(EK-Eval v2 – Dec 2025)

KUBEX EVALUATION AGREEMENT

*PLEASE READ THE FOLLOWING **EVALUATION AGREEMENT** CAREFULLY. BY CLICKING THE "AGREE" BUTTON AND PROCEEDING WITH THE EVALUATION FOR THE SERVICE, YOU, ON BEHALF OF THE COMPANY OR ORGANIZATION FOR WHOSE BENEFIT YOU ACT ("CUSTOMER") ACKNOWLEDGE THAT YOU HAVE READ AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS AS DEFINED IN THE EVALUATION AGREEMENT ("AGREEMENT") BETWEEN CUSTOMER AND EVENKEEL INC. (D/B/A KUBEX) ("KUBEX") (TOGETHER THE "PARTIES" AND INDIVIDUALLY A "PARTY").*

BY CLICKING "DO NOT AGREE", THIS EVALUATION FOR THE SERVICE WILL NOT PROCEED. YOU MAY NOT USE THE SERVICE UNLESS YOU ACCEPT THESE TERMS AND CONDITIONS.

IF YOU CLICK THE "AGREE" BUTTON, THAT ACTION IS THE EQUIVALENT OF YOUR SIGNATURE AND INDICATES YOU HAVE READ THIS AGREEMENT, UNDERSTAND AND ACCEPT ALL THE TERMS AND CONDITIONS AND THAT YOU INTEND TO BE LEGALLY BOUND BY THEM AND THAT YOU HAVE THE AUTHORITY TO BIND THE COMPANY OR ORGANIZATION FOR WHOSE BENEFIT YOU ACT.

This Kubex Evaluation Agreement (including the terms, Schedules and other documents included by reference herein) ("**Agreement**") is made by and between Evenkeel Inc. (d/b/a Kubex) ("**Kubex**"), an Ontario corporation located at 200-120 East Beaver Creek Road, Richmond Hill, Ontario, Canada L4B 4V1 and the customer entity ("**Customer**") for whom you act and becomes effective on the date of acceptance of the Agreement by you ("**Effective Date**").

1. **Interpretation.**

    In this Agreement, the following terms and expressions will have the following meanings:

    - **"AI"** means a technological system that, using a model, makes inferences in order to generate output, including predictions, recommendations or decisions.

    - "**Confidential Information**" means: (i) all information of Kubex or Customer that is marked confidential, restricted or proprietary or that may reasonably be considered as confidential from its nature or from the circumstances surrounding its disclosure; (ii) the Customer Data, (iii) the Kubex Technology; (iv) the Commercial Third Part Software; and (v) the specific terms and conditions of this Agreement, and any amendment and attachment thereof between the parties.

    - "**Customer Data**" means electronic data uploaded by or for Customer and Customer's agents, employees and contractors, and processed using the Service.

    - "**Kubex Software**" means the proprietary computer programs of Kubex, in object code format only, that are accessed by the Service.

    - "**Kubex Technology**" means: (a) the Service; Kubex Software; Documentation and Kubex technology and methodologies and third party software (including, without limitation, products, software tools, algorithms, templates, software (in source and object forms), architecture, class libraries, objects and documentation) existing as of the Effective Date; (b) Updates, upgrades, improvements, configurations, extensions, and derivative works of the foregoing and related technical or end user documentation or manuals; and (c) intellectual property anywhere in the world relating to the foregoing.

    - "**Direct Competitor(s)**" means Cast.ai; CloudSaver; Harness.io; IBM (in respect of its products Cloudability and Turbonomic); Kubecost; NetApp (in respect of its product CloudCheckr); PerfectScale; VegaCloud; and VMware (in respect of its product CloudHealth); including the respective personnel of each of the foregoing.

    - "**Documentation**" means the user documentation for the Service that is made generally available by Kubex to customers of the Service and which may include technical program or interface documentation, user manuals, operating instructions and release notes, as updated

from time to time by Kubex. The Documentation is provided in electronic form and is accessible through the Service and may also be found at https://www.kubex.ai/legal/docs-cco.

- "**Evaluation Term**" means the term of the evaluation period approved by Kubex for Customer's evaluation of the Service. The default Evaluation Term is fourteen (14) days.

- "**Instance**" means a compute-based service, including physical servers, virtual machines, cloud instances or containers (whether Standalone Containers or Replicated Containers), employed by Customer in its infrastructure environment and which is supported by the Service, as described in the Documentation.

- "**Intellectual Property Rights**" means all worldwide intellectual and industrial property rights including all rights in each country to copyrights, trademarks, patents, inventions, industrial designs, trade secrets, trade dress and all other proprietary rights.

- "**Outputs**" means any insights, recommendations, predictions, analyses, reports or other results generated by the Service, including through the use of AI. Outputs are generated through the application of Kubex's models, algorithms, and methodologies, are distinct from and do not include any part of the Kubex Technology, and may be similar or identical to outputs generated for other Customers without the use of the Customer Data.

- "**Replicated Container**" means those containers where 2 or more Instances are created from the same definition.

- "**Restricted Countries**" means any of the countries listed in Schedule F – List of Restricted Countries, located at http://www.kubex.ai/legal/schedule-f-cco, which Schedule is incorporated into this Agreement by reference and is deemed to be a part hereof. This Schedule may be updated by Kubex from time to time.

- "**Service**" means the Kubex software as a service (SaaS) offering hosted by Kubex or its subcontractors. A description of the principal features of the Service is set out in Schedule A – Description, located at http://www.kubex.ai/legal/schedule-a-cco, which Schedule is incorporated into this Agreement by reference and is deemed to be a part hereof. This Schedule may be updated by Kubex from time to time.

- "**Standalone Container**" means those containers where there is only ever one Instance running (or zero).

- "**Territory**" means worldwide.

- "**Updates**" means any new versions and releases of the Service, which Kubex makes generally available to its customers from time to time.

2. **Grant of Use Rights for Evaluation**

   a. <u>Kubex Service.</u> Subject to the terms of this Agreement, Kubex hereby authorizes Customer to access and use the Service, including the features and functions provided by the software programs and programming, applications, operating systems, networks, utilities, hardware and interfaces (other than those components comprising Customer's computing and network systems), in each case solely as made accessible to Customer through the client-facing portion of the Service, and including any Updates thereto, such right of access and use to be during the Evaluation Term and for the number of Instances approved by Kubex in its sole discretion. Customer shall use or access the Service in accordance with the Documentation and only for its internal business purposes to evaluate the Service.

   b. <u>License to Use Outputs</u>. Subject to the terms and conditions of this Agreement, Kubex hereby grants Customer a limited, non-exclusive, non-transferrable (except as permitted under Section 9(b)), non-sublicensable right during the Evaluation Term to access and use the Outputs solely for Customer's internal business purposes and solely in connection with Customer's authorized use of the Service. Customer's use of the Outputs shall at all times comply with the restrictions set forth in Section 3(a). Nothing in the Agreement grants Customer any right, title, or interest in or to the Outputs or Output Elements, except for the limited license granted in this Section 2(b).

3. **Supplementary Use Terms**

   a. <u>Restrictions</u>. Customer shall not (and shall not permit others to) do any of the following with respect to the Kubex Technology: (i) use the Service with external programs in a manner that intentionally circumvents contractual usage restrictions; (ii) license, sublicense, sell, resell, rent, lease, transfer,

distribute, use for time sharing, or otherwise make any of it available for access by third parties; (iii) access it for the purpose of developing or operating products or services intended to be offered to third parties in competition with Kubex or the Service; (iv) disassemble, decompile, translate or convert into human readable form or into another computer language, reconstruct or decrypt, or reverse engineer all or any part of it, including any algorithms, models, or other components of the AI; (v) use, analyze, or access the Service, any AI, or any Outputs in a manner intended to discover, infer, extract, reconstruct, or replicate any aspect of the Kubex Technology, including any algorithms, models, scoring systems, classifications, or optimization methodologies; (vi) copy, create derivative works based on or otherwise modify it, except as may be expressly authorized hereunder; (vii) remove or modify a copyright or other proprietary rights notice on it; (viii) use the Service, any AI features, or any Outputs, for the purpose of benchmarking, performance analysis, training machine-learning models, evaluating or testing model performance (except as expressly permitted by Kubex), or in any manner to develop or operate products or services that compete with the business of Kubex (provided that Customer may conduct benchmarking or performance analysis solely for its internal purposes and that the results of any such benchmarking or performance analysis shall constitute Kubex Confidential Information and may not be shared with any third party); or (ix) use it to create, use, send, store or run viruses or other harmful computer code, files, scripts, agents or other programs or otherwise engage in a malicious act or disrupt its security, integrity or operation. In addition and notwithstanding anything to the contrary in the Agreement, (A) Customer shall not, directly or indirectly, disclose or provide any Confidential Information of Kubex to any person or entity located in any Restricted Countries; (B) Customer shall not, directly or indirectly, disclose or provide any Confidential Information of Kubex to a Direct Competitor; and (C) Customer shall not, directly or indirectly, permit any Direct Competitors to have access to the Service, whether via Customer's access credentials or otherwise. For clarity, the foregoing in clause (A) of this Section 3(a) shall not prevent an authorized user located in a Restricted Country from accessing and using the Service via its browser-based user interface unless such access is prohibited by applicable law, provided that in no case may any Kubex Technology or Kubex Confidential Information be physically located in a Restricted Country.

b. Open Source. Certain portions of open source or third party software accessible through the use of the Service are subject to terms and conditions that the licensor of such software imposes on Kubex (the "Open Source Provisions"). The licenses applicable to such open source or third party software are identified in the Documentation. Customer's right hereunder to use such open source or third party software is solely as accessed through the Service. In the event that Customer elects to use any open source software other than as integrated by Kubex and accessed through the Service, then Customer shall be responsible for such use and the Open Source Provisions shall govern such use. Customer hereby agrees not to make any modification to any Open Source Third Party Software for use with the Service.

c. Documentation. The Documentation may be used by Customer for the purpose of assisting in its use of the Service for the internal business purposes of Customer. No reproduction or other use of the Documentation is permitted.

4. **Proprietary Rights and Confidential Information.**

a. Kubex Technology. All right, title and interest in and to all intellectual property rights in the Kubex Technology are and shall remain, exclusively owned by Kubex. Nothing in this Agreement transfers or conveys to Customer any ownership right, title or interest in or to all or any part of the Kubex Technology or any Intellectual Property Rights therein, or to any copy thereof or any license right with respect to same not expressly granted herein. Nothing in this Agreement constitutes a sale of the Kubex Technology to Customer and no copies are being sold to Customer. All rights not expressly granted to Customer hereunder are retained by Kubex.

b. Customer Data and Inputs. As between Customer and Kubex, Customer shall retain all of its right, title and interest in and to its intellectual property rights in the Customer Data and any inputs it provides for use with the Service. Kubex shall have no ownership rights to Customer Data or Customer input. Customer hereby grants to Kubex a royalty-free, fully paid up, non-exclusive, non-transferrable (except as set forth in Section 9.b (Assignment)), sub-licensable right to use Customer Data for the purpose of providing the Service to Customer, which for certainty includes providing Customer the ability to use the Service, as well as for Kubex to use the Customer Data in a user acceptance test ("UAT") environment for the purpose of responding to and resolving specific issues reported by Customer concerning the Service or for the purpose of validating upgrades to the Service prior to such upgrades being made available to Customer. Such UAT environment shall contain all the same security and protections that Kubex employs for the production environment. For clarity, Kubex does not use Customer Data to train, tune, or improve its AI models. Customer Data is used solely for the purpose of providing the Service, including generating Outputs requested by Customer. Customer is responsible for the content, quality, and legality of Customer Data, for obtaining all rights, licenses and consents required to provide Customer Data to Kubex

and use it with the Service, and for ensuring that Customer's use of Customer Data with the Service complies with all applicable laws.

c. <u>Ownership of Outputs and Output Elements.</u> As between the parties, Kubex owns all right, title and interest in and to the Outputs, including all system-generated components of Outputs, such as recommendations, analyses, insights, predictions, rationales, explanations, classifications, confidence scores, tags, metadata, prioritization indicators, and any other structural, analytic, or contextual elements created by or derived from the operation of the Service (collectively, "**Output Elements**"). Notwithstanding the foregoing, any portion of an Output that consists solely of Customer Data or Customer inputs within an Output shall remain the property of Customer. The inclusion or reflection of Customer Data or Customer inputs within an Output does not transfer to Customer any ownership or other rights in or to the Kubex Technology or Output Elements. Customer acknowledges that Outputs may be similar or identical to outputs generated for other customers and nothing herein restricts Kubex from generating or providing such similar outputs to other customer.

d. Kubex encourages Customer to provide suggestions, proposals, ideas, recommendations or other feedback regarding improvements to the Service and other Kubex products. To the extent Customer provides such feedback, Customer grants to Kubex a royalty-free, fully paid up, sublicensable, transferrable, non-exclusive, irrevocable, perpetual, worldwide right and license to make, use, sell, offer for sale, import and otherwise exploit feedback (including by incorporation of such feedback into the Kubex Technology) without restriction.

e. Each party agrees to use reasonable efforts to maintain the confidentiality of the Confidential Information of the other party that has been disclosed or made available by the other party or otherwise received by the receiving party, whether prior to, subsequent to or on the Effective Date hereof, and to use same only as expressly authorized herein. Each party shall use its reasonable efforts (but in any event not less than those employed for safeguarding its own proprietary information) to keep the other party's Confidential Information confidential and shall not disclose, provide, or make the Confidential Information or any part thereof available in any form or medium to any person except to such party's employees, agents, contractors and consultants (excluding any of the foregoing that are Direct Competitors) who have executed an agreement in writing to protect such Confidential Information and who have a need to access such Confidential Information for the purpose of this Agreement. Customer shall ensure that all persons to whom it gives access to the Confidential Information, including employees, agents, contractors and consultants, shall comply with the provisions of this Section 4 and the other provisions of this Agreement related to the use of the Kubex Technology.

f. The provisions of Section 4.e shall not apply to any information which: (i) was at the time of disclosure to a party, in the public domain; (ii) after disclosure to a party becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party prior to the time of disclosure to it without any obligation of confidence or any breach of confidence; (iv) was received after disclosure to a party from a third party who had a lawful right to disclose such information to it; (v) was independently developed by a party without reference to the Confidential Information of the other party; or (vi) was ordered to be disclosed by a court, administrative agency, or other governmental body with jurisdiction over the parties hereto, provided that, to the extent legally permissible, the ordered party will have first provided the disclosing party with prompt written notice of such required disclosure and will take reasonable steps to allow the disclosing party to seek a protective order with respect to the confidentiality of the information required to be disclosed. Further, the ordered party will promptly cooperate with and assist the disclosing party in connection with obtaining such protective order.

g. Customer shall not remove any proprietary copyright, patent, trademark, design right, trade secret, or any other proprietary rights legends from the Kubex Technology.

h. Customer agrees to comply with all applicable export control laws, regulations and sanctions programs of Canada, including the Export and Import Permits Act and its associated regulations, as well as any applicable laws of other jurisdictions. Customer shall not, directly or indirectly, export or re-export, transfer or use the Service in any manner that violates such laws or regulations. Customer is solely responsible for compliance with all applicable export laws and regulations.

5. **Technical Support.**

Kubex may, at its option, provide technical support services to Customer during the Evaluation Term, to be provided through the Service and by email.

6. **Disclaimer.**

    a. THE SERVICE IS PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. KUBEX SPECIFICALLY DISCLAIMS ALL WARRANTIES OR CONDITIONS, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, PERFORMANCE, RESULTS, TITLE, NON-INFRINGEMENT AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE. KUBEX DOES NOT PROVIDE SUPPORT OF ANY KIND UNLESS KUBEX SPECIFIES OTHERWISE. ANY SUPPORT PROVIDED BY KUBEX IS SUBJECT TO THE DISCLAIMERS AND EXCLUSIONS IN THIS SECTION 6.

    b. Customer acknowledges that certain features of the Service may utilize AI. AI features generate probabilistic outputs that may be inaccurate or incomplete and are intended solely to assist Customer in evaluating infrastructure-related decisions. Customer remains solely responsible for verifying the accuracy, completeness and suitability of any output produced by AI and for all decisions, configurations, or actions made or taken in reliance on such outputs. Kubex makes no warranty regarding the accuracy, completeness, or suitability of any output generated by AI features. Customer assumes all risks associated with its use of AI and must conduct its own independent assessment of any Outputs before relying on them.

7. **Limitation of Liability.**

    a. FOR ANY BREACH OR DEFAULT BY KUBEX OF ANY OF THE PROVISIONS OF THIS AGREEMENT, OR WITH RESPECT TO ANY CLAIM ARISING HEREFROM OR RELATED HERETO, KUBEX'S AGGREGATE LIABILITY TO CUSTOMER, REGARDLESS OF THE FORM OF ACTION, WHETHER BASED ON CONTRACT OR TORT, INCLUDING NEGLIGENCE, SHALL IN NO EVENT EXCEED, IN THE AGGREGATE FOR ALL CLAIMS, THE SUM OF U.S. TWO HUNDRED AND FIFTY THOUSAND DOLLARS (U.S. $250,000) (THE "LIABILTY CAP"). THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT INCREASE THIS LIMIT. THE LIABILITY CAP SHALL NOT APPLY TO: (1) KUBEX'S OBLIGATIONS UNDER SECTION 4 (PROPRIETARY RIGHTS AND CONFIDENTIAL INFORMATION) OR (2) KUBEX'S FRAUD, GROSS NEGLIGENCE OR WILFULL MISCOUNDUCT OR (3) BREACH OF LAW BY KUBEX (OTHER THAN LAWS CONCERNING PRIVACY AND SECURITY, WHICH SHALL BE SUBJECT TO THE LIABILITY CAP).

    b. OTHER THAN FOR A BREACH OF SECTION 3.A (RESTRICTIONS) OR SECTION 4 (PROPRIETARY RIGHTS AND CONFIDENTIAL INFORMATION) OR (3) BREACH OF LAW (OTHER THAN LAWS CONCERNING PRIVACY AND SECURITY), IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY IN CONNECTION WITH THIS AGREEMENT FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE, LOST BUSINESS REVENUE, LOSS OF PROFITS, OR LOSS OF DATA, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. KUBEX SHALL NOT BE RESPONSIBLE FOR ANY LOSS, DAMAGE, DOWNTIME, MISCONFIGURATION, INCREASED CLOUD CONSUMPTION, OR OTHER HARM ARISING FROM THE USE, IMPLEMENTATION, APPLICATION OF, OR DECISIONS, ACTIONS, OR INACTIONS TAKEN BY CUSTOMER IN RELIANCE ON OUTPUTS GENERATED BY AI.

    c. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS AGREEMENT SHALL APPLY IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION, DEMAND, OR ACTION BY CUSTOMER, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL THEORY AND SHALL SURVIVE A FUNDAMENTAL BREACH OR BREACHES OR THE FAILURE OF THE ESSENTIAL PURPOSE OF THIS AGREEMENT.

    d. Neither Kubex nor Customer may bring an action, regardless of form, arising out of or related to this Agreement more than two (2) years after the cause of action has arisen or the date of discovery of such cause, whichever is later.

8. **Termination.**

    This Agreement continues until the expiry of the Evaluation Term hereunder. Kubex may terminate this Agreement if Customer fails to comply with the terms hereof. Upon the expiration or termination of this Agreement for any reason, Kubex shall stop providing, and Customer shall stop accessing, the Service and all rights granted to Customer in this Agreement shall immediately terminate.

9. **Miscellaneous.**

   a. <u>Notices</u>. Except as otherwise provided herein, all notices shall be in writing and deemed given upon: (i) personal delivery; (ii) when received by the addressee if sent by a recognized overnight courier (receipt requested); (iii) the second business day after mailing; or (iv) the first business day after sending by email with confirmation of receipt, except that email shall not be sufficient for notices regarding a claim. Notices shall be sent to the parties as set forth in the preamble to this Agreement or as otherwise advised by a party. Notices hereunder will be effective only if in writing addressed to the relevant party.

   b. <u>Assignment</u>. Customer may not assign its rights or obligations under this Agreement, whether by operation of law or otherwise, without Kubex's prior written consent. Any attempted or purported assignment in violation of this Section 9.b will be null and void. Subject to the foregoing, this Agreement shall bind and enure to the benefit of the parties hereto, their respective successors and permitted assigns.

   c. <u>Severability</u>. The parties agree that it is the intention of each party not to violate any public policy, statutory or common law or government regulation. To the extent that any provision, portion or extent of this Agreement is deemed to be invalid, illegal or unenforceable, such provision, portion or extent shall be severed and deleted herefrom or limited so as to give effect to the intent of the parties insofar as possible and the parties will use their best efforts to substitute a new provision of like economic intent and effect for the illegal, invalid or unenforceable provisions and each remaining provision shall be enforced.

   d. <u>Waiver</u>. No modification, addition to or waiver of any rights, obligations or defaults shall be effective unless in writing and signed by the party against whom the same is sought to be enforced. One or more waivers of any right, obligation or default shall not be construed as a waiver of any subsequent right, obligation or default. No delay or failure of either party in exercising any right hereunder and no partial or single exercise thereof shall be deemed of itself to constitute a waiver of such right or any other rights hereunder.

   e. <u>Governing Law</u>. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. With respect to any action, suit or proceeding brought by either party hereto under or relating to this Agreement, each party irrevocable submits to the exclusive jurisdiction of the federal courts of the Province of Ontario. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

   f. <u>Survival</u>. The provisions of this Agreement which by their nature should survive, shall survive any termination or this Agreement, including, without limitation, Sections 1, 3.a, 3.b, 4, 6, 7, 8 and 9.

   g. <u>Headings</u>. The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of the Agreement.

   h. <u>Entire Agreement</u>. This Agreement, together with other information included by reference herein, contains the entire agreement of the parties with respect to the subject matter hereof and supersedes any prior agreements or understandings of the parties concerning the subject matter hereof. The terms of this Agreement apply to the exclusion of any other terms that Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

   i. <u>Counterparts</u>. This Agreement may be executed in any number of counterparts and by the different parties in separate counterparts, each of which when executed shall be deemed to be an original, and all of which taken together shall constitute one and the same agreement with the same effect as if such signatures were upon the same instrument. Delivery of an executed counterpart hereof by email or other electronic means (including via Docusign or any other electronic signature platform) shall be equally as effective as an original executed counterpart hereof. Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures.