

## LICENSE AGREEMENT

Version: 6.0 (7 January 2025)

By accepting the terms and conditions of this License Agreement (the "**Agreement**") in accordance with the section 3.3 hereof, this Agreement is made by and between the company from the Kentico Group that submitted the Quote (as defined below) to the customer during the procedure described in the section 3 hereof (the "**Provider**"), and the customer to whom the Quote was submitted (the "**Customer**"). The Provider and the Customer are collectively referred to as the "**Parties**" or any of them individually as a "**Party**". In the case that the Parties have entered or will enter into a separate written agreement on provision of the Software (as defined below), such agreement shall apply in lieu of this Agreement.

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

### 1. SUBJECT MATTER OF THE AGREEMENT

- 1.1 The Provider hereby undertakes to provide the Customer with Xperience by Kentico computer program, a digital experience platform (the "**Software**") and to grant to the Customer the right to use the Software. Further, the Provider undertakes to provide the Customer with Support Services under the conditions hereof as defined in section 8 of this Agreement. The Customer hereby undertakes to pay the Provider the fee set out in this Agreement and to use the Software under the conditions hereof.
- 1.2 Up-to-date detailed specification of the Software and its functions (the "**Software Specification**") is available online at the Xperience Documentation page (<https://docs.xperience.io/xp>) which provides information and technical documentation about the Software for its users.
- 1.3 From time to time, at the sole discretion of the Provider, any feature of the Software may be changed by means of hotfixes, updates or upgrades provided pursuant to the section 8 of this Agreement, including inter alia modifying current functions,

adding new functions, and even cancelling current functions (together referred to as the "**Release**"). The Customer acknowledges and expressly agrees with Releases according to previous sentence and that the Releases may even result in the cancellation of current functions. The Provider will endeavor to avoid changes that are incompatible with the Customer's current use of the Software, especially cancelling current functions without a substitute. If, despite the previous sentence, any such change becomes necessary, the Provider shall notify the Customer about such change in advance, if possible.

- 1.4 The Customer is entitled to request migration from on-premise version of the Software to the use of the Software as a cloud based service (hereinafter referred to as the "**Service**"). The Provider shall enable such migration on condition that a separate agreement on provision of the Service is concluded between the Customer and the Provider. If the migration occurs during the Subscription Term (as defined below), the proportional (unconsumed) part of fee paid by the Customer under this Agreement shall be used as a partial payment for the Service and other performance by the Provider related to the migration (e.g. data migration).

## **2. SUBSCRIPTION PLANS**

- 2.1 The Software is available in various subscription plans (the "**Subscription Plans**") specified in the pricelist available online at [xperience.io/pricing](http://xperience.io/pricing) (the "**Pricelist**"). The extent and features of the provided Software, and the limits on the extent to which the Customer is entitled to use the Software depend on the chosen Subscription Plan.
- 2.2 The Parties may agree on a custom Software subscription based on any existing Subscription Plan. If a custom Software subscription has been agreed, the specificities of such custom Software subscription are specified in the Quote (as defined below). In the case where the custom Software subscription is provided for a definite time period, after this period lapses, the provision of the Software shall continue according to the Subscription Plan, on which the custom Software subscription was based, unless otherwise agreed.
- 2.3 If the current settings of the Software allow it, the Customer may also be enabled to use certain additional features or services intended for use together with the Software or to use the Software to an increased extent (the "**Additional Services**").

### **3. CONCLUSION OF THE AGREEMENT, SOFTWARE PARAMETERS AND SOFTWARE DELIVERY**

- 3.1 Prior to the conclusion of the Agreement between the Parties, the Provider submits to the Customer a draft Xperience by Kentico Quote (the "**Quote**") based on the Customer's requirements. The Quote sets out the variable parameters under which the Software shall be provided to the Customer and usually includes in particular (i) the chosen Subscription Plan agreed between the Parties, (ii) the agreed Additional Services, if any, (iii) the period for which the Software license shall be provided (the "**Subscription Term**"), and (iv) any other specific terms of provision of the Software agreed between the Parties.
- 3.2 As soon as the Customer accepts the Quote and pays the Fee for the first Subscription Term (as described in the section 6.2 hereof), the Provider will create a user account for them on the Client Portal, which is accessible online at <https://client.kentico.com> (the "**Client Portal**") (unless the Customer's user account has already been created previously, for example for the purposes of Free Edition (as defined below)) and provide him/her with login information for this user account.
- 3.3 In order to obtain and use the Software, the Customer needs to review and accept this Agreement by clicking the "I accept" button in its user account or using other similar mechanism provided. By acceptance of this Agreement, this Agreement is concluded between the Parties under the terms specified in the Quote, this Agreement and other documents referred to in this Agreement (in this order of precedence).
- 3.4 After the Client has accepted this Agreement, the Provider shall provide to the Customer a license serial number. The Software is delivered upon provision of the license serial number (the date of the provision of the license serial number hereinafter as the "**Delivery Date**").
- 3.5 Upon receipt of the license serial number, the Customer is entitled to generate the Software license key, by registering the license serial number through the Client Portal, and to download copies of the Software in the latest version available at the date of conclusion of the Agreement from Provider's server.
- 3.6 By accepting the Quote and/or this Agreement, the Customer confirms that he/she is of legal age (in case he/she is a natural person) and otherwise eligible to enter into the Agreement and to use the Software. If any third person acts on behalf of the

Customer while accepting the Quote and/or this Agreement, such person by accepting them confirms that he/she is entitled to do so on behalf of the Customer.

#### **4. USE OF THE SOFTWARE**

- 4.1 The Software, including, but not limited to, logos, graphics, trademarks, service marks, technology, whether patentable or unpatentable, copyrights, trade secrets, know-how, documentation, text, software, etc., is the Provider's intellectual property, which is owned by, or validly licensed to, the Provider.
- 4.2 The Provider grants to the Customer worldwide, non-exclusive right to use the Software (license) commencing on the Delivery Date. The license is time-limited to the Subscription Term and to the following Subscription Terms, for which the term of the Agreement is extended in accordance with the section 7.2 of this Agreement (if any).
- 4.3 The Customer may use the Software solely for collecting, organizing, managing and collaborating on content or tracking customer data, behavior and providing a personalized experience. The Customer may not use the Software beyond the limitations described in this Agreement, the Software Specification (for the provided Subscription Plan), the Pricelist, and the Quote (if applicable).
- 4.4 Unless otherwise provided for in the Software Specification, the Pricelist or the Quote (if applicable), the Software can be used only by the Customer for its own projects, by the Customer's subsidiaries for their own projects, and by the Customer's implementation provider for the Customer's or Customer's subsidiaries' projects. For the purposes of this provision, a "subsidiary" means any other entity in which the Customer owns directly 50% of the outstanding equity interests or shares. Any act or omission by a subsidiary or an implementation provider shall be deemed the act or omission of the Customer for all purposes of this Agreement and the Customer shall be liable therefore in the same manner as if such act or omission were the act or omission of the Customer.
- 4.5 If the Customer is a Kentico partner (in this paragraph the "**Partner**") and has ordered the Software for the needs of their customers' projects, the Software may be used for the projects of Partner's customers to the maximum extent specified in the Quote. Any act or omission by a Partner's customer shall be deemed

the act or omission of the Partner for all purposes of this Agreement and the Partner shall be liable therefore in the same manner as if such act or omission were the act or omission of the Partner.

4.6 The Customer shall not use the Software for any illegal activities, in particular for:

4.6.1 unlawful activities, such as child pornography, illegal gambling, crime, copyright infringement, trademark rights infringement, and/or a breach of other intellectual property laws;

4.6.2 providing or enabling access to the Software to any person from a country on which an embargo has been imposed;

4.6.3 making threats, stalking, defamation, fraud, humiliation, bullying, or intimidation aimed at any person for any reason whatsoever;

4.6.4 invasion of any person's privacy by unlawful attempts at obtaining, gathering, storing, or publishing of the person's private information or attributable personal information such as passwords, account information, credit card numbers, addresses, or other contact information without such person's knowledge and consent;

4.6.5 deliberately abusing minors or their interests or gathering attributable personal information about any minor.

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

4.8 In relation to the source code of the Software, the following applies:

4.8.1 The Customer is entitled to disclosure of the source code only if applicable according to the Software Specification or expressly agreed upon in writing. The source code will be disclosed only to the extent agreed upon or specified in the Software Specification. The Customer shall:

(a) use the source code for the sole purpose of modifying the Software in connection with Customer's use of the Software for its internal business purposes, and always within the limitations agreed upon or specified in the Software Specification;

(b)with due care protect the source code against misuse or disclosure to any third party. The Customer is not entitled to sell, transfer, or license the disclosed source code;

- 4.8.2 The Customer is not entitled to anyhow acquire or seek to acquire the source code of the Software (or any part thereof), which was not disclosed to the Customer pursuant to the section 4.8.1 of this Agreement.
- 4.9 Regardless of whether the Customer is provided with the source code of the Software or not, the Customer is not entitled to enable (by any means) use of the functionalities of the Software, use of which is disabled in the source code of the provided Software edition (i.e. the functionalities hidden in the provided Software edition).
- 4.10 Except to the extent necessary for the Customer's use of the Software under the terms of this Agreement, the Customer is not permitted to copy, modify, republish, display, or distribute all or any part of the Software or Software documentation. Nor is the Customer permitted to reverse compile, disassemble, or reverse engineer Software or make use of Software or Software documentation to build a product or service.
- 4.11 The Customer is not entitled (and shall not permit any third party) to translate, process, alter or otherwise modify the Software, with the exception of those parts of the Software code which are disclosed to the Customer in the form of a source code, and are marked as permitted to modify by the Provider. Nevertheless, the Software is provided on a white label basis, thus the Customer may use its own logo and design in the Software.
- 4.12 The Customer may make a single backup copy of the Software for archival purposes. The Customer must reproduce and include Provider's copyright and other intellectual property rights notices on the backup copy of the Software. The Customer shall with due care protect such copy against misuse.
- 4.13 The Customer may not transfer, assign or sub-license the license granted under this Agreement, whether wholly or partially, to a third party without the prior written consent of the Provider.
- 4.14 The license to the Software granted under this Agreement applies to Releases of the Software provided by the Provider to the Customer under this Agreement as well.

- 4.15 The Software comes with certain limitations on the extent to which the Customer is entitled to use the Software as stated for the applicable Subscription Plan and the Customer in the Software Specification, the Pricelist, or the Quote. The Provider may, at its sole discretion, allow the Customer to exceed the limitations applicable to the Customer in order to use the Software to a greater extent for a trial period of 30 days during one Subscription Term. If the Customer's actual use of the Software exceeds the limitations applicable to the Customer for a longer period of time, the Provider will contact the Customer with an accordingly updated Quote. If the Customer does not accept the updated Quote pursuant to the section 22 hereof, the Customer is obliged to immediately stop using the Software to the extent exceeding the limitations applicable to the Customer.
- 4.16 If the Customer does not comply with the obligation to stop using the Software to the extent exceeding the limitations applicable to the Customer pursuant to section 4.15 hereof, the Customer is obliged to pay to the Provider the difference between the Fee for current Subscription Term of the Customer and the Fee applicable pursuant to the current Pricelist to the actual scope of use of the Software by the Customer. The difference is payable upon delivery of a request for payment by the Provider. The Provider's right to terminate the Agreement pursuant to section 7.4 hereof is by the payment of the contractual penalty not affected.
- 4.17 The Customer is obliged, at the Provider's request, to regularly make available to the Provider the log files relevant for the assessment of the extent of use of the Software by the Customer.

## **5. CONTENT, CUSTOMER'S DATA**

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

The Provider is entitled to collect data related to use of the Software by the Customer for the purpose of improvement of the Software and verification of compliance of the use of the Software with license terms. Such data shall contain information regarding the frequency of use of individual parts of the Software and error logs. The collected data shall not contain any particular data created by the Customer, personal data, sensitive data or

data on the activities of particular users. Method of collection and a detailed specification of the collected data are contained in the Software Specification. The Provider is entitled to change the scope and method of collection of the data unilaterally. Any such change shall be noted in the Software Specification.

## **6. BILLING**

- 6.1 The Customer shall pay the Provider the fee specified in the Quote for the provision of the Software, the license, Support Services and Additional Services (the "**Fee**").
- 6.2 The Fee specified in the Quote applies only to the first Subscription Term, unless otherwise explicitly stated in the Quote. The Provider is entitled to unilaterally and repeatedly increase the Fee for the following Subscription Terms. The Provider shall notify the increased Fee to the Customer always no later than 30 days prior to the start of the following Subscription Term. The increased Fee shall then apply starting from such following Subscription Term. If the Customer does not agree with the increased Fee, the Customer is entitled to terminate this Agreement by written notice served to the Provider within 15 days of delivery of the notice of the increased Fee. In such case this Agreement will not be automatically extended by another Subscription Term and this Agreement terminates upon the lapse of the current Subscription Term. Continued use of the Software after the 15-day period to serve the notice constitutes the Customer's acceptance of the increased Fee.
- 6.3 The Fee shall always be paid in advance for the entire Subscription Term. In the event of a Subscription Term longer than 1 year, the Parties may agree in the Quote to divide the Fee for such Subscription Term into annual installments (the "**Annual Installments**").
- 6.4 The Fee and other payments under this Agreement will be payable on the basis of invoices issued by the Provider. Unless otherwise agreed between the Parties, the invoices shall be due 14 days from the date of issue. Any payment to the Provider is payable by bank transfer to the Provider's account specified in the invoice. The payment is deemed to have been paid by crediting it to the Provider's account specified in the invoice.
- 6.5 The Provider will invoice the Fee for the first Subscription Term (or the first Annual Installment if the Fee is divided into Annual Installments) after the conclusion hereof. Payment of the Fee for the first Subscription Term (or the first Annual Installment) is



a condition for provision of the license serial number by the Provider to the Customer as stated in the section 3.2 hereof.

- 6.6 If the term of this Agreement is extended by another Subscription Term pursuant to section 7 hereof, the Provider will invoice the Fee for the following Subscription Term before the start of this following Subscription Term.
- 6.7 If the Fee is divided into Annual Installments, the Provider will invoice the Annual Installments always before the beginning of the year of provision of the Software to which the relevant Annual Installment relates. The amount of the Annual Installment specified in the Quote applies only to the first year of provision of the Software, unless otherwise explicitly stated in the Quote. The Provider is entitled to unilaterally and repeatedly increase the Annual Installments for the following years of provision of the Software. The Provider shall notify the increased Annual Installment to the Customer always no later than 30 days prior to the start of the following year of provision of the Software. The increased Annual Installment shall then apply starting from such following year of provision of the Software. If the Customer does not agree with the increased Annual Installment, the Customer is entitled to terminate this Agreement by written notice served to the Provider within 15 days of delivery of the notice of the increased Annual Installment. In such case this Agreement terminates upon the lapse of the current year of provision of the Software. Continued use of the Software after the 15-day period to serve the notice constitutes the Customer's acceptance of the increased Annual Installment.

## **7. TERM OF THE AGREEMENT**

- 7.1 This Agreement shall commence on the date of conclusion hereof and shall continue for the duration of the Subscription Term specified in the Quote. If the Subscription Term is not specified in the Quote, the Subscription Term shall be one year from the Delivery Date.
- 7.2 Unless either Party notifies the other Party at least 30 days prior to the expiration of the current Subscription Term that it does not want to extend the term of this Agreement, this Agreement automatically extends for the following Subscription Term (the following Subscription Term starts from the day immediately following the last day of the previous Subscription Term and its length is one year, unless it is explicitly stated in the Quote that the term of this Agreement will be automatically extended

by another period). The previous sentence applies accordingly to the following Subscription Terms, i.e., the term of this Agreement may be automatically extended repeatedly. If the term of this Agreement is automatically extended, the Software will be in the following Subscription Term provided in the same extent in which it was provided at the end of the previous Subscription Term (including ordered Additional Services etc.).

- 7.3 The Provider has right to terminate this Agreement for whatever reason or without stating the reason by giving a written notice to the Customer. The notice period is 3 (three) months and commences on the first day of the month following delivery of the notice to the Customer.
- 7.4 The Provider may terminate this Agreement by written notice immediately if the Customer breaches this Agreement and/or the terms of use of the Software in any way, in particular if the Customer is in default with the payment of the Fee or any other payment under this Agreement for more than 14 days.
- 7.5 If the Customer terminates this Agreement due to its breach by the Provider or if the Provider terminates the Agreement by giving the three months' notice, the Provider shall return to the Customer the unused portion of the Fee previously paid by the Customer, corresponding to the period from the effective date of termination of this Agreement to the end of the relevant prepaid period. If the Provider terminates this Agreement due to its breach by the Customer by giving the immediate notice, the unused part of the Fee shall not be returned.
- 7.6 If this Agreement is terminated for any reason, the license to the Software provided under this Agreement will lapse and the Customer must stop using the Software immediately.

## **8. SUPPORT SERVICES**

- 8.1 The Provider shall provide the Customer during the Subscription Term with support services for using the Software (the "**Support Services**"). The Support Services consists basically of providing technical support through means of distant communication, and providing Releases, if released by the Provider (upon its sole discretion) during the Subscription Term. The level of the Support Services is specified in the Pricelist, the Software Specification, and the Quote (if applicable) and depends on the Subscription Plan. For the avoidance of any doubt, the Parties agreed that the Provider guarantees no response times when providing the Support Services.

- 8.2 The Customer shall fully cooperate with the Provider when receiving the Support Services. The Customer acknowledges that the Releases provided by the Provider may be necessary for maintaining proper functionality of the Software and that the Provider bears no responsibility for functionality of the Software in case that the Customer does not implement the Releases notified to the Customer by the Provider in reasonable time from the notification, does not implement them properly or does not implement them at all.
- 8.3 The Customer is strongly recommended to use all the Support Services available to the Customer, especially during the Software implementation. Not using the Support Services by the Customer may result into inappropriate implementation of the Software, in which case the results obtained from the use of the Software by the Customer may not be optimal. For the avoidance of any doubt, the Parties agreed that the Customer is solely liable for the Software implementation, regardless whether the Support Services were used (unless otherwise agreed).
- 8.4 The Customer is recommended to implement the hotfixes and updates of the Software on regular basis. Notwithstanding the previous sentence, the Customer is obliged to implement the updates of the Software at least once a year, always by 31<sup>st</sup> October of the given year. If the Customer does not implement the hotfixes and updates of the Software as set out in the previous sentence, the Provider is not obliged to provide full Support Services and, as a solution to fix product related technical issue reported by the Customer, the Provider may only offer an update to a newer version of the Software. The obligation of the Customer to pay the Fee in full amount is not affected by not providing the full Support Services as set out in the previous sentence, nor is the Customer entitled to any damages.

## **9. FREE EDITION AND BETA RELEASES**

- 9.1 For the purposes of time-limited evaluation, the Provider may provide the Customer free of charge and for a limited period of time with (i) free or trial edition of the Software (the "**Free Edition**") or (ii) "beta" or other early-stage versions, integrations, or other features of the Software (the "**Beta Releases**"). The Free Edition and Beta Releases are optional for the Customer to use. Customer may use the Free Edition and the Beta Releases only for the period and purposes specified by the Provider when they are provided to the Customer. The Provider is

entitled to terminate the Customer's use of Free Edition or Beta Releases at any time at its discretion.

9.2 The Provider will not provide the Customer with Support Services in relation to the Free Edition or the Beta Releases. As regards the Free Edition and Beta Releases of the Software, section 4.12 does not apply. Further, section 4.11 last sentence of this Agreement does not apply to the Free Edition.

9.3 The following derogations from the terms hereof apply to the Free Edition of the Software:

9.3.1 on each website (each page of the website), which is administered with the use of the Software, the following shall be displayed:

(a) the Provider's logo "Powered by Xperience by Kentico" containing a hypertext link to the Provider's website currently under the following link <https://xperience.io>, the size of which shall be determined by the Provider, or

(b) text reading "Powered by Xperience by Kentico" containing a hypertext link to the Provider's website currently under the following link <https://xperience.io>, the size of which shall be determined by the Provider;

9.3.2 the Customer shall not remove any logos or other marks of the Provider from the Software.

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

9.5 Customer agrees that the Free Edition and the Beta Releases are provided on an 'as is' and 'as available' basis without any warranty, support, maintenance, storage, SLA or indemnity obligations of any kind. Customer acknowledges and agrees that Software provided under the Free Edition and the Beta Releases may not be complete or fully functional and may contain bugs, errors, omissions and other problems for which the Provider will

not be liable. Accordingly, any use of the Free Edition and the Beta Releases are at Customer's sole risk.

## **10. PERSONAL DATA PROCESSING**

- 10.1 As a result of providing the Support Services and fulfilling other obligations under this Agreement, the Provider may process, on the Customer's behalf, personal data (as defined in the General Data Protection Regulation [Regulation (EU) 2016/679] [**"GDPR"**]) which the Customer will enter, upload, or distribute in using the Software (**"Personal Data"**).
- 10.2 If the Provider processes any Personal Data on the Customer's behalf when performing its obligations under this Agreement, the Customer is the data controller and the Provider is the data processor (eventually the Customer is the data processor and the Provider is the sub-processor) for the purposes of the GDPR, or any successor legislation to the GDPR (**"Data Protection Legislation"**) (where data controller and data processor have the meanings as defined in the Data Protection Legislation). The Customer hereby authorizes the Provider to process the Personal Data according to the conditions stipulated in this section hereof.
- 10.3 The Provider may process any Personal Data of any data subjects (e.g., Customer's customers, partners, or employees) which the Customer will enter, upload, or distribute in using the Software. The nature and purpose of processing the Personal Data follows from this Agreement and includes, without limitation, access, gathering, storing, using, sorting or combining, blocking, and disposal of the Personal Data by the Provider's personnel to the extent necessary for the provision of the Support Services and fulfilling other obligations according to this Agreement. The Provider shall process the Personal Data solely for the purposes of fulfilling its obligations under this Agreement.
- 10.4 The Personal Data may be transferred or stored outside the European Union or the country where the Customer is located in order to carry out the Support Services and the Provider's other obligations under this Agreement. Such transfer will be carried out in compliance with the Data Protection Legislation.
- 10.5 The Customer shall fulfill all obligations arising out of their role as a data controller according to the Data Protection Legislation, or, in the case where the Customer is a data processor, fulfill all obligations arising out of their role as a data processor and ensure that the data controller fulfills

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

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

- a. process the Personal Data only for the purposes of fulfilling its obligations under this Agreement and on the documented instructions of the Customer issued in accordance with this Agreement unless the Provider is required to process personal data by the laws of any member state of the European Union or by the laws of the European Union applicable to the Provider. Where the Provider is relying on the above-mentioned laws as the basis for processing of the Personal Data, the Provider shall promptly notify the Customer of this before performing the processing required by these laws, unless these laws prohibit the Provider from so notifying the Customer. The Customer shall give instructions to the Provider regarding processing of the Personal Data mainly through its use of the Software, by email, by placing support requests, or the instructions may follow directly from this Agreement. The Provider shall notify the Customer in case, in the Provider's opinion, any of the Customer's instruction violates the Data Protection Legislation or other data protection legislation of a relevant member state of the European Union;
- b. taking into account the nature of the processing, upon the Customer's written request, assist the Customer by appropriate technical and organizational measures, insofar as this is possible, for the fulfillment of the Customer's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of the GDPR;
- c. upon the Customer's written request, assist the Customer in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR (e.g., security, breach notifications, impact assessments) taking into account the nature of processing and the information available to the Provider;

- d. notify the Customer without undue delay on becoming aware of a personal data breach;
  - e. maintain complete and accurate records and information to demonstrate their compliance with this section hereof;
  - f. ensure that their personnel authorized to process the Personal Data are subject to contractual or statutory obligation of confidentiality;
  - g. upon the Customer's written request, provide the Customer with all information necessary to prove compliance with this section hereof, and
  - h. upon the Customer's written request, enable audits, including inspections, carried out by an independent auditor authorized by the Customer and assist with these audits. The Customer needs to notify to the Provider the intention to carry out the audit and identity of the authorized auditor in advance and enable the Provider to raise objections against the identity of the authorized auditor. The audit will be carried out in time adequate to the extent of the audit and capacities of the Provider, agreed upon by the Parties. Prior to the audit, the authorized auditor shall enter into a non-disclosure agreement with the Provider or prove that they are subject to a statutory obligation of confidentiality.
- 10.7 Taking into account the state of the art, the costs of implementation, and the nature, scope, context, and purposes of processing of the Personal Data as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall implement appropriate technical and organizational measures to ensure a level of security of the Personal Data appropriate to the risk. Detailed information on the Provider's technical and organizational measures is provided in the Provider's privacy policy (available online on the Provider's website, currently under the following link: <https://www.kentico.com/privacy-policy>).
- 10.8 In the case where the Provider provides the Customer with any assistance or cooperation according to this section of this Agreement (especially pursuant to section 10.6 letters b, c, g, or h above), the Customer shall pay to the Provider corresponding charges according to the Provider's pricelist valid at the time of the respective activity, upon the Provider's request.
- 10.9 The Provider shall process the Personal Data for only as long as it is necessary to provide the Support Services or to fulfill

other obligations under this Agreement, but not longer than until the Agreement expires or is terminated. After the expiry or termination of the Agreement, any Personal Data at Provider's disposal will be stored and made available to the Customer upon written request for 30 days following the expiry or termination of the Agreement. After the expiry or termination of the Agreement, the Personal Data will be irrecoverably deleted, unless according to the Data Protection Legislation, the Provider is obliged to store the respective Personal Data.

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

## **11. PRIVACY POLICY**

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

11.2 The Customer is obliged to ensure that the personal data specified in the previous paragraph is handed over to the Provider in accordance with the Data Protection Legislation and that the



respective data subjects are informed that their personal data is handed over to the Provider and for what purpose.

## **12. PUBLICITY AND MARKETING**

- 12.1 The Provider reserves for itself and for other companies from the Kentico Group (as defined below) the right to reference the Customer as a client and display the Customer's logo and name on their websites and other promotional materials for marketing purposes. Any display of the Customer's logo and trademarks shall be in compliance with the Customer's branding guidelines. In case the Customer does not agree to such use of the logo and/or name, the Provider must be notified in writing. Except this provision, neither Party will use the name or trademarks of the other Party or refer to the other Party in any form of publicity or press release without such Party's prior written approval.
- 12.2 Kentico Group is formed by the company Kentico software s.r.o. with its registered office at Nové Sady 996/25, 602 00 Brno, Czech Republic, ID No.: 269 30 943, registered in the Commercial Register maintained by the Regional Court in Brno, file No: C 46072, and its subsidiaries. For the purposes of this Agreement, any other company, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Kentico software s.r.o. is also considered to be a part of Kentico Group.

## **13. THIRD-PARTY SOFTWARE**

- 13.1 The Software contains computer programs and computer graphics that are made by a third party and are subject to third-party rights (the "**Third-Party Software**"). The Third-Party Software is governed by the licensing terms of the relevant third parties. A list of Third-Party Software is included in the Software Specification or on the Provider's **Community** portal available at <https://community.kentico.com/documentation/third-party-software-licenses>. The Provider may amend this list at any time. The Customer will indemnify the Provider for any loss or damage, including attorney's fees, arising from any claims against the Provider due to actions of the Customer which allegedly violate the license terms of the Third-Party Software. The Provider declares that, to his knowledge, the Software does not violate any such third-party rights.

## **14. LIABILITY**

- 14.1 The Customer acknowledges being sufficiently acquainted with the Software and the Software Specification prior to the execution of this Agreement and fully aware of Software's functionalities. The Customer is solely responsible for determining whether the Software is fit for Customer's intended use of the Software. The Customer acknowledges, that the Software is not suitable for use in operating environments susceptible to large-scale or serious damage and that defects in the Software may appear during the use of the Software.
- 14.2 The Customer shall use its best efforts to prevent any damage to Customer or its Content, systems, documents, etc., caused due to defects in the Software (e.g., thorough and comprehensive testing before the Software is released into common use within the Customer's business or a business of other third persons, including testing of interoperability of the Software with other computer programs or other components). The Customer shall be solely responsible for procuring and maintaining its network connections and telecommunications links, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the Internet.
- 14.3 The Customer hereby declares that it has been advised by the Provider in a clear and understandable manner of the necessary technical and software equipment and network connection to access and use the Software prior to entering into the Agreement.
- 14.4 The Provider bears no liability for the functionality of the Customer's data network, public data networks, hardware and software running on it, and the backing up of the data. The Customer shall ensure that its network and systems comply with the relevant specifications provided by the Provider from time to time. The Provider bears no liability for the state of other programs used by the Customer or for any potential interference by third parties with other programs used by the Customer.
- 14.5 The Provider shall provide the Customer with updates to the Software which are necessary for its operation in accordance with this Agreement. If a defect in the Software occurs during the term of the Agreement, i.e. the Software does not operate in accordance with this Agreement, the Customer shall provide the Provider with reasonable assistance necessary to verify whether the defect in the Software was caused by inadequate technical or software equipment of the Customer or its network connection to

access the Software. The Customer acknowledges that if the Customer rejects to provide the Provider with required reasonable assistance, the burden of proof regarding the occurrence of the defect in the Software passes to the Customer.

14.6 Except as expressly and specifically provided in this Agreement:

14.6.1 the Customer assumes sole responsibility for results obtained from the use of the Software by the Customer, and for conclusions drawn from such use. The Provider shall have no liability for any damage caused by errors or omissions in any information, instructions, or scripts provided to the Provider by the Customer in connection with the Software, or any actions taken by the Provider at the Customer's direction;

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

14.7 The Software is provided to the Customer on an "as is" basis.

14.8 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES AGREE THAT THE PROVIDER'S LIABILITY FOR DAMAGES, INCLUDING THE LOSS OF PROFITS, THAT MAY ARISE FOR THE CUSTOMER DUE TO A BREACH OF THE PROVIDER'S OBLIGATIONS HEREUNDER, OR DUE TO DEFECTS IN THE SOFTWARE, SHALL BE LIMITED TO THE MAXIMUM CUMULATIVE AMOUNT OF US \$10. THE PROVIDER SHALL IN NO CASE BE LIABLE FOR ANY DAMAGES EXCEEDING THIS LIMIT. THE LIMITATION ABOVE DOES NOT EXTEND TO DAMAGE CAUSED BY THE PROVIDER TO A NATURAL PERSON ON HIS/HER NATURAL RIGHTS OR CAUSED INTENTIONALLY OR THROUGH GROSS NEGLIGENCE.

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

## **15. INDEMNIFICATION**

15.1 The Provider shall defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the possession or use of the Software (or any part thereof) in accordance with the terms of this Agreement infringes the intellectual property rights of a third party (a "**Claim**") and shall be responsible for any reasonable losses, damages, costs and expenses incurred by or awarded against the Customer as a result of or in connection with any such Claim.

- 15.2 The Customer shall promptly notify the Provider if any third party makes a Claim, or notifies an intention to make a Claim against the Customer and shall provide the Provider with reasonable assistance that the Provider may request in connection with the defence of such a Claim (e.g. access to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records). The defence of such Claim shall be conducted by the Provider with counsel selected by the Provider, provided that the Customer shall have the right to participate in such defence through separate counsel of its own choosing retained at Customer's expense. The Customer is not entitled to make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Provider.
- 15.3 If any Claim is made, or in the Provider's reasonable opinion is likely to be made, against the Customer, the Provider may at its sole discretion, (i) promptly procure a license for the Customer, at no cost to the Customer, to allow the Customer to continue using the Software in accordance with terms hereof, or (ii) modify the Software without diminishing its functional capabilities to make it non-infringing. If neither of the foregoing is feasible or otherwise commercially reasonable, the Provider is entitled to withdraw from this Agreement. In that case, the Customer is entitled to refund in the amount calculated in accordance with the section 7.5, first sentence, of this Agreement.
- 15.4 Notwithstanding the foregoing, the Provider shall have no obligation to the Customer with respect to any Claim (i) if the Software is being used in violation of the terms of this Agreement (unless such use is authorized by, or at the direction of, the Provider), (ii) if the Software has been modified by the Customer or any third party (unless such modification is authorized by, or at the direction of, the Provider), or (iii) if such Claim is based upon the combination, operation, or use of the Software with any other Software, product, device, or equipment that are not Third-Party Software, or use of which is not recommended by the Provider in writing for normal operation of the Software, if Customer's liability for such infringement claim would have been avoided in the absence of such modification, combination, use, or operation. Further, the Provider shall have no obligation to the Customer with respect to any Claim to the extent that the Claim arises directly or indirectly through the possession or use

of any Third-Party Software or through the breach of any Third-Party Software terms by the Customer.

**16. JURISDICTION**

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

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

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

Provider	Governing Law	Competent Courts
Kentico Software CZ s.r.o. ID No. 03902803	Law of the Czech Republic	Courts of the Czech Republic in Brno
Kentico Software, LLC, 15 Constitution Drive, Suite 2G, Bedford, NH, 03110, USA	Law of the State of New Hampshire	Federal courts of the United States of America located in the State of New Hampshire or the courts of the State of New Hampshire
Kentico Software Limited company no. 07584637	Law of England and Wales	Courts of England and Wales
Kentico Software Pty Ltd, Level 4, 83 Mount St, North Sydney, New South Wales 2060, Australia	Law of State of New South Wales in the Commonwealth of Australia	Municipal Court in Sydney
Kentico Software GmbH Commercial reg. no. HRB 32869	Law of the Federal Republic of Germany	Courts of Neuss, Germany

**17. SEVERABILITY**

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

**18. FULL AGREEMENT**

18.1 This Agreement represents full and complete agreement of the Parties and replaces all prior agreements or understandings. For the avoidance of doubt, the Parties explicitly agree that for the purposes of provision and use of the Software under this Agreement, no terms published on the Provider's website are binding, unless expressly referred to in this Agreement.

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

**19. NO PARTNERSHIP OR AGENCY**

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

**20. ASSIGNMENT**

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

**21. COMMUNICATION OF THE PARTIES**

- 21.1 Any notification under this Agreement shall be deemed to have been made if sent by email to the following email address:
- 21.1.1 to the email address sales@kentico.com, in the case of notification by the Customer to the Provider,
  - 21.1.2 to the email address of any of the contact persons that the Customer has communicated to the Provider in any way, in the case of notification by the Provider to the Customer.
- 21.2 The Customer is obliged to notify the Provider without undue delay of any change in their contact persons and/or their contact details.

## **22. CHANGES**

- 22.1 The Parties may agree anytime to change the parameters of the Software or the extent of provided Additional Services. In such a case, the Provider shall submit to the Customer a new quote based on the Customer's requirements and the Parties will proceed accordingly pursuant to section 3 hereof.
- 22.2 The documents referred to in this Agreement, as well as the other Provider's policies regarding the Software may be unilaterally changed by the Provider at any time to a reasonable extent (the "**Change**"). Publication of the Change in the Client Portal shall be considered sufficient notice of such Change. If the Customer does not agree with the Change, the Customer is entitled to terminate this Agreement by written notice served to the Provider within 15 days of the publication of the Change in the Client Portal or from the notification of the Change to the Customer in another way. In that case, this Agreement terminates at the time agreed upon by the Parties or, at the latest, 30 days after the Provider was served with the termination notice. For the avoidance of any doubt, the Customer is obliged to pay a proportional share of the fees for using the Software until the termination of this Agreement becomes effective. Continued use of the Software after the 15-day period to serve the notice constitutes the Customer's acceptance of such Change.