

KINETICA DEVELOPER LICENSE AGREEMENT

THIS KINETICA DEVELOPER LICENSE AGREEMENT (THE “**AGREEMENT**”) IS BY AND BETWEEN KINETICA, INC. (“KINETICA”), AND THE INDIVIDUAL OR LEGAL ENTITY WHO CLICKS “I ACCEPT” OR INSTALLS OR USES ANY SOFTWARE, TOOLS, COMPONENTS OR OTHER MATERIALS MADE AVAILABLE BY KINETICA (“DEVELOPER”) AND GOVERNS ALL USE BY CUSTOMER OF SUCH SOFTWARE. DEVELOPER EXPRESSLY ACCEPTS AND AGREES TO THE TERMS OF THIS AGREEMENT ON YOUR OWN OR YOUR COMPANY’S BEHALF AND IN THE LATTER CASE YOU REPRESENT THAT YOU HAVE THE LEGAL AUTHORITY TO DO SO. IF YOU DO NOT AGREE WITH THE TERMS OF THIS AGREEMENT, YOU MUST NOT AND MAY NOT INSTALL OR USE THE SOFTWARE.

1. **Definitions**

- 1.1 **“Kinetica Code”** means any and all APIs, development kits, documentation, training materials, quickstart guides, connectors, sample apps, sample queries, sample code, repositories, drivers, libraries, databases, content and related media and printed materials, whether in source or object or compiled form, provided or made available to Developer for the purposes contemplated herein, and any subsequent updates or adaptations of the foregoing.
- 1.2 **“Internal Code”** means any and all Kinetica Code that is composed, in whole or in part, of APIs, development kits, documentation, training materials and quickstart guides and any related repositories, drivers, libraries, databases, content and related media and printed materials.
- 1.3 **“Publishable Code”** means any and all Kinetica Code that is composed, in whole or in part, of connector code, sample apps, sample queries, sample code and any related repositories, drivers, libraries and related media and printed materials. No database is Publishable Code, whether in source, object or compiled form.

2. **License and Proprietary Rights**

- 2.1 Subject to the terms and conditions of this Agreement, Kinetica grants to Developer a non-transferable, nonexclusive, revocable right and license to (a) download, install, use, copy and modify operate the Kinetica Code for internal development purposes, and (b) publish and distribute Publishable Code. Internal Code may only be used internally and must not be distributed to third parties without Kinetica’s prior written consent. If Developer elects to publish or distribute Publishable Code then it may not charge a fee for it (but may charge for Developer’s additions) and must give attribution to Kinetica as the source of the Publishable Code. Developer shall not make any representations or warranties about Publishable Code that are not approved by Kinetica. Kinetica currently provides the Kinetica Code for development purposes at no charge. Kinetica reserves the right to change the pricing for the Kinetica Code for development or other purposes and/or the terms of this license at any time in its sole discretion. Kinetica shall provide reasonable prior written notice of such changes to Developer.
- 2.2 Developer acknowledges and agrees that (a) the Kinetica Code is protected by United States and international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws, (b) Kinetica retains all right, title and interest (including, without limitation, all patent, copyright, trade secret and other intellectual property rights) in and to the Kinetica Code, any and all related and underlying technology, and any derivative works or modifications of any of the foregoing, (c) there are no implied licenses under this Agreement and any rights not expressly set forth in this Agreement are hereby expressly reserved by Kinetica and (d) the Kinetica Code is licensed, not sold and Developer acquires no ownership or other interest (other than the license rights expressly stated herein) in or to the Kinetica Code.
- 2.3 Developer shall not, and shall not allow, assist or authorize any third party to: (a) modify, translate, copy or create derivative works based on the Kinetica Code unless expressly authorized herein, (b) reverse assemble, reverse compile, reverse engineer, decompile or otherwise attempt to discover the object code, source code, non-public APIs or underlying ideas or algorithms of the Kinetica Code in whole or in part, (c) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Kinetica Code available to any third party, other than as contemplated by this Agreement or (e) remove or obscure any proprietary or other notice contained in the Kinetica Code.
- 2.4 Developer represents and warrants that (a) Developer will use the Kinetica Code only in compliance with all applicable laws and regulations, (b) Developer is not a person or entity appearing on the lists published by the U.S. Department of Commerce, the U.S. Department of State, the U.S. Department of Treasury or any other list that may be published by the U.S. Government, as amended from time to time, that is prohibited from acquiring control of items under this Agreement, or with which Kinetica is prohibited from doing business and (c) it will not make any representations or warranties regarding the Kinetica Code to any third party. Developer acknowledge that any materials delivered under this Agreement are subject to U.S. export control laws and may be subject to export or import regulations in other countries. Developer agrees to comply strictly with these laws and regulations and you acknowledge that you have the responsibility to obtain any licenses to export, re-export, or import as may be required.
- 2.5 Developer may publish, provide to third parties or otherwise share any developments it makes that contain or use Kinetica Code (“Developments”) in accordance with this Agreement. Developer hereby grants Kinetica a non-exclusive, non-

transferable, worldwide, royalty-free right and license to reproduce, distribute, perform, and display the Development for the purposes of (a) evaluating them for approval prior to distribution and (b) demonstration to Kinetica's customers and prospects. Developer may use Kinetica names, logos, labels or trademarks (the "Kinetica Marks") to identify Kinetica as the source of Publishable Code and may name Kinetica as the source of Kinetica Code in reviews and marketing materials in a factual and accurate manner. All other uses of Kinetica Marks must have Kinetica's prior written approval. Developer may not, without Kinetica's prior written approval, state or imply that Kinetica has approved any Developments or that any partnership or relationship exists between the parties.

2.6 From time to time, Developer may provide Kinetica with suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the Kinetica Code or the Kinetica Service ("**Feedback**"). Feedback shall not be deemed to constitute confidential information or to impose any confidentiality obligations on Kinetica. Developer agrees that Kinetica is free to use, disclose, reproduce, license or otherwise distribute and exploit any Feedback as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise.

2.7 Developer acknowledges that some components of Kinetica Code include repositories or other materials that rely on open source distributions by third parties, including, but not limited, to Docker, MacOS or Linux. Kinetica makes no representations about those and any other third party materials and Developer is solely responsible for acquiring any third party licenses needed to access, install and use the Kinetica Code. The terms of such third party licenses govern such materials exclusively. Further, except for Developer's sole, internal use Developer will not introduce into Kinetica Code or any Developments any third party materials, open source code, or other code that requires a license from a third party without Kinetica's prior written consent.

3. **Support, Updates, and Disclaimer of Warranty.** Kinetica may, but is not obligated to, provide Developer with limited support resources for the most recently released version of the Kinetica Code; provide Developer with updates and bug fixes to the Kinetica Code. Further, Kinetica may change or discontinue any portion of the Kinetica Code or its developer program or the Kinetica Services at any time. Developer acknowledges that updates and changes to the Kinetica Code may render any of its developments inoperable or obsolete. DEVELOPER ACKNOWLEDGES THAT THE KINETICA CODE IS PROVIDED BY KINETICA IN AN "AS IS" CONDITION WITH NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AND ALL SUCH WARRANTIES ARE DISCLAIMED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. KINETICA DOES NOT WARRANT THAT THE OPERATION OF THE KINETICA CODE WILL BE UNINTERRUPTED OR ERROR FREE. DEVELOPER ACKNOWLEDGES AND AGREES THAT IT MAY NOT RELY ON THE FUTURE AVAILABILITY OF THE KINETICA CODE FOR ANY PURPOSE IN MAKING ANY DECISIONS WITH RESPECT TO DEVELOPMENTS OR OTHERWISE.

4. **Term and Termination.** This Agreement begins on the date accepted by Kinetica and shall continue until terminated. If Developer breaches any term of this Agreement and does not cure such breach within ten (10) business days of notice of such breach, or if such breach is by its nature incapable of cure, then Kinetica may terminate this Agreement immediately. Either Party may terminate this Agreement at any time by giving written notice to the other Party. Upon termination of this Agreement for any reason, (a) Kinetica will terminate Developer's access to the Kinetica Code, (b) Developer shall immediately discontinue all use of the Kinetica Code, (c) Developer shall uninstall and destroy all copies of the Kinetica Code, and (d) Developer shall return or destroy all Confidential Information (defined below) of Kinetica.

5. **Confidentiality.** Developer acknowledges that the Kinetica Code is the proprietary and confidential information of Kinetica and in the course of using the Kinetica Code under this Agreement, Developer may obtain other proprietary and confidential information relating to Kinetica, including, without limitation, trade secrets, know-how, inventions (whether or not patentable), techniques, ideas, processes, computer code, documentation, and design and functional specifications related to the Kinetica Code ("**Confidential Information**"). Developer shall (a) hold Confidential Information in strict confidence, (b) not disclose Confidential Information to third parties without the written consent of Kinetica and (c) not use Confidential Information for any purpose except as expressly permitted hereunder. Developer shall not be obligated to maintain the confidentiality of information which (i) is already known to Developer prior to receipt from Kinetica with no confidentiality obligation attached, or (ii) is or becomes publicly known other than through a wrongful act by Developer. Developer acknowledges and agrees that there can be no adequate remedy at law for any breach of this section, which breach will result in irreparable harm to Kinetica, and therefore, upon any such breach or any threat thereof, Kinetica is entitled to temporary, preliminary and permanent injunctive relief without the requirement of posting a bond or proving actual damages, in addition to whatever remedies Kinetica might have at law

6. **Indemnification**

6.1 Kinetica will defend any third party claim or action brought against Developer to the extent based on the allegation that the Kinetica Code infringes any intellectual property right (patents, utility models, design rights, copyrights and trademarks or any other intellectual property right) having effect in the United States and Kinetica will pay any settlements that Kinetica agrees to in a writing signed by an authorized officer of Kinetica or final judgments awarded to the third party claimant by a court of competent jurisdiction. The foregoing obligations do not apply to (a) any modifications to the Kinetica Code, (b) the Kinetica Code combined with other products, processes or materials, (c)

Developer's use of the Kinetica Code other than strictly in accordance with this Agreement, or (d) any use of the Kinetica Code which Kinetica has replaced with a newer version or which Kinetica has notified Developer to discontinue such use.

6.2 Developer will defend any third party claim or action brought against Kinetica to the extent based on (a) the allegation that its Developments infringe any intellectual property right (patents, utility models, design rights, copyrights and trademarks or any other intellectual property right) (other than as directly caused by the Kinetica Code or materials directly provided by Kinetica hereunder, without modification), (b) a claim relating to any Developments, or (c) Developer's breach of its representations and warranties herein. Developer will pay any settlements that Developer agrees to in a writing signed by an authorized officer of Developer or final judgments awarded to the third-party claimant by a court of competent jurisdiction.

6.3 Each party's obligations in this section are conditioned on the indemnified party (a) providing the indemnifying party with prompt written notice of any claim, (b) granting the indemnifying party the sole control of the defense or settlement of the claim and (c) providing reasonable information and assistance to the indemnifying party in the defense or settlement of the claim at the indemnifying party's expense.

6.4 THIS SECTION STATES KINETICA' ENTIRE RESPONSIBILITY AND SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO KINETICA' INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

7. **Limitation of Liability.** EXCEPT FOR (I) DEVELOPER'S BREACH OF ANY OBLIGATIONS RELATING TO KINETICA'S PROPRIETARY RIGHTS OR CONFIDENTIAL INFORMATION OR EITHER PARTY'S INDEMNIFICATION OBLIGATIONS, NEITHER PARTY SHALL BE LIABLE WITH RESPECT TO ANY CAUSE RELATED TO OR ARISING OUT OF THIS AGREEMENT, WHETHER IN AN ACTION BASED ON A CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ANY OTHER LEGAL THEORY, HOWEVER ARISING, FOR (A) INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, (B) DAMAGES BASED ON LOST REVENUES OR PROFITS, LOSS OF BUSINESS OR GOODWILL, LOSS OR CORRUPTION OF DATA OR BREACHES IN SYSTEM SECURITY OR (C) ANY DAMAGES THAT EXCEED ONE HUNDRED DOLLARS (\$100). THESE LIMITATIONS SHALL APPLY WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

8. **Governing Law and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to any choice or conflict of law provisions. Any legal claim, suit, action or proceeding arising out of this Agreement or the matters contemplated hereunder shall be subject to the exclusive jurisdiction of the courts located in San Francisco, California, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding and waives any objection based on improper venue or forum non conveniens.

9. **Miscellaneous.** The parties acknowledge that they are acting as independent contractors who are solely responsible for their own actions or inactions and that no joint venture, franchise, partnership, agency, or other relationship shall be created or implied by this Agreement. Developer may not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without Kinetica' prior written consent, which shall not be unreasonably withheld. No delegation or other transfer will relieve Developer of any of its obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this provision is void. Kinetica may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this Agreement without consent. If any court of competent jurisdiction adjudges any provision of this Agreement to be to be illegal, unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable, but shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. This Agreement constitutes the sole and entire agreement between the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. Any terms and conditions of any purchase order or other instrument issued by Developer shall be of no force or effect. Except as stated herein, this Agreement may only be amended, modified or supplemented by an agreement in writing by non-preprinted agreements clearly understood by both parties to be an amendment and signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.