter, or obscure any proprietary rights notices contained in or affixed to the Kubecost Properties.
- 2.2 **No Rights by Implication.** Except for the rights expressly granted in this Agreement, no license or right is granted to Customer by Kubecost by implication or otherwise.
- 2.3 **Feedback.** To the extent Customer or any Authorized User provides Kubecost with any suggestions, feature requests, evaluation results, feedback, or other input in relation to any aspect of the Products or other Kubecost Properties (collectively, **“Feedback”**), Customer hereby assigns and agrees to assign to Kubecost all right, title and interest in and to such Feedback, including any Intellectual Property Rights therein, and acknowledges and agrees that Kubecost is free to use such Feedback in any manner, including by implementing such Feedback in Kubecost’s products and services, without compensation or other obligation to Customer or any Authorized User, and without any attribution to Customer or any Authorized User.
- 2.4 **Open Source Component(s).** Customer acknowledges that certain software components of the Product may be covered by open source licenses as promulgated by the Open Source Initiative or as promulgated by the Free Software Foundation (**“Open Source Component”**). To the extent required by such open source license for respective Open Source Component, the terms of such license will apply to such Open Source Component in lieu of the relevant provisions of this Agreement. If such open source license prohibits any of the restrictions in this Agreement, such restrictions will not apply to such Open Source Component. Kubecost shall provide Customer with a list of Open Source Components upon Customer’s request.

3. FEES AND TRIALS

- 3.1 **Payment Terms.** Except as otherwise set forth in an Order Form, Fees will be due and payable thirty (30) days after Customer’s receipt of an undisputed invoice. Customer shall provide Kubecost with accurate billing and contact information and notify Kubecost of any changes to such information. All Fees are non-refundable and non-cancellable except as otherwise set forth herein.
- 3.2 **Renewal Term Fees.** Kubecost reserves the right to modify the Fees payable by Customer for any Order Form renewal upon at least sixty (60) days’ written notice to Customer prior to expiration of the applicable Order Form’s then-current Term.

- 3.3 **Subscriptions and True up.** Except as otherwise provided in the applicable Order Form: (i) Product licenses are purchased for the Term stated therein; (ii) additional license quantities may be added during a Term at the same pricing as the underlying subscription and shall be co-terminated and prorated for the remainder of the applicable Term. License quantities cannot be decreased during the Term. If Customer's actual license usage exceeds the license usage quantity (determined monthly) set forth in the Order Form, Kubecost will notify Customer (email sufficing) of such overage and will invoice Customer the Fees for the excess license usage, prorated for the remainder of the then-current Term.
- 3.4 **Interest.** If any Fees payable under this Agreement are not paid when due then, without prejudice to Kubecost's other rights under this Agreement, that sum will bear interest from the due date until the date when payment is received by Kubecost, both before and after any judgment, at the rate of one and a half percent (1.5%) per month, or if lower the maximum rate allowed by applicable law. In the event Customer in good faith disputes any Fees due under any invoice issued by Kubecost, Customer shall pay the undisputed amount, and the parties shall use diligent efforts to resolve any such dispute. Kubecost will also be entitled to recover from Customer the costs and expenses incurred in connection with collecting any undisputed Fees (including without limitation costs of investigation, collection agency, court and attorneys' fees).
- 3.5 **Resellers and Payment Processors.** Customer may elect to purchase certain Products through a reseller authorized by Kubecost to resell the Products ("**Reseller**") or elect to pay for the Products through a third party that processes Customer's payments (each a "**Payment Processor**"). Customer's obligation for payment to, and relationship with, such Reseller or Payment Processor is between Customer and such Reseller or Payment Processor and is governed by the Customer's agreement with such Reseller or Payment Processor. If Customer elects to use a Reseller or Payment Processor in connection with the Products, Customer acknowledges and agrees that information about Customer, this Agreement and any Order Forms may be disclosed to such Reseller or Payment Processor.
- 3.6 **Taxes.** All payments, Fees, and any other charges payable by Customer to Kubecost under this Agreement are exclusive of all local, state, federal and foreign taxes, levies and duties of any nature, including sales, goods and services, value added, property, excise, withholding and use taxes (collectively, "**Taxes**"). Customer shall bear, and is responsible for paying, all Taxes imposed on Customer or Kubecost arising out of this Agreement, excluding any tax based on Kubecost's net income.
- 3.7 **Free Trials.** Customer's subscription to the Product may be preceded by a trial (a "**Trial**"). If Customer receives a Trial, Customer may only use those portions of the Product included in the Trial and only for the duration of that Trial, in each case as communicated by Kubecost to Customer in writing, and only for the purpose of evaluating the desirability of purchasing a subscription to the Product. Upon the expiration of any Trial, Customer's access to the Product will cease, except to the extent Customer has purchased and/or registered for a subscription license under an Order Form in accordance with the terms hereof.

4. WARRANTY AND LIABILITY

- 4.1 **Limited Warranty.** Kubecost warrants to Customer that, as applicable, (i) the Kubecost Software will conform in all material respects to the applicable Documentation in effect on the Acceptance Date during the first three (3) months of this Agreement, provided the Kubecost Software is used in accordance with the Documentation and the terms of this Agreement; and (ii) the Kubecost Cloud will conform in all material respects to the Documentation in effect during the Term. Notwithstanding any provision of this Agreement to the contrary, Kubecost shall not have any obligation under this section to the extent a nonconformity of the Product is the result of (a) the Product having been modified, repaired, or reworked by any party other than Kubecost or a third party on behalf of Kubecost, (b) any use of the Product in conjunction with another product or service not recommended in the Documentation, (c) any damage to the Product beyond Kubecost's reasonable control, or (d) any use of or access to the Product not in conformance with the Documentation. The limited warranty set forth in this section does not apply, and is fully excluded, in cases of Trial use of the Product.
- 4.2 **Representation.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.
- 4.3 **Remedy.** If the Product does not conform to the warranty as provided in [Section 4.1](#) during the applicable warranty period set forth in [Section 4.1](#), Kubecost will, as its sole and exclusive obligation and as Customer's sole and exclusive remedy for breach of this warranty, at Kubecost's election (i) use commercially reasonable efforts to correct such nonconformity provided the non-conformance can be recreated by Kubecost or (ii) replace the nonconforming Product or (iii) if Kubecost is unable to accomplish either of the foregoing in a commercially reasonable amount of time, Kubecost may terminate the Order Form for the affected Product and Customer shall be entitled to a pro-rata refund of the Fees paid corresponding to the period of discontinuation of the affected Product upon receipt of a letter from Customer certifying de-installation of the

nonconforming Kubecost Software and/or discontinuation of the Kubecost Cloud. Customer shall notify Kubecost in writing, specifically describing the non-conformity of the Product within the warranty period and Kubecost shall verify the existence of such non-conformity before Kubecost proceeds as set forth in this Section 4.3.

4.4 **DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 4.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE KUBECOST PROPERTIES ARE PROVIDED BY KUBECOST “AS IS” AND ON AN “AS-AVAILABLE” BASIS, AND NEITHER KUBECOST NOR ITS THIRD-PARTY LICENSORS MAKE ANY OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, BY STATUTE, USAGE, TRADE CUSTOM, OR OTHERWISE WITH RESPECT TO THE KUBECOST PROPERTIES, AND KUBECOST DISCLAIMS ANY AND ALL WARRANTIES, REPRESENTATIONS, OR CONDITIONS RELATING THERETO INCLUDING, WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR ANY INTENDED OR PARTICULAR PURPOSE. KUBECOST DOES NOT GUARANTEE THAT ANY OF THE KUBECOST PROPERTIES WILL BE FREE OF DEFECTS, RUN ERROR-FREE OR UNINTERRUPTED OR MEET CUSTOMER'S REQUIREMENTS. AS BETWEEN CUSTOMER AND KUBECOST, CUSTOMER ASSUMES ALL RISK IN CONNECTION WITH ITS USE OF, INTERPRETATION OF, AND RELIANCE ON THE KUBECOST PROPERTIES AND ALL CONTENT, RESULTS, AND OUTPUTS GENERATED THEREBY, AND ALL DATA AND INFORMATION MADE AVAILABLE, ACCESSIBLE, OR EXPORTABLE VIA THE PRODUCTS. CUSTOMER EXPRESSLY AGREES AND ACKNOWLEDGES THAT PERFORMANCE OF THE PRODUCTS AND THE DEVELOPMENT, DELIVERY AND AVAILABILITY OF ANY OUTPUTS THEREOF IS DEPENDENT UPON AND SUBJECT TO THE AVAILABILITY OF CUSTOMER DATA. KUBECOST SHALL HAVE NO RESPONSIBILITY OR LIABILITY WHATSOEVER FOR ANY CUSTOMER DATA, OR FOR ANY LOSS, DAMAGE, OR OTHER ISSUE CAUSED BY THE UNAVAILABILITY, INCOMPLETENESS, OR INACCURACY OF THE SAME, WHETHER CAUSED BY CUSTOMER OR ANY THIRD PARTY.

4.5 **LIABILITY.** EXCEPT FOR ANY UNDISPUTED FEES DUE FROM CUSTOMER, CUSTOMER'S BREACH OF ANY PRODUCT USAGE RIGHTS AND RESTRICTIONS, INDEMNIFICATION OBLIGATIONS UNDER SECTION 5 (INDEMNITY), A BREACH OF SECTION 6 (CONFIDENTIAL INFORMATION AND CUSTOMER DATA), OR IN THE EVENT OF DAMAGE CAUSED INTENTIONALLY OR BY GROSS NEGLIGENCE OR OF DEATH, BODILY INJURY OR DAMAGE TO HEALTH, NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, REGARDLESS OF THE FORM OR CAUSE OF ACTION, WHETHER IN CONTRACT OR TORT, OR THE NUMBER OF CLAIMS AND TO THE EXTENT PERMITTED BY APPLICABLE LAW (i) NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY, FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL OR INDIRECT DAMAGES, ANY LOSS OF REVENUES OR PROFITS, LOSS OF DATA OR ANY COST OF COVER ARISING OUT OF THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (ii) EACH PARTY'S LIABILITY FOR ANY CLAIM ARISING OUT OF THIS AGREEMENT WILL BE LIMITED TO THE FEES ACTUALLY PAID OR PAYABLE BY CUSTOMER FOR THE PERFORMANCE THAT IS THE SUBJECT OF SUCH CLAIM WITHIN TWELVE (12) MONTHS PRECEDING THE INITIAL INCIDENT GIVING RISE TO THE LIABILITY. THE PARTIES AGREE THAT THIS SECTION REFLECTS A REASONABLE ALLOCATION OF RISK BETWEEN THE PARTIES IN LIGHT OF THE TERMS OF THIS AGREEMENT. THIS LIMITATION OF LIABILITY WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREUNDER.

5. INDEMNITY

5.1 Indemnity of Customer.

5.1.1 Subject to the limitations below, Kubecost shall defend, or at Kubecost's option, settle, any claim, demand, suit, or proceeding made or brought against Customer, its directors, employees, and agents by a third party alleging that the use of the Product received by Customer pursuant to an Order Form infringes such third party's Intellectual Property Rights enforceable in a jurisdiction that is signatory to the Berne Convention (“**Claim Against Customer**”), and shall indemnify Customer from any and all costs, damages, liabilities, losses, and expenses (including reasonable attorneys' fees) finally awarded against Customer as a result of, or for amounts paid by Customer under a court-approved settlement of a Claim Against Customer, provided that Customer (i) promptly gives Kubecost written notice of the Claim Against Customer, (ii) gives Kubecost sole control of the defense and settlement of the Claim Against Customer, and (iii) gives Kubecost all reasonable assistance. Customer may, at its expense, participate in any such action, suit, or claim with counsel of its choice.

5.1.2 The above obligations do not apply to the extent (i) the total aggregate fees received by Kubecost from Customer with respect to this Agreement in the 12 months immediately preceding the claim do not exceed US\$20,000; (ii) if Customer settles or make any admissions with respect to the applicable claim without Kubecost's prior written consent; or (iii) a Claim Against Customer arises from: (a) Customer Data, (b) Customer's material breach of this Agreement which gave rise to the Claim Against Customer, (c) use of the Product in combination with any software, hardware, network, technology or system

not provided by Kubecost, (d) compliance with any Customer requirements or specifications outside the Documentation, or (e) any matter covered by Customer's indemnification obligations.

- 5.1.3 If any Claim Against Customer which Kubecost is obligated to defend has occurred, or in Kubecost's determination, is likely to occur, Kubecost may in its discretion and at no cost to Customer (i) modify the Product so that it no longer infringes, without breaching the warranty set forth in [Section 4.1](#), (ii) obtain a license for Customer's continued use of the Product in accordance with this Agreement, or if such remedies are not reasonably available, (iii) terminate this Agreement upon thirty (30) days' written notice and refund Customer the prepaid but unused Product subscription fee that corresponds to the period of license discontinuation upon certified destruction and deinstallation of the Kubecost Software and/or discontinued access and use of the Kubecost Cloud.
- 5.2 **Indemnity of Kubecost.** Customer shall defend, or at Customer's option, settle, any claim, demand, suit, or proceeding made or brought against Kubecost, its directors, employees, and agents by a third party arising out of (i) Customer's or any of its Authorized Users' violation of this Agreement or applicable law; (ii) any claim that the Customer Data infringes, misappropriates, or otherwise violates the Intellectual Property Rights or rights of privacy of any third party; (iii) any submission of Sensitive Content to Kubecost by Customer or any of its Authorized Users; (iv) any access to or use of the Product by Customer or any of its Authorized Users in a manner that exceeds the scope of the License granted hereunder or that otherwise violates this Agreement; or (v) any Customer System (each a "**Claim Against Kubecost**"), and shall indemnify Kubecost from any and all costs, damages, liabilities, losses, and expenses (including reasonable attorneys' fees) incurred by or awarded against Kubecost as a result of, or for amounts paid by Kubecost under a court-approved settlement of a Claim Against Kubecost, provided that Kubecost (a) promptly gives Customer written notice of the Claim Against Kubecost, (b) gives Customer control of the defense and settlement of the Claim Against Kubecost, and (c) gives Customer all reasonable assistance. Kubecost may, at its expense, participate in any such action, suit, or claim with counsel of its choice.
- 5.3 **Exclusive Remedy.** This section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for relevant claims as described in this section.

6. CONFIDENTIAL INFORMATION AND CUSTOMER DATA

- 6.1 **Confidential Information.** Any information furnished to one party ("**Recipient**") by the other party ("**Discloser**") that (i) is marked at the time of disclosure as being "Confidential" or words of similar import or (ii) is identified orally as being confidential or proprietary, or (iii) is of such a nature or the circumstances of the disclosure are such that a reasonable person would understand that the information should be treated as confidential ("**Confidential Information**"). The Product, Documentation and other Kubecost Properties are deemed Kubecost's Confidential Information regardless of whether so marked. All Customer Personal Data as defined in [Section 6.3](#) shall be deemed to be Customer's Confidential Information. Confidential Information will not include information that Recipient can demonstrate by contemporaneous records (a) was rightfully known by Recipient prior to the date it was disclosed by Discloser, (b) is lawfully disclosed to Recipient without obligation of confidentiality by a third party, (c) becomes generally known to the public through no act or omission on the part of Recipient, or (d) is independently developed by Recipient without reference to or reliance upon any Confidential Information of Discloser.
- 6.2 **Use Restriction and Disclosure.** The Recipient shall (i) not use Confidential Information of the Discloser for any purposes other than for performing its obligations or exercising its rights under this Agreement and (ii) hold such Confidential Information in strict confidence and protect such Confidential Information with the same degree of care (but no less than a reasonable degree of care) the Recipient uses to protect its own Confidential Information. Notwithstanding the foregoing, the Recipient may disclose Confidential Information of the Discloser (a) to the Recipient's directors, officers, or legal or business advisors to the extent reasonably necessary to carry out its obligations or exercise its rights under this Agreement, provided that such directors, officers, employees, or agents are legally bound to maintain such information as confidential as required by this section, or (b) if required to be disclosed by the Recipient pursuant to a judicial or governmental statute, rule, or order, provided that the Recipient gives sufficient written notice (to the extent permissible) prior to any disclosure to seek a protective order or injunction or other opportunity to limit disclosure, and the Recipient shall disclose only such Confidential Information as is required to be disclosed.
- 6.3 **Data Protection.** Each party warrants that it shall use, collect, store and/or process personal data as defined under and in accordance with any applicable data privacy laws ("**Personal Data**").

- 6.4 **Limited Data Collection.** Customer shall only provide data related to its cloud cost and infrastructure via the Products. Except as set forth below, Customer will not provide to Kubecost any Personal Data of Customers' employees, clients, or any other related natural person. If Customer intends to use and/or transmit Personal Data in accordance with the Product, Customer shall inform Kubecost with written notice prior to using and/or transmitting such Personal Data to Kubecost and Kubecost will provide Customer with a written confirmation of such receipt of Personal Data. Customer shall (i) not share or transmit any Personal Data to Kubecost unless strictly necessary and (ii) limit any transfer of Personal Data to Kubecost to the minimum required for the performance of this Agreement.
- 6.5 **Access to Customer Data.** Customer understands and acknowledges that the ability of Customer and its Authorized Users to operate and utilize the Product is dependent upon Customer providing or making available for access by the Product all required Customer Data via Customer System(s). As between Customer and Kubecost, Customer is solely and exclusively responsible for obtaining and providing all consents, authorizations, permissions, notices, and access from Customer's Kubernetes environment via Customer System(s), as may be necessary or helpful to facilitate the Product's access to the Customer Data. Customer acknowledges and agrees that Kubecost shall not be liable to Customer or to any third party for any failure, delay, or deficiency in the performance of the Product arising from (i) any failure by Customer to authorize connection to its Kubernetes environment, (ii) any system failure or technical deficiency on the part of Customer or its service providers that prevents or limits access by the Product to Customer Data or other necessary Customer content, materials, data or information, or (iii) any error or deficiency in the Customer Data. As between Customer and Kubecost, Customer is solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data, and for ensuring that Customer Data does not: (a) infringe, misappropriate or violate the Intellectual Property Rights, rights of privacy or publicity, or other proprietary rights of any third party, (b) violate any applicable law, or (c) contain any malware, viruses, Trojan horses, spyware, worms, or other malicious or harmful code. For the avoidance of doubt, please note that Kubecost Software is not provided, and does not receive access to, Customer Data as a result of Customer's installation and operation of the Kubecost Software. Customer is solely responsible for the installation, maintenance, repair, use, and upgrade of any Customer System(s) the Product is used with. Kubecost disclaims all warranties of any kind with respect to any Customer System(s).
- 6.6 **No Sensitive Content.** Notwithstanding anything herein to the contrary, Customer acknowledges that the Product is not designed to collect, and is not designed with security and access management for processing or storing, any personal information that imposes specific data security obligations on Kubecost for the processing or storage of such data, including, without limitation, any "nonpublic personal information" as defined under the Gramm-Leach-Bliley Act, cardholder, payment card, or related information protected by the Payment Card Industry Data Security Standard, "protected health information" as defined under the Health and Insurance Portability and Accountability Act of 1996, "personal information" as defined under the California Consumer Privacy Act of 2018, "personal data" as defined under the General Data Protection Regulation, or other information similar to any of the foregoing, however described, as defined under applicable law (each of the foregoing, "**Sensitive Content**"). Customer shall not, and shall not permit any of its users to, provide or make available any Sensitive Content to Kubecost, or endeavor to submit or make available any Sensitive Content for processing or evaluation through the Product. Customer is solely responsible for all Customer Data and represents and warrants to Kubecost that no Customer Data or other data or content made available by Customer constitutes or contains Sensitive Content. Kubecost makes no representations or warranties with respect to, and disclaims any responsibility or liability for, the Customer Data, and Customer will indemnify Kubecost for any failure by Customer or its users to comply with the requirements of this Section 6.6.
- 6.7 **Storage of Customer Data.** Customer agrees and acknowledges that Kubecost is not a provider of data back-up, archiving, or data retention services. As between Customer and Kubecost, Customer is solely and exclusively responsible for the backing up, archiving, and retaining of all Customer Data and any other of Customer's information, data, or materials. Kubecost does not make any representations, warranties, or guarantees that any Customer Data or other of Customer's information, data or materials will not be lost, altered, destroyed, damaged, or corrupted. KUBECOST HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF ANY CUSTOMER DATA THROUGH OR IN CONNECTION WITH CUSTOMER'S USE OF THE PRODUCT.

7. TERM AND TERMINATION

- 7.1 **Term.** This Agreement will remain in effect during the Term of any unexpired Order Form, unless terminated earlier in writing pursuant to the terms of this section. For the avoidance of doubt, upon the renewal of an Order Form, the term of

this Agreement shall be extended accordingly. Order Forms may not be terminated for Customer's convenience during the Term. Kubecost reserves the right, at any time, without notice to Customer, to deactivate any Customer Kubecost Cloud account on a free tier, that has remained unused for one hundred eighty (180) days.

- 7.2 **Auto-Renewal.** The Term of each Order Form shall automatically renew for successive periods equal to one (1) year or the preceding term, whichever is shorter, at the prior quantity of licenses (including any overages or add-ons), unless either party cancels such renewal by notifying the other party in writing at least sixty (60) days prior to the expiration of the then-current applicable Term, unless otherwise agreed in the Order Form.
- 7.3 **Termination for Breach.** Either party may terminate this Agreement and any Order Form immediately upon written notice to the other party, if the other party is in material breach of this Agreement and fails to correct the breach thirty (30) days following written notice from the other party specifying the breach. Notwithstanding anything to the contrary, Kubecost may, alternatively suspend the Product, if Customer violates any Product Usage Rights and Restrictions or if any undisputed sum payable under this Agreement is past due for longer than thirty (30) days.
- 7.4 **Termination for Insolvency.** Either party may terminate this Agreement and any Order Form immediately upon written notice to the other party if the other party has a receiver appointed, or an assignee for the benefit of creditors or in the event of any insolvency or inability to pay debts as they become due by the other party, except as may be prohibited by applicable bankruptcy laws.
- 7.5 **Effect of Termination.** Expiration or termination of this Agreement will not relieve any party of its obligations to pay any undisputed amounts accrued or otherwise owed under this Agreement and any Order Form. Upon termination or expiration of this Agreement and any Order Form, all licenses or rights granted to Customer hereunder shall terminate and Customer shall not use the Product, and Kubecost shall have no further obligation to provide the Product or Support. Customer shall promptly delete all Kubecost Confidential Information. In addition, no later than thirty (30) calendar days after termination or expiration, Kubecost shall delete Customer's Kubecost Cloud account and all contents therein. Any provision that is intended to continue after termination shall not be affected by the termination of this Agreement.
- 7.6 **Survival.** The provisions of the following Sections of this Agreement will survive any expiration or earlier termination of the Agreement: Section(s) 1 (Scope and Definitions), 2 (Ownership), 3.1-3.6 (Fees), 4.4 (Warranty Disclaimer), 4.5 (Limitation of Liability), 5 (Indemnity), 6 (Confidential Information and Customer Data), 7.5 (Effect of Termination), 7.6 (Survival), 8 (with exception of 8.2) (Miscellaneous), 8.14 (Aggregated Statistics Use Rights), 9.2 (Kubecost Software License Restrictions), and 10.2 (Kubecost Cloud Restrictions).

8. MISCELLANEOUS

- 8.1 **Notices.** All notices and communications between the Parties under, or in connection with, this Agreement ("**Notices**") shall be in writing, by hand delivery, by nationally recognized courier service or by prepaid certified mail. Notwithstanding the foregoing, Kubecost may send Notices to Customer through the management module of the Products. Customer shall send all Notices to Kubecost at Stackwatch Inc., 315 Montgomery St, Floor 9, San Francisco, CA 94123, Attn: CEO; with cc: to legal@kubecost.com.
- 8.2 **Publicity.** For sole marketing and promotional purposes, Customer agrees that Kubecost may identify Customer as a Kubecost customer in Kubecost's promotional, marketing, or other materials and refer to Customer by name, trade name and trademark as applicable. Customer hereby grants Kubecost a license to use Customer's name and applicable trademarks in accordance with this section. Customer may opt out anytime by emailing team@kubecost.com.
- 8.3 **Injunctive Relief.** Each party acknowledges and agrees that any breach of its obligations with respect to Confidential Information and Intellectual Property Rights may cause substantial harm to the other party that could not be remedied by payment of damages alone. Accordingly, the other party will be entitled, in addition to any other rights or remedies, to seek injunctive relief in any jurisdiction where damage may occur.
- 8.4 **Exports.** Customer shall comply with all applicable export control laws, rules, and regulations with respect to its use of the Product, including the Export Administration Regulations promulgated by the U.S. Department of Commerce. Without limiting the foregoing, Customer shall not export or re-export all or any part of the Product without Kubecost's prior written consent.
- 8.5 **No Waiver.** Neither party's failure or delay in exercising any of its rights will constitute a waiver of such rights unless

expressly waived in writing.

- 8.6 **Relationship.** The relationship between the parties is that of independent contractors, and nothing contained in this Agreement will be construed to constitute as agents, partners, joint ventures, or otherwise as participants in a joint undertaking.
- 8.7 **Force Majeure.** Kubecost will not be liable for any delay or failure in the performance of its obligations under this Agreement if the delay or failure is due to any cause outside of Kubecost's reasonable control ("**Force Majeure**"). If Force Majeure continues for more than sixty (60) days preventing Kubecost from performing, Customer may terminate this Agreement upon written notice to Kubecost.
- 8.8 **Assignment.** Neither this Agreement nor any rights granted hereunder may be assigned or otherwise transferred (whether by operation of law or otherwise), in whole or in part, by either party, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. However, no such consent will be required in the event of an assignment to either party's Affiliate, or a merger or a sale of substantially all of a party's assets; provided that the assigning party provides notice as soon as reasonably practicable. The right of assignment granted herein shall apply only to the business of Customer as it existed prior to such assignment or sale. Any attempted assignment will be void and of no effect unless permitted by the foregoing. This Agreement shall inure to the benefit of the parties' permitted successors and assigns.
- 8.9 **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, such provision will be interpreted in a manner that best reflects the parties' intentions, and the remaining provisions of this Agreement will remain in full force and effect.
- 8.10 **Entire Agreement.** This Agreement constitutes the entire agreement between Kubecost and Customer regarding the subject matter hereof and supersedes all prior oral and written communications. It may be executed in one or more counterparts, all of which together will be considered one and the same and may be executed and delivered by facsimile or electronic signature. All amendments or modifications to this Agreement must be in writing and signed by authorized representatives of both parties, however, modifications to this Agreement may be incorporated by way of specific reference in an Order Form. The terms on any purchase order, confirmation, or similar document submitted by Customer to Kubecost will have no effect and are hereby rejected. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be (1) the Order Form, (2) these Kubecost General Terms and Conditions, and (3) the Documentation.
- 8.11 **Governing Law and Jurisdiction.** This Agreement and any dispute or claim arising out of or related to this Agreement, its subject matter or formation (in each case, including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the State of Delaware, USA other than such laws and case law that would result in the application of the laws of a jurisdiction other than the State of Delaware. The United Nations Convention on Contracts for the International Sale of Goods shall have no applicability. The parties further agree that the exclusive venue and jurisdiction for any dispute arising or relating to this Agreement shall be the State or Federal courts of competent jurisdiction located in the State of Delaware. Customer agrees to waive any and all objections to the exercise of jurisdiction over Customer by such courts and to venue in such courts. ANY CAUSE OF ACTION OR CLAIM CUSTOMER MAY HAVE ARISING OUT OF OR RELATING TO THIS AGREEMENT MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION OR CLAIM ACCRUES, OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.
- 8.12 **Waiver of Jury Trial and Class Action Waiver.** CUSTOMER HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, CLAIM, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT. CUSTOMER AND KUBECOST EACH AGREE THAT ANY SUIT, PROCEEDING, OR OTHER ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION.
- 8.13 **Ultimate Federal Government Provisions.** Kubecost will provide the Product, including related Documentation and technology for ultimate federal government end use solely in accordance with the following: government technical data and software rights related to the Product include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has

a need for rights not granted under these terms, it must negotiate with Kubecost to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

- 8.14 **Aggregated Statistics Use Rights.** Notwithstanding anything else to the contrary, Customer acknowledges and agrees that (unless its opts out via the Kubecost Software, as applicable), Kubecost may, in accordance with applicable data privacy laws, monitor Customer's and its Authorized Users' use of the Product and may track and compile data and information related to such use, as long as such data is aggregated and anonymized, including, without limitation, statistical and performance information related to the provision and operation of the Product ("Aggregated Statistics"). As between Kubecost and Customer, the Aggregated Statistics, and all Intellectual Property Rights therein or relating thereto are and shall remain the exclusive property of Kubecost. Kubecost may, without limitation, (a) make such Aggregated Statistics publicly available, (b) use the Aggregated Statistics to the extent and in the manner required by applicable law or regulation, and (c) use the Aggregated Statistics to maintain, optimize and improve the Products, to develop, improve, or offer other Products, or to otherwise operate Kubecost's business, provided that such Aggregated Statistics does not identify Customer or its Authorized Users.

PART A

9. KUBECOST SOFTWARE

- 9.1 **Kubecost Software License Usage Rights.** Subject to the terms and conditions of this Agreement, including payment by Customer of the Fees, Kubecost hereby grants to Customer, during the Term of the applicable Order Form, a limited, non-exclusive, non-transferable, non-sublicensable worldwide license for its Authorized Users to download, install and use the Kubecost Software on Customer System(s) controlled by Customer or its Affiliate in executable form, solely for Customer's internal business purposes up to the permitted metrics listed in the Order Form. Any license overages will be charged in accordance with Section 3.3. Kubecost shall make a copy of the Kubecost Software electronically available to Customer for download. Access credentials for the Kubecost Software may not be shared with third parties. Customer shall be responsible for all use of the Kubecost Software by Authorized Users.
- 9.2 **Kubecost Software License Restrictions.** Customer agrees to access and use Kubecost Software solely for Customer's internal business purposes, in accordance with any Documentation, and in accordance with all applicable laws. Customer shall not, and shall not permit any third party to: (i) copy, reproduce, frame, mirror, modify, decompile, disassemble, create derivative works based on, or reverse engineer Kubecost Software or any associated software or materials (except to the extent that applicable law prohibits or restricts reverse engineering restrictions); (ii) provide any third parties with access to any of Kubecost Software, or use any part of Kubecost Software for time sharing or similar purposes for the benefit of any third party; (iii) sell, resell, rent or lease Kubecost Software; (iv) remove any copyright or proprietary notices contained in Kubecost Software or any output thereof; (v) breach, disable or tamper with, or develop or use (or attempt) any workaround for, any security measure provided or used by Kubecost Software; (vi) access or use (or permit a third party to access or use) Kubecost Software for any unlawful purpose or for purposes of monitoring the availability, performance or functionality of Kubecost Software or for any other benchmarking or competitive purposes; (vii) attempt to gain unauthorized access to Kubecost Software or any related systems, software or networks; (viii) access Kubecost Software in order to build a competitive product or service, or copy any features, functions or graphics of Kubecost Software; (ix) use Kubecost Software to transmit viruses or malicious code; or (x) make any use of, or take any other action with respect to, Kubecost Software or any component thereof in a manner that violates applicable law or any provision of the Agreement. Without limiting the foregoing, Customer further understands and agrees that Kubecost Software shall only be used by Customer for its internal monitoring purposes and may not be used to evaluate any systems or infrastructure which is not owned by Customer. Kubecost may suspend or terminate the license granted herein, and Customer's access to and use of Kubecost Software, or any component thereof, if Kubecost reasonably determines that Customer has violated any term or condition of the Agreement. Customer shall be liable to Kubecost for any violation of the terms and conditions of the Agreement by Customer or by any user or other third party accessing or using Kubecost Software through or on behalf of Customer.
- 9.3 **License Support.** Subject to the payment of the Fee in the applicable Order Form, Kubecost shall provide Customer with Support in respect for the Kubecost Software for the applicable Term.
- 9.4 **License Backups.** Except for maintaining a single archival copy of the Kubecost Software for backup purposes only,

Customer shall not make copies of the Kubecost Software. Nothing herein shall limit or restrict Customer from providing Authorized Users with copies of the Documentation for their internal use, in connection with the license granted in this section.

- 9.5 **Installation.** Customer will be responsible for the installation of Kubecost Software, including without limitation all configuration/integration to the Customer System in connection therewith, unless otherwise agreed to by the parties under a professional services engagement as outlined in the Order Form.

PART B

10. KUBECOST CLOUD

- 10.1 **Kubecost Cloud Usage Rights.** Subject to the terms and conditions of this Agreement, including payment by Customer of the Fees, Kubecost hereby grants to Customer, during the Term of the applicable Order Form, a limited, non-exclusive, non-transferable, non-sublicensable, worldwide license for its Authorized Users to access and use the Kubecost Cloud, solely for Customer's internal business purposes up to the permitted metrics listed in the Order Form. Any license overages will be charged in accordance with Section 3.3. Kubecost shall make available the Kubecost Cloud over the Internet as SaaS. Access credentials for the Kubecost Cloud may not be shared with third parties. Customer shall be responsible for all use of the Kubecost Cloud by Authorized Users. Customer hereby grants Kubecost a nonexclusive, worldwide, transferable, sublicensable, irrevocable, royalty-free, fully paid-up license to extract, process, display, copy, store, transmit, modify, and otherwise access and use the Customer Data for purposes of providing Kubecost Cloud and making Kubecost Cloud available to Customer and its Authorized Users, and for such other purposes as may be set forth herein during the Term.
- 10.2 **Kubecost Cloud Restrictions.** Customer agrees to access and use Kubecost Cloud solely for Customer's internal business purposes, in accordance with the Documentation, and in accordance with all applicable laws. Customer shall not (and shall ensure that Customer's Authorized Users do not): (i) copy, reproduce, frame, mirror, modify, decompile, disassemble, create derivative works based on, or reverse engineer Kubecost Cloud or any associated software or materials (except to the extent that applicable law prohibits or restricts reverse engineering restrictions); (ii) provide any third parties with access to any of Kubecost Cloud, or use any part of Kubecost Cloud for time sharing or similar purposes for the benefit of any third party; (iii) sell, resell, rent or lease Kubecost Cloud; (iv) remove any copyright or proprietary notices contained in Kubecost Cloud or any output thereof; (v) breach, disable or tamper with, or develop or use (or attempt) any workaround for, any security measure provided or used by Kubecost Cloud; (vi) access or use (or permit a third party to access or use) Kubecost Cloud for any unlawful purpose or for purposes of monitoring the availability, performance or functionality of Kubecost Cloud or for any other benchmarking or competitive purposes; (vii) attempt to gain unauthorized access to Kubecost Cloud or any related systems, software or networks; (viii) access Kubecost Cloud in order to build a competitive product or service, or copy any features, functions or graphics of Kubecost Cloud; (ix) use Kubecost Cloud to transmit viruses or malicious code; or (x) make any use of, or take any other action with respect to, Kubecost Cloud or any component thereof in a manner that violates applicable law or any provision of the Agreement. Kubecost may suspend or terminate Customer's or any Authorized User's access to Kubecost Cloud, or any component thereof, if Kubecost reasonably determines that Customer or any Authorized User has violated any term or condition of the Agreement. Customer shall be liable to Kubecost for any violation of the terms and conditions of the Agreement by Customer or by any Authorized User.
- 10.3 **Kubecost Cloud Support.** Kubecost shall provide Customer with Support in respect for Kubecost Cloud as part of the Fees at no additional charge for the Term.
- 10.4 **Technical Requirements.** Access to and use of Kubecost Cloud by Customer and any Authorized Users is dependent upon access to telecommunications and Internet services. Customer acknowledges that Customer, and not Kubecost, is responsible for acquiring and maintaining any telecommunications or Internet services or other hardware or software that Customer or its Authorized Users may need to access and use Kubecost Cloud, and for all costs, fees, expenses, and taxes of any kind related to the foregoing.
- 10.5 **Platform Provider.** In order to provide the Kubecost Cloud, Kubecost may outsource its platform infrastructure and obtain services from platform service providers (each, a "**Platform Provider**"). Kubecost may change, discontinue, or replace Platform Providers, provided there is no material change to, discontinuation or termination of the Kubecost Cloud or



applicable data protection standards. Kubecost will use commercially reasonable efforts to announce any transition to a different Platform Provider at least one month in advance.

[end of section]