

KYLIG - ENTERPRISE END-USER LICENSE AGREEMENT

Last modified: Nov 18, 2021

KYLIGENCE ENTERPRISE END-USER LICENSE AGREEMENT

This End-User License Agreement (the “Agreement”) is a binding legal contract between you and the entity or company that you represent (“You” or "Customer") and Kyligence USA, Inc. (“Kyligence”), and applies to your use of the Kyligence Software. Please read these terms carefully.

By taking any step (including, but not limited to, by clicking on the "Accept" button or downloading the Software) to set-up, install, access, or use the Software, you are unconditionally consenting to be bound by and are becoming a party to this Agreement. You represent that you have full legal authority to accept enter into this Agreement on behalf of Customer. If you do not agree with any of the terms or conditions of this Agreement, you may not use any portion of the Software. If these terms of this Agreement are considered an offer, acceptance is expressly limited to these terms.

The “Effective Date” of this Agreement is the earliest to occur of the date you accept this Agreement, or the date you first access or use any Software.

1. Definitions.

Capitalized terms used but not otherwise defined in this Agreement have the meanings set forth in Exhibit A.

2. License Grants.

- Subscription. Subject to Customer’s timely payment of the Subscription Fees and compliance with all the terms and conditions of this Agreement, Kyligence hereby grants Customer a limited, non-exclusive, non-transferable, non-sublicensable license, during the Subscription Term, to use or access the Kyligence Software within the Licensed Capacity, solely for the Customer’s Business Purposes in accordance with any documentation that accompanies the Software.
- Free Trial. If Kyligence, in its sole discretion, makes certain Free Software available to Customer for trial without charge, the license granted under Section 2(a) above shall be revocable by Kyligence at any time, and limited to Customer’s internal evaluation purposes in non-production environment only for up to thirty (30) days (unless otherwise specified by Kyligence in writing). Customer acknowledges that the Free Software (i) is provided “AS IS” without any warranty or support, (ii) may have limited features, functions, or other limitations of any kind, and (iii) may be modified from time to time without notice. Notwithstanding anything to the contrary in this Agreement, **Kyligence does not provide any maintenance and support (Section 6), warranty (Section 8), or indemnification (Section 11) with respect to Free Software.** Upon

the expiry of a free trial, Customer shall immediately cease any further use of the Software; otherwise, Customer may be charged for the applicable Subscription Fees.

- Third Party Services. Customer acknowledges and agrees that the Software operates on or with or using application programming interfaces (APIs) and/or other services operated or provided by third parties (“Third Party Services”). Kyligence is not responsible for the operation of any Third Party Services nor the availability or operation of the Software to the extent such availability and operation is dependent upon Third Party Services. Customer is solely responsible for procuring any and all rights necessary for it to access Third Party Services and for complying with any applicable terms or conditions thereof. Kyligence does not make any representations or warranties with respect to Third Party Services or any third party providers. Any exchange of data or other interaction between Customer and a third party provider is solely between Customer and such third party provider and is governed by such third party’s terms and conditions.
- Delivery. The Software is delivered via electronic process made available following Customer’s acceptance of this Agreement. Customer has no right to receive, use or examine any source code or design documentation relating to the Software.

3. License Restrictions.

Unless otherwise expressly permitted by Kyligence, Customer shall not: (a) copy any Kyligence Software; (b) modify, adapt, or create derivative works of any Kyligence Software; (c) rent, lease, loan, resell, transfer, sublicense, distribute, disclose or otherwise provide any Kyligence Software to any third party; (d) decompile, disassemble or reverse-engineer any Kyligence Software, or determine or attempt to determine any source code, algorithms, methods or techniques embodied in or underlying structure, ideas or algorithms of any Kyligence Software, except that reverse engineering is prohibited only to the extent such prohibition is not contrary to applicable law; (e) access or use any Disabled Materials; (f) provide to any third party the results of any benchmark tests or other evaluation of any Kyligence Software without Kyligence’s prior written consent; (g) attempt to disable or circumvent any license key or other technological mechanisms or measures intended to prevent, limit or control use or copying of, or access to, any Kyligence Software (including in order to gain access to any Disabled Materials); (h) remove or obscure any copyright, trademark, patent, or other proprietary notices, legends or symbols from any Kyligence Software; (i) exceed the Licensed Capacity or violate other license limitations identified in this Agreement; (j) separately use any of the applicable features and functionalities of the Kyligence Software with external applications or code not furnished by Kyligence; (k) access or use any Kyligence Software for commercial time-sharing or service-bureau use or for any purpose other than its own internal Business Purpose as expressly authorized in this Agreement; (l) use the Kyligence Software other than in compliance with all applicable laws and regulations, including but not limited to laws and regulations concerning privacy, data security, and data protection, intellectual property, consumer and child protection, obscenity or defamation; or (l) encourage, assist, or permit any third party to do any of the foregoing. Customer acknowledges that the Software may display warnings if the Subscription Term is about to expire or the Licensed Capacity is about to be reached or exceeded. In the event that the Licensed Capacity is reached, the Software will continue function at the level of Licensed Capacity purchased by Customer, but Customer can no longer use additional capacity.

4. Ownership.

- Kyligence Software. Kyligence, its suppliers and/or licensors own all worldwide right, title and interest in and to the Kyligence Software, including all related Intellectual Property Rights. Except for the licenses expressly granted to Customer in Section 2, Customer will not acquire or claim any right, title or interest in or to any Kyligence Software or related Intellectual Property Rights, whether by implication, operation of law or otherwise. Notwithstanding anything to the contrary, the Software is licensed, not sold, to Customer. To the extent that Customer provides any Feedback, Customer grants to Kyligence a perpetual, irrevocable, worldwide, nonexclusive, transferable, sublicensable, royalty-free, fully paid-up right and license to use and commercially exploit the Feedback in any manner Kyligence deems fit.
- User Information. Customer owns all worldwide right, title and interest in and to the User Information, including all related Intellectual Property Rights. Customer hereby grants Kyligence a license to use User Information for the sole purposes of: (a) providing the Kyligence Software and related services to Customer as set forth in this Agreement; (b) testing, improving, and providing the Kyligence Software and services (but solely in aggregated and de-identified form in a manner); and (c) enforcing its rights under this Agreement. Customer shall only make available User Information to Kyligence if, and to the extent, necessary for the performance of this Agreement and to the extent that it is lawful to do so.

5. Fees and Payments.

- Subscription Fees. Customer shall pay all subscription fees made available by Kyligence during the purchase process (the “**Subscription Fees**”) at the commencement of the Subscription Term. If Customers’ use of the Software exceeds the Licensed Capacity, Customer will be invoiced for the excess usage over the Licensed Capacity, at Kyligence’s then-current rate, and Customer agrees to pay the additional fees without any right of set-off or deduction. Without limitation of Kyligence’s other rights or remedies, if Customer fails to pay the Subscription Fees when due, then Kyligence may terminate this Agreement and all licenses granted hereunder by notice to Customer. All payments shall be made in U.S. dollars in immediately available funds, and are non-refundable once paid, except as otherwise explicitly provided hereunder. Any amounts not paid when due shall bear interest at the rate of one and one-half percent (1.5%) per month or the maximum rate allowed by law, whichever is less. All payments will be made in accordance with the payment schedule as specified by Kyligence during the purchase process. If not otherwise specified, payments will be due within thirty (30) days of invoice.
- Taxes. Customer shall pay any sales, use, value-added, property, and other taxes, withholdings and similar charges based on or arising from this Agreement (other than taxes based on Kyligence’s net income). In the case of any withholding requirements, Customer will pay any required withholding itself and will not reduce the amount paid to Kyligence on account thereof.

6. Support Services; Professional Services.

Subject to Customer's timely payment of all the applicable fees, Kyligence will provide its standard support and maintenance services in accordance with Kyligence's support policy available at <https://kyligence.io/service-level-agreement/> (the "Support Services"). The parties may enter into by mutual execution separate statements of work (the "SOW") for the provision by Kyligence of certain professional services (the "Professional Services") to Customer, which may include customization, configuration, deployment, implementation, guided services, consultation, education or training services. The fees and terms for such Professional Services will be as provided in the applicable SOW.

7. Records and Audit.

Customer shall establish and maintain complete and accurate records related to the location, access and use of the Kyligence Software by Customer, its employees or its agents, and any such other information as reasonably necessary for Kyligence to verify compliance with the terms of this Agreement. With Customer's prior written approval, Kyligence or its representative may request such records, which shall not be unreasonably withheld, to confirm Customer's compliance with the terms of this Agreement. If an audit reveals that Customer (and/or any of its service provider) has exceeded the Licensed Capacity or the scope of Customer's license grant during the period audited, then Kyligence will invoice Customer, and Customer will promptly pay Kyligence any underpaid Subscription Fees based on Kyligence's price list in effect at the time the audit is completed. If the excess usage exceeds ten percent (10%) of the Licensed Capacity, then Customer will also pay Kyligence's reasonable costs of conducting the audit. Customer will ensure that its service providers provide Kyligence with the access described in this Section 7. This Section 7 will survive expiration or termination of this Agreement for a period of three (3) years.

8. Representations and Warranties.

- Mutual. Each party represents and warrants that: (a) such party is duly organized, validly existing, and in good standing under the laws of the state of its organization, and has the full corporate power and authority to enter into and perform its obligations under this Agreement; (b) the execution of this Agreement by such party, and the performance by such party of its obligations and duties hereunder do not and will not violate any other agreement to which such party is a party or by which it is otherwise bound; and (c) when executed and delivered by such party, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.
- Limited Software Warranty. Kyligence warrants that for a period of sixty (60) days from the Delivery of Kyligence Software, the Kyligence Software will perform the material functions described in the applicable documentation for such Kyligence Software, when used in accordance with the user documentation. If during this 60-day period, Kyligence fails to comply with the warranty in this Section, Customer may promptly notify Kyligence in writing of any such noncompliance. Kyligence will, within ninety (90) days of receipt of such written notification, make commercially reasonable efforts to either correct or replace such Kyligence Software. If Kyligence

reasonably decides that the noncompliance is not corrected or if a reasonably acceptable plan for correcting them is not established during such period, Customer may terminate this Agreement and Kyligence will issue a pro rata refund of the Subscription Fees previously paid by Customer, which will be calculated using the remainder of the applicable Subscription Term (beginning with the date of Kyligence's receipt of such termination notice), as its sole and exclusive remedy for such noncompliance. The foregoing warranty does not apply: (i) if the failure or defect in the Software results from Customer's use in breach of this Agreement, (ii) if there is an update (whether a new release or new version) to the Software which corrects the failure to perform, or (iii) (for clarity), in relation to the Free Software.

- Customer Content. Kyligence will obtain and process certain content/data provided by or on behalf of Customer, including User Information ("Content") to perform its obligations under this Agreement. Customer and its licensors shall, and Customer hereby represents and warrants that they do, have and retain all right, title and interest (including, without limitation, sole ownership of) all Content provided to and/or processed through the Software, and the Intellectual Property Rights with respect to that Content. If Kyligence receives any notice or claim that any Content, or activities hereunder with respect to any Content, may infringe or violate rights of a third party (a "Claim"), Kyligence may (but is not required to) suspend activity hereunder with respect to that Content and Customer will indemnify Kyligence from all liability, damages, settlements, attorney fees and other costs and expenses in connection with any such Claim, as incurred.

9. WARRANTY DISCLAIMER.

EXCEPT AS EXPRESSLY SET FORTH IN SECTION 8 ABOVE, THE KYLIGENCE SOFTWARE, OPEN SOURCE SOFTWARE, THIRD PARTY CONTENT, SUPPORT SERVICES, PROFESSIONAL SERVICES, AND ANY OTHER SUBJECT MATTER PROVIDED BY KYLIGENCE HEREUNDER ARE PROVIDED "AS IS" WITH NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED. TO THE FULL EXTENT PERMITTED BY LAW, KYLIGENCE AND ITS SUPPLIERS AND LICENSORS DISCLAIM ALL WARRANTIES OTHER THAN AS EXPRESSLY SET FORTH IN SECTION 8, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR TRADE USAGE. WITHOUT LIMITATION OF THE GENERALITY OF THE FOREGOING, KYLIGENCE DOES NOT WARRANT THAT USE OF THE SOFTWARE WILL BE UNINTERRUPTED, ERROR FREE OR SECURE, OR THAT ALL DEFECTS WILL BE CORRECTED.

10. LIMITATION OF LIABILITY.

TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY OR LIMITATION OF LIABILITY: (A) KYLIGENCE AND ITS AFFILIATES, SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS, AND LICENSORS (THE "KYLIGENCE ENTITIES") WILL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR

PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF; AND (B) KYLIGENCE ENTITIES' TOTAL CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF WILL NOT EXCEED THE TOTAL AMOUNT OF SUBSCRIPTION FEES PAID BY CUSTOMER TO KYLIGENCE FOR THE KYLIGENCE SOFTWARE IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY, IN EACH OF THE FOREGOING CASES (A) AND (B), REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM CONTRACT, INDEMNIFICATION, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND REGARDLESS OF WHETHER KYLIGENCE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. IN ADDITION, CUSTOMER, AND NOT KYLIGENCE, IS SOLELY RESPONSIBLE FOR THE LEGALITY, RELIABILITY, ACCURACY, QUALITY, INTEGRITY, AND SECURITY OF CUSTOMER'S DATA (INCLUDING, WITHOUT LIMITATION, USER INFORMATION) AND FOR MAINTAINING A BACKUP OF ALL SUCH DATA, AND FOR ENSURING THE SECURITY AND INTEGRITY OF CUSTOMER'S (AND ITS SERVICE PROVIDER'S) DATA, COMPUTERS, NETWORKS AND SYSTEMS (INCLUDING WITH RESPECT TO PROTECTING AGAINST VIRUSES AND MALWARE). Customer acknowledges and accepts that Kyligence shall not be responsible for any loss, destruction, alteration or disclosure of Customer's Data.

11. Indemnification.

Kyligence will defend Customer against any claim, demand, suit or proceeding brought against Customer by any unaffiliated third party alleging that Kyligence Software purchased by Customer infringes or misappropriates such third party's Intellectual Property Rights ("**Claim**"), and Kyligence will pay all damages finally awarded against Customer by a court of competent jurisdiction as a result of such Claim, subject to the other terms and conditions of this Agreement. Notwithstanding the foregoing, Kyligence has no obligation to indemnify Customer with respect to: (a) use of the Kyligence Software that is not permitted under the Agreement or that is inconsistent with Kyligence's applicable user documentation; (b) modifications to the Kyligence Software made by Customer without prior written approval of Kyligence; (c) the combination of Software with hardware or software not made by Kyligence, or with third-party services, processes or materials where the infringement or misappropriation relates to such combination; (d) Customer's continued use of the Kyligence Software or other allegedly infringing activity after receiving notice of the alleged infringement; (e) any version of the Kyligence Software that is no longer supported by Kyligence; or (f) (for clarity) any Free Software ((a) through (f), collectively, "**Excluded Matters**"). If an applicable Claim is made or appears likely to be made, Kyligence may, at its option and expense, modify the affected Kyligence Software so that it is non-infringing, or replace it with substantially functionally equivalent software. If Kyligence determines that neither is reasonably feasible, Kyligence may terminate Customer's applicable license and issue Customer a pro rata refund of the Subscription Fees previously paid by Customer, which will be calculated using the remainder of the applicable Subscription Term (beginning with the date of Kyligence's receipt of notice of the applicable Claim). The obligations set forth in this Section constitute Customer's sole and exclusive remedy, and Kyligence's entire liability, with respect to any Claims that the Kyligence Software infringes, violates, or misappropriates any third party's Intellectual Property Rights. Customer will defend Kyligence against any Claim brought against Kyligence by a third party arising out of or relating to any Excluded Matter, User Information, or Content,

and Customer will pay damages finally awarded against Kyligence by a court of competent jurisdiction as a result of such Claim. Each party's indemnity obligations set forth in this Section 11 are conditioned upon the party seeking indemnification (x) providing prompt written notice to the other party of the applicable Claim; (y) giving the indemnifying party sole control of the defense and/or settlement of the Claim, except that: (i) the indemnified party may participate in the defense with counsel of its choice at its own expense, and (ii) the indemnifying party will not agree to any settlement that imposes any obligation on the indemnified party without the indemnified party's prior written consent (not to be unreasonably withheld or delayed), and (z) providing reasonable cooperation and assistance in the defense and negotiations.

12. Confidential Information.

- Confidential Information. “**Confidential Information**” means any technical or business information, ideas, materials, know-how or other subject matter that is disclosed by one party to the other party that: (a) if disclosed in writing, is marked “confidential” or “proprietary” at the time of such disclosure; (b) if disclosed orally, is identified as “confidential” or “proprietary” at the time of such disclosure; or (c) under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary. Confidential Information of Kyligence will include the Kyligence Software (including any license keys and all applicable documentations).
- Use and Disclosure Restrictions. The party receiving Confidential Information (“**Recipient**”) agrees: (a) to maintain the Confidential Information of the party disclosing such information (the “**Discloser**”) in strict confidence; (b) not to disclose such Confidential Information to any third parties; and (c) not to use any such Confidential Information for any purpose other than to exercise its rights or perform its obligations under this Agreement. Recipient will treat Confidential Information of the Discloser with the same degree of care as it accords to its own Confidential Information, but in no event with less than reasonable care. Recipient may disclose the Confidential Information of Discloser to its directors, officers, employees, and subcontractors (collectively, “**Representatives**”), who have a bona fide need to know such Confidential Information, provided that each such Representative is bound by a legal obligation as protective of the other party's Confidential Information as those set forth herein. Recipient's obligations under this Section 12 will continue in effect for a period of three (3) years from the date of last disclosure of Confidential Information by Discloser, except that Customer's obligations under this Section 12 will continue in effect in perpetuity with respect to Kyligence Software.
- Exclusions. The obligations of Recipient under Section 12(a) will not apply to any Confidential Information that: (a) is now or thereafter becomes generally known or available to the public, through no act or omission on the part of Recipient (or any of its Representatives, Affiliates, or agents) or any third party subject to any use or disclosure restrictions with respect to such Confidential Information; (b) was known by or lawfully in the possession of Recipient, prior to receiving such information from Discloser, without restriction as to use or disclosure; (c) is rightfully acquired by Recipient from a third party who has the right to disclose it and who provides it without restriction as to use or disclosure; or (d) is independently developed by Recipient without access, use or reference to any Confidential Information of Discloser.

- Required Disclosures. The provisions of Section 12(a) will not restrict Recipient from disclosing Discloser's Confidential Information to the extent required by any law or regulation or compelled by a court or administrative agency of competent jurisdiction, provided that, to the extent permissible under law, Recipient uses reasonable efforts to give Discloser advance notice of such required disclosure in order to enable Discloser to prevent or limit disclosure.
- Return or Destruction of Confidential Information. Upon termination of the Agreement or support and maintenance, Recipient will promptly return to Discloser or, at Discloser's option, destroy all tangible items and embodiments containing or consisting of Discloser's Confidential Information and all copies thereof and provide written certification of such destruction or return by an authorized person.
- Injunctive Relief. Recipient agrees that, due to the unique nature of the Confidential Information, the unauthorized disclosure or use of the Confidential Information will cause irreparable harm and significant injury to Discloser, the extent of which will be difficult to ascertain and for which there will be no adequate remedy at law. Accordingly, Recipient agrees that Discloser, in addition to any other available remedies, will have the right to an immediate injunction and other equitable relief enjoining any breach or threatened breach of this Section 12, without the necessity of posting any bond or other security. Recipient will notify Discloser in writing immediately upon Recipient's becoming aware of any such breach or threatened breach.

13. Government End User Rights.

. Customer acknowledges that all Kyligence Software were developed entirely at private expense and that no part of the Kyligence Software was first produced in the performance of a government contract. Customer agrees that all Kyligence Software and any derivatives thereof are "Commercial Items" as defined in 48 C.F.R. § 2.101, and if Customer is the Government, then such use, duplication, reproduction, release, modification, disclosure or transfer of this commercial product and data, is restricted in accordance with 48 C.F.R. § 12.211, 48 C.F.R. § 12.212, 48 C.F.R. § 227.7102-2, and 48 C.F.R. § 227.7202, as applicable. Consistent with 48 C.F.R. § 12.211, 48 C.F.R. § 12.212, 48 C.F.R. § 227.7102-1 through 48 C.F.R. § 227.7102-3, and 48 C.F.R. §§ 227.7202-1 through 227.7202-4, as applicable, the Kyligence Software are licensed to Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other users pursuant to this Agreement and any related agreement(s), as applicable. Accordingly, Customer will have no rights in the Kyligence Software except as expressly agreed to in writing by Customer and Kyligence.

14. Term and Termination.

- This Agreement shall commence on the Effective Date and continue for the Subscription Term, subject to early termination (the "**Initial Term**"), and thereafter this Agreement will automatically renew for successive one-year terms, subject to early termination (each, a "**Renewal Term**", and together with the Initial Term, the "**Term**"); unless each party gives the other party notice of non-renewal at least thirty (30) days

prior to the end of the then-current term. Either Party may terminate this Agreement if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days (or ten (10) days in the case of nonpayment) of receiving written notice thereof. Either party may terminate this Agreement, without notice, (i) upon the institution by or against the other party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other party's making an assignment for the benefit of creditors, or (iii) upon the other party's dissolution or ceasing to do business. If Customer is only accessing the Free Software hereunder, Kyligence has the right to terminate this Agreement for convenience at any time in its sole discretion.

- Effect of Termination. Upon the expiration or termination of this Agreement, (i) all licenses granted by Kyligence to Customer hereunder shall automatically terminate, (ii) Customer shall discontinue all use of the Kyligence Software and shall immediately return to Kyligence any materials provided by Kyligence to Customer; (iii) Customer shall pay all Subscription Fees payable unless otherwise provided in this Agreement; and (iv) Section 1 (Definitions), Section 4 (Ownership), Section 7 (Records and Audit), Section 9 (Warranty Disclaimer), Section 10 (Limitation of Liability), Section 11 (Indemnification), Section 12 (Confidentiality), Section 14 (Termination) and Sections 15 (Export) through 18 (General) will survive any expiration or termination of this Agreement.

15. Export.

Customer shall comply fully with all relevant export laws and regulations of the United States and any other country (“**Export Laws**”) where Customer uses any of the Kyligence Software. Customer certifies that Customer is not on any of the relevant U.S. government lists of prohibited persons, including the Treasury Department’s List of Specially Designated Nationals and the Commerce Department’s List of Denied Persons or Entity List. Customer further certifies that Customer will not export, re-export, ship, transfer or otherwise use the Kyligence Software in any country subject to an embargo or other sanction by the United States, and that Customer will not use the Kyligence Software for any purpose prohibited by the Export Laws, including, but not limited to, nuclear, chemical, missile or biological weapons related end uses.

16. Publicity.

Customer agrees that, with Customer’s written permission, Kyligence may publish a brief description of Customer’s deployment of the Software and identify Customer as a Kyligence customer on any of Kyligence’s websites, client lists, press releases, and/or other marketing materials.

17. Choice of Law and Arbitration.

This Agreement will be governed by and construed in accordance with the laws of Singapore, without giving effect to the conflicts of law principles of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre

("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause. The parties agree that any arbitration commenced pursuant to this clause shall be conducted in accordance with the Expedited Procedure set out in Rule 5.2 of the SIAC Rules. The seat of the arbitration shall be Singapore. The Tribunal shall consist of one arbitrator. The language of the arbitration shall be English. The arbitral award so rendered is final and binding upon both parties and may be entered in a court having jurisdiction or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be. Notwithstanding the foregoing, each party shall have the right to institute an action in a court of proper jurisdiction for injunctive or other equitable relief pending a final decision by the arbitrator(s).

18. General.

- Notices. All notices required or permitted under this Agreement will be in writing and delivered in person, by confirmed facsimile transmission, by overnight delivery service, or by registered or certified mail, postage prepaid with return receipt requested, and, in each instance, will be deemed given upon receipt. All communications will be sent to the addresses as specified by either party during the purchase process or later notified to the other party in accordance with this Section.
- Assignment. Neither party may assign, delegate or transfer this Agreement, in whole or in part, without the prior written consent of the non-assigning party; provided that Kyligence may assign this Agreement in whole or in part to an Affiliate or to its successor in connection with a corporate reorganization or a merger, acquisition, or sale of all or substantially all of Kyligence's assets to which this Agreement relates. Kyligence may also assign its rights to receive payment due as a result of performance of this Agreement to a bank, trust company, or other financing institution. Any attempt to assign this Agreement other than as permitted herein will be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties' permitted successors and assigns.
- Rights and Remedies. Except as otherwise expressly set forth in this Agreement, the rights and remedies of either party as set forth in this Agreement are not exclusive and are in addition to any other rights and remedies now or hereafter provided by law or at equity.
- Waiver; Severability. The waiver by either party of a breach of or a default under this Agreement will not be effective unless in writing. The failure by either party to enforce any provisions of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent enforcement of that or any other provisions. If a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.
- Diagnostics. Customer acknowledges that Kyligence Software contain a diagnostic functionality that collects and processes technical and diagnostic related information about Customer's environment and Customer's use of the Kyligence Software, which

may include Internet protocol addresses, hardware identification, operating system, application software, session data and other usage information (the “Diagnostic Information”). Customer has the right to change the diagnostic functionality in the Kyligence Software in order to disable regular automatic reporting or to report only on filing of a support ticket. In no event will Kyligence have access to the Diagnostic Information unless Customer reports (as enabled by the manual reporting function of the Kyligence Software) the Diagnostic Information to Kyligence. For any Diagnostic Information reported by Customer, Kyligence may use and process such Diagnostic Information to support and troubleshoot issues identified in the support tickets filed by Customer, provide bug fixes, updates, and improve Kyligence’s products or services.

- Force Majeure. Kyligence will not be responsible for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, acts of terror, riot, acts of God or governmental action.
- Integration; Entire Agreement. This Agreement along with any additional terms incorporated herein by reference, including the Exhibit(s) hereto and web links referenced herein, constitute the complete and exclusive understanding and agreement between the parties and supersedes any and all prior or contemporaneous agreements, communications and understandings, written or oral, relating to their subject matter. There will be no force or effect to any different terms of any related purchase order, quote, invoice, or similar form even if signed by the parties after the date hereof. Each party’s acceptance of this Agreement was and is expressly conditional upon the other’s acceptance of the terms contained in this Agreement to the exclusion of all other terms. Kyligence may update this Agreement from time to time, and may provide Customer with notice of such updates. Customer’s use of the Software after the effective date of such updated terms shall constitute Customer’s agreement to be bound by the updated terms. Except as explicitly provided otherwise herein, any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of both parties.

Exhibit A

Definitions

“**Affiliate**” means a corporation, partnership or other entity controlling, controlled by or under common control with such party, but only so long as such control continues to exist. For purposes of this definition, “control” means ownership, directly or indirectly, of greater than fifty percent (50%) of the voting rights in such entity (or, in the case of a noncorporate entity, equivalent rights).

“**Business Purpose**” means Customer’s use of the Kyligence Software in support of Customer’s products for its own internal business purposes on systems, networks and devices used by Customer.

“**Delivery**” means the date of Kyligence’s initial delivery of the license key for the applicable Software or otherwise making the applicable Software available for download by Customer.

“Disabled Materials” means certain materials (including programs, modules or components, functionality, features, documentation, content or other materials) that may be contained in or provided with the Software as part of the delivery mechanism used by Kyligence, but that are disabled or hidden in Customer’s setting, because Customer either: (a) does not have the relevant license or license key, or (b) has not paid the applicable Subscription Fees, for those materials.

“Feedback” means all suggestions for improvement or enhancement, recommendations, comments, opinions, code, input, ideas, reports, information, know-how or other feedback provided by Customer (whether in oral, electronic or written form) to Kyligence in connection with Kyligence Software. Feedback does not include any User Information, unless specifically submitted or communicated by Customer to Kyligence as part of the Feedback.

“Free Software” means Kyligence Software that is provided to Customer by Kyligence without charge.

“Government” means an agency, department, or instrumentality of the United States government.

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