



Effective as of January 13, 2022

TERMS OF SERVICE

These Terms of Service constitute an agreement (this “Agreement”) by and between Kevala, Inc., a Delaware Corporation (“Kevala”, “We”, or “Us”) and the corporation, LLC, partnership, sole proprietorship, or other legal entity (“Customer” or “You”) using the Assessor Platform (as defined below in Section 1.1).

PLEASE READ THESE TERMS OF SERVICE CAREFULLY. BY USING THE ASSESSOR PLATFORM YOU REPRESENT AND WARRANT THAT (A) YOU ARE ACTING AS A DULY AUTHORIZED REPRESENTATIVE, AND IN THE NAME AND ON BEHALF OF, CUSTOMER, AND (B) YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS SET FORTH HEREIN.

ARBITRATION NOTICE. Except for certain kinds of disputes described in Section 11.6, Customer agrees that disputes arising under this Agreement will be resolved by binding, individual arbitration, and BY ACCEPTING THIS AGREEMENT, CUSTOMER AND KEVALA ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN ANY CLASS ACTION OR REPRESENTATIVE PROCEEDING. CUSTOMER AGREES TO GIVE UP CUSTOMER’S RIGHT TO GO TO COURT to assert or defend Customer’s rights under this contract (except for matters that may be taken to small claims court). Customer’s rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury. (See Section 11.6).

1. DEFINITIONS

The following capitalized terms will have the following meanings whenever used in this Agreement.

- 1.1. “Assessor Platform” means the cloud-based, integrated data and analytics tool operated by or for Kevala.
- 1.2. “Customer Data” means data in electronic form input or collected through the Assessor Platform by or from Customer, including without limitation by Users.
- 1.3. “Feedback” means feedback, ideas, proposals, suggestions regarding the Assessor Platform, or any existing or potential products or services, including identification of any potential errors therein, or improvements thereto.



- 1.4. “Order Form” means a written or electronic document issued for access and use of the Assessor Platform which upon acceptance by Kevala creates a contract with Customer. As used herein, the term Order Form includes documents such as orders and statements of work or “SOWs”, if such documents expressly reference and incorporate this Agreement.
- 1.5. “Partners” means third party contractors, service providers, and other third parties.
- 1.6. “Personal Information” means any information that identifies an individual or can be used to identify or contact an individual, e.g., an individual’s name, e-mail address, address, phone number, social security number, or credit card information.
- 1.7. “Privacy Policy” means Kevala’s privacy policy, currently posted at <https://kevala.com/privacy-policy/>.
- 1.8. “Technical Data” means technical data, know-how, trade secrets, processes, techniques, specifications, protocols, methods, algorithms, interfaces, ideas, solutions, structures and other information.
- 1.9. “Third-Party Content” means Web pages and content of Partners and third parties that are not hosted by Kevala.
- 1.10. “User” means any individual who uses the Assessor Platform on Customer’s behalf or through Customer’s account or passwords, whether authorized or not.
- 1.11. “User Credentials” means a valid account username and password.

2. USAGE RIGHTS AND RESTRICTIONS

- 2.1. Grant of Rights: Subject to compliance with all terms and conditions of this Agreement and with the terms set forth in your Order Form, solely during the Term (as defined in Section 10), Kevala grants you a non-exclusive, non-sublicensable, non-transferable, revocable right to access and use the Assessor Platform solely for Customer’s internal business operations.
- 2.2. Data License: In the event that your Order Form allows you to download data from the Assessor Platform, we grant you a limited, non-exclusive, non-sublicensable, non-transferable, revocable license to use such data in accordance with these Terms of Service and with the terms of the Order Form.

2.3. Authorized Account Access and Password Policy: The use of certain portions of the Assessor Platform and access requires User Credentials. As part of the registration process, you must select your User Credentials and provide Kevala with accurate, complete and up-to-date information. Kevala reserves the right to suspend or revoke User Credentials and access to the Assessor Platform in the event of any actual or suspected misuse or abuse of User Credentials, or any failure to comply with the terms and conditions of this Agreement.

Customer is solely responsible for (a) procuring and maintaining at its own cost any software, hardware, network access and other connectivity infrastructure required to access and use the Assessor Platform and (b) any and all fees charged by third parties with respect to any of the foregoing. Kevala has no obligation to provide Customer with any support or maintenance in connection with the Assessor Platform.

2.4. Unauthorized Access: Customer shall take reasonable steps to prevent unauthorized access to the Assessor Platform, including without limitation by protecting its User Credentials. You shall notify Kevala immediately of any known or suspected unauthorized use of the Assessor Platform or breach of its security and shall use best efforts to stop said breach.

2.5. Restrictions: Except as expressly authorized under this Agreement or by Kevala in writing, Customer must not, and will not permit, encourage, or assist anyone else to:

- (a) record, store or copy the Assessor Platform or any data associated with the Assessor Platform;
- (b) modify, distribute, publicly display, publicly perform, or otherwise make available to the public, resell, publish, or otherwise provide access to the Assessor Platform;
- (c) rent, lend, lease, loan, offer, sell, or sublicense access to the Assessor Platform, in whole or in part, to another person (except to the extent that Kevala enables sharing functionality designed to permit access by others) or use the Assessor Platform to provide any service, information, or access thereto, to or for the benefit of a third party;
- (d) use the Assessor Platform for any purpose except as expressly permitted herein;
- (e) circumvent or disable any access control, digital rights management, usage rules, or other security features of the Assessor Platform;
- (f) attempt to reverse engineer, disassemble, decompile, or in any way attempt to derive the source code for or any Technical Data embedded or used in the Assessor Platform, or any portion thereof;
- (g) use the Assessor Platform in a manner that threatens the integrity, performance, or availability of the Assessor Platform, or any Kevala or third party software, systems, networks, or services;
- (h) remove, alter, or obscure any proprietary notices on any portion of the Assessor Platform; or

- (i) use the Assessor Platform for any personal, family or household use or otherwise for the benefit of any individual consumer.
- 2.6. Compliance with Laws: You agree to use the Assessor Platform only for legal and authorized purposes. You will not use or assist others in using the Assessor Platform in ways that violate or infringe the rights of Kevala, our users, or others, including privacy, publicity, intellectual property, or other proprietary rights.
- 2.7. Users & Access: Customer is responsible and liable for: (a) Customer's use of the Assessor Platform, including without limitation unauthorized User conduct and any User conduct that would violate the requirements of this Agreement applicable to Customer; and (b) any use of the Assessor Platform through Customer's account, whether authorized or unauthorized.
- 2.8. Revisions: Kevala reserves the right to modify, suspend, or discontinue, temporarily or permanently, all or any part of the Assessor Platform without notice. Neither Kevala nor any of its Partners will be liable to Customer or to any third party for any modification, suspension, or discontinuance of the Assessor Platform in whole or in part.
- 2.9. Partners: Kevala may engage or partner with one or more Partners in connection with the operation and provision of the Assessor Platform or any portion thereof.
- 2.10. Third Party Content: The Assessor Platform may contain links to Third-Party Content. We do not monitor, endorse, or adopt, or have any control over, any Third-Party Content. We undertake no responsibility to update or review any Third-Party Content and make no representation, warranty, or guarantee as to its accuracy, validity, timeliness, completeness, reliability, integrity, quality, legality, usefulness or safety of Third-Party Content, or any intellectual property rights therein.

3. CUSTOMER DATA & PRIVACY

- 3.1. Use of Customer Data: Customer hereby grants to Kevala a non-exclusive, royalty-free, worldwide license to use customer data for the purposes of (a) facilitating access to and use of the Assessor Platform; (b) providing the services under the Order Form; and (c) assessing, testing, deploying, and using such customer data, deliverables created under the Order Form, and such derivatives thereof to improve Kevala's products and services. The rights granted by Customer to Kevala in the foregoing sentence (i) shall extend perpetually, (ii) are fully sublicensable, and (iii) include the right for Kevala to continue to use learnings from such customer data.

- 3.2. Privacy Policy: The Privacy Policy applies only to the sites operated by Kevala and does not apply to any third party website or service linked to the Assessor Platform or recommended or referred to through the Assessor Platform or by Kevala's staff. The Personal Information, if any, that Kevala collects in connection with the Assessor Platform will be processed and protected in accordance with the Privacy Policy.

4. PAYMENT

- 4.1. Subscription Fees: Customer shall pay Kevala the fee set forth in the Order Form. All fees paid for access and use of the Assessor Platform are non-refundable and non-transferable. All fees and applicable taxes, if any, are payable in United States dollars. Customer is solely responsible for the payment of, and shall pay when due, all applicable sales and use taxes and similar fees now in force, enacted or imposed in the future.

5. INTELLECTUAL PROPERTY ("IP") & FEEDBACK

- 5.1. IP Rights to the Assessor Platform: Kevala retains all right, title, and interest in and to the Assessor Platform, including without limitation all software used to provide the Assessor Platform and all graphics, user interfaces, logos, and trademarks reproduced through the Assessor Platform. This Agreement does not grant Customer any intellectual property license or rights in or to the Assessor Platform or any of its components. Customer recognizes that the Assessor Platform and its components are protected by copyright and other laws.

All Trademarks displayed on the Assessor Platform are the property of Kevala or its licensors. Customer is not permitted to use these Trademarks without the prior written consent of Kevala or third party owners of such Trademarks, as applicable.

- 5.2. Feedback: Customer will retain all right, title, and interest in and to Feedback provided by Customer. Customer hereby grants to Kevala a worldwide, royalty-free, fully paid-up, non-exclusive, perpetual, irrevocable, transferable, and fully sublicensable (through multiple tiers) license, without additional consideration to Customer or any third party, to reproduce, distribute, perform and display (publicly or otherwise), create derivative works of, adapt, modify and otherwise use, analyze and exploit such Feedback, in any format or media now known or hereafter developed, and for any purpose (including for analytic, statistical, security, quality control and, promotional purposes).

Customer hereby acknowledges and agrees that such Feedback is not confidential, that Kevala will have no obligation to treat any Feedback as confidential or proprietary, and that Customer's provision of such Feedback is gratuitous, unsolicited and without restriction, and does not place Kevala under any fiduciary or other obligation.

6. CONFIDENTIALITY

- 6.1. “Confidential Information” refers to the following items one party to this Agreement (“Discloser”) discloses to the other (“Recipient”): (a) any document Discloser marks “Confidential”; (b) any information Discloser orally designates as “Confidential” at the time of disclosure, provided Discloser confirms such designation in writing within 15 business days; and (c) any other nonpublic, sensitive information Recipient should reasonably consider a trade secret or otherwise confidential.
- 6.2. Nondisclosure: Recipient shall not use Confidential Information for any purpose other than to exercise its rights or perform its obligations under this Agreement (the “Purpose”). Recipient: (a) shall not disclose Confidential Information to any employee or contractor of Recipient unless such person needs access in order to facilitate the Purpose and executes a nondisclosure agreement with Recipient with terms no less restrictive than those of this Section 6; and (b) shall not disclose Confidential Information to any other third party without Discloser’s prior written consent. Without limiting the generality of the foregoing, Recipient shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. Recipient shall promptly notify Discloser of any misuse or misappropriation of Confidential Information that comes to Recipient’s attention. Notwithstanding the foregoing, Recipient may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. Recipient shall give Discloser prompt notice of any such legal or governmental demand and reasonably cooperate with Discloser in any effort to seek a protective order or otherwise to contest such required disclosure, at Discloser’s expense.
- 6.3. Termination & Return: With respect to each item of Confidential Information, the obligations of Section 6.2 above (*Nondisclosure*) will terminate 3 years after the date of disclosure; provided that such obligations related to Confidential Information constituting Discloser’s trade secrets will continue so long as such information remains subject to trade secret protection pursuant to applicable law.

7. REPRESENTATIONS & WARRANTIES

- 7.1. Customer represents and warrants that: (a) it has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement; (b) it has accurately identified itself and it has not provided any inaccurate information about itself to or through the Assessor Platform; (c) it is a corporation, the sole proprietorship of an individual 18 years or older, or another entity authorized to do business pursuant to applicable law; (d) it has all rights necessary to provide the data to Kevala and to grant the rights and licenses granted to Kevala under this Agreement; and (e) it will comply with all applicable laws, rules, regulations, and obligations to third parties, including without limitation with respect to privacy and data security.

7.2. Disclaimers: THE ASSESSOR PLATFORM, IS MADE AVAILABLE TO YOU ON AN “AS IS,” “WHERE IS” AND “WHERE AVAILABLE” BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY. KEVALA DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE ASSESSOR PLATFORM, THIRD-PARTY CONTENT, AND PRODUCTS TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE.

8. INDEMNIFICATION

8.1. Customer shall defend, indemnify and hold harmless Kevala and its officers, directors, employees, shareholders, agents, and assigns from and against any “Indemnified Claim,” meaning any third party claim, suit, or proceeding arising out or in any way connected with (a) any breach by Customer of this Agreement; (b) any non-compliance by Customer with any applicable law, rule, regulation, or obligation to a third party; and (c) Customer’s alleged or actual use of, misuse of, or failure to use the Assessor Platform, the work product, or the services under the Order Form; including without limitation: (i) claims by Customer’s clients or other Users or by Customer’s or Customer’s clients’ employees; (ii) claims related to unauthorized disclosure or exposure of personally identifiable information or other private information, including customer data; and (iii) claims related to infringement or violation of a copyright, trademark, trade secret, or privacy or confidentiality right by written material, images, logos or other content uploaded to the Assessor Platform through Customer’s account. Customer’s obligations pursuant to this Section 8 include retention and payment of attorneys and payment of court costs, as well as settlement at Customer’s expense and payment of judgments.

9. LIMITATION OF LIABILITY

9.1. KEVALA WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND, UNDER ANY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHER THEORY, INCLUDING DAMAGES FOR LOSS OF PROFITS, USE OF DATA, LOSS OF OTHER INTANGIBLES, LOSS OF SECURITY OF SUBMISSIONS (INCLUDING UNAUTHORIZED INTERCEPTION BY THIRD PARTIES OF ANY SUBMISSIONS), EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES. WITHOUT LIMITING THE FOREGOING, KEVALA WILL NOT BE LIABLE FOR DAMAGES OF ANY KIND RESULTING FROM YOUR USE OF OR INABILITY TO USE THE ASSESSOR PLATFORM, OR FROM ANY PRODUCTS OR THIRD-PARTY CONTENT, INCLUDING FROM ANY VIRUS THAT MAY BE TRANSMITTED IN CONNECTION THEREWITH. YOUR SOLE AND EXCLUSIVE REMEDY FOR DISSATISFACTION WITH THE ASSESSOR PLATFORM, OR ANY PRODUCTS OR THIRD-PARTY CONTENT IS TO STOP USING THE ASSESSOR PLATFORM.

THE MAXIMUM AGGREGATE LIABILITY OF KEVALA FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL BE THE GREATER OF THE TOTAL AMOUNT, IF ANY, PAID BY YOU TO KEVALA TO USE THE ASSESSOR PLATFORM AND \$100.

- 9.2. Applicable law may not allow for limitations on certain implied warranties, or exclusions or limitations of certain damages; solely to the extent that such law applies to you, some or all of the above disclaimers, exclusions or limitations may not apply to you, and you may have certain additional rights.

10. TERM & TERMINATION

- 10.1. Term: The term of this Agreement will commence on the Effective Date and continue for the period set forth in the Order Form or, if none, this Agreement will remain in full force and effect while Customer uses the Assessor Platform.
- 10.2. Kevala reserves the right to suspend or terminate Customer's access to and use of the Assessor Platform, in whole or in part, if: (a) Kevala reasonably believes that Customer has violated this Agreement; (b) Customer fails to cooperate with reasonable investigation by Kevala of any suspected violation of this Agreement by Customer; (c) there is a denial of service on Kevala's servers or systems, a security breach, or a similar event and Kevala reasonably believes that suspension of Customer's access is reasonably necessary to protect its servers or systems, information or data, or other customers; or (d) requested by a law enforcement agency, government agency or similar authority.
- 10.3. Effects of Termination: Upon termination of this Agreement, Customer shall cease all use of and access to the Assessor Platform. The following provisions will survive termination or expiration of this Agreement: (a) any obligation of Customer to pay fees incurred before termination; (b) Sections 5 (*IP & Feedback*), 6 (*Confidentiality*), 7.2 (*Disclaimers*), 8 (*Indemnification*), and 9 (*Limitation of Liability*); and (c) any other provision of this Agreement that must survive to fulfill its essential purpose. Additionally, unless Kevala terminates this Agreement for breach by Customer, the license contained in Section 2.2 will survive only as to the data downloaded during the Term in accordance with Section 2.2.

11. MISCELLANEOUS

- 11.1. Relationship of the Parties: The status of a party under this Agreement shall be that of an independent contractor. Nothing contained in this Agreement shall be construed as creating a partnership, joint venture or agency relationship between the parties. All persons employed by a party shall be employees of such party and not of the other party and all costs and obligations incurred by reason of any such employment shall be for the account and expense of such party.

- 11.2. Force Majeure: Kevala will not be responsible for any claim of harm, loss, or liability resulting from a cause beyond its reasonable control, including, but not limited to, the failure of electronic or mechanical equipment or communication lines, telephone or other interconnection problems, computer viruses, unauthorized access, theft, operator errors, severe weather, earthquakes, or natural disasters, quarantines or shelter-in-place orders, pandemics or epidemics, strikes or other labor problems, wars, terrorism or governmental restrictions.
- 11.3. Assignment & Successors: Customer may not assign this Agreement or any of its rights or obligations hereunder without Kevala's express written consent. Kevala may assign this Agreement freely without Customer's consent. Except to the extent forbidden in this Section 11.3, this Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns.
- 11.4. Severability: In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 11.5. No Waiver: Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.
- 11.6. Governing Law & Arbitration: This Agreement is and shall be governed by and construed under the laws of the State of California, U.S.A., without regard to its principles of conflicts of law, and regardless of your location. EXCEPT FOR DISPUTES THAT QUALIFY FOR SMALL CLAIMS COURT, ALL DISPUTES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY ASPECT OF THE RELATIONSHIP BETWEEN CUSTOMER AND KEVALA, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, FRAUD, MISREPRESENTATION OR ANY OTHER LEGAL THEORY, WILL BE RESOLVED THROUGH FINAL AND BINDING ARBITRATION BEFORE A NEUTRAL ARBITRATOR INSTEAD OF IN A COURT BY A JUDGE OR JURY AND YOU AGREE THAT WE AND YOU ARE EACH WAIVING THE RIGHT TO TRIAL BY A JURY. YOU AGREE THAT ANY ARBITRATION UNDER THIS AGREEMENT WILL TAKE PLACE ON AN INDIVIDUAL BASIS; CLASS ARBITRATIONS AND CLASS ACTIONS ARE NOT PERMITTED AND YOU ARE AGREEING TO GIVE UP THE ABILITY TO PARTICIPATE IN A CLASS ACTION. The arbitration will be administered by JAMS under its Comprehensive Arbitration Rules and Procedures ("Comprehensive Rules"). The Comprehensive Rules are available online at <http://www.jamsadr.com/rules-comprehensive-arbitration/>. Any in-person appearances will be held at a location which is reasonably convenient to both parties with due consideration of their ability to travel and other pertinent circumstances. If the parties are unable to agree on a location, such determination

should be made by JAMS or by the arbitrator. The arbitrator's decision will follow the terms of this Agreement and will be final and binding. The arbitrator will have authority to award temporary, interim or permanent injunctive relief or relief providing for specific performance of this Agreement, but only to the extent necessary to provide relief warranted by the individual claim before the arbitrator. To reduce the time and expense of the arbitration, the arbitrator will not provide a statement of reasons for his or her award unless requested to do so by all parties. The award rendered by the arbitrator may be confirmed and enforced in any court having jurisdiction thereof. An arbitration award and any judgment confirming it apply only to that specific case; it cannot be used in any other case except to enforce the award itself. Notwithstanding any of the foregoing, nothing in this Agreement will preclude you from bringing issues to the attention of federal, state or local agencies and, if the law allows, they can seek relief against us for you.

- 11.7. Technology Export: Customer is responsible for complying with United States export controls and for any violation of such controls, including any United States embargoes or other federal rules and regulations restricting exports. Customer represents, warrants, and covenants that Customer is not (a) located in, or a resident or a national of, any country subject to a U.S. government embargo or other restriction, or that has been designated by the U.S. government as a "terrorist supporting" country; or (b) on any of the U.S. government lists of restricted end users.
- 11.8. Entire Agreement: These terms including each executed Order Form constitute the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications. In the event of any conflict or inconsistency between this Agreement and the terms of the Order Form, the terms of the Order Form shall control.
- 11.9. Amendment: Kevala may revise this Agreement from time to time. If an update affects Customer's use of the Assessor Platform or Customer's legal rights as a user of our services, Kevala will notify Customer prior to the update's effective date by sending an email to the email address associated with Customer's account or by prominently posting notice of the changes on the Assessor Platform. These updated terms will be effective upon the earlier 30 (thirty) days following Kevala's dispatch of an e-mail notice to Customer or Kevala's posting of notice on the Assessor Platform. Continued use of the Assessor Platform following notice of such changes will indicate Customer's acknowledgement of such changes and agreement to be bound by the modified terms and conditions.
- 11.10. Consent to Electronic Communications: By using the Assessor Platform, Customer consents to receiving electronic communications from Kevala and our Partners. These communications may include notices about Customer's account and User Credentials, and information concerning or related to the Assessor Platform. Customer agrees that any notices, agreements, disclosures, or other



communications that Kevala or its Partners send to Customer electronically will satisfy any legal form requirements, including that such communications be in writing.

11.11. Contact Information: All inquiries or notices to Kevala regarding this Agreement should be addressed to: termsofservice@kevala.com.

If Customer chooses to contact Kevala via e-mail regarding this Agreement, the subject heading of that e-mail should be marked "Terms of Service Inquiry".