

Terms and Conditions – November 2022

1. About Us

We are Kim Technologies Limited (trading as Kim), a company registered in England and Wales under company number: 09687973. Our registered office is at, Sky View Argosy Road, East Midlands Airport, Castle Donington, Derby, DE74 2SA, United Kingdom. Our VAT number is: 224738993.

2. These Terms and Conditions

2.1 These standard terms apply to your purchase of any modules of the Formlinks Product, based on the Service Specification available on our website. Please read these terms carefully before you place any orders with us, as they set out important information about your and our rights and obligations. Please note that you must agree to these terms before you place your order. Descriptions of the Formlinks Product are set out on our website. Please read the descriptions carefully.

2.2 For the purposes of these terms, any reference to 'we', 'us' or 'our' in these terms is to Kim, and any reference to 'you' or 'your' is to the business placing an order.

2.3 You confirm that you have the full right, power and authority to place an order for and on behalf of the business that you represent.

2.4 We may make changes to these terms at any time. However, the terms which apply to your account will be those in force at the time you submitted your first order to us or those at the time of renewal unless they are varied by the renewal Order Form.

2.5 Please print out or save a copy of these terms and any emails from us for your records.

3. Orders

3.1 Your order is an offer to license the Formlinks Product from us on these terms. Acceptance of your order by us takes place when we provide you with confirmation of your subscription or the date on which your subscription is renewed for any modules of the Formlinks Product, as applicable. At that point a legally binding contract is formed between you and us on these terms. If there is any conflict between your order and these terms and conditions, your order shall take precedence.

3.2 If we do not accept your order, we will email you using the details you provided when you placed your order and provide you with a refund if payment has already been taken. We have the right to reject any order for any reason.

4. Availability

We will use commercially reasonable endeavors to make the Formlinks Product available to your authorized users and operating to the Service Specification. Access may be temporarily unavailable for maintenance purposes or for other technical reasons and so we cannot guarantee that the Formlinks Product will be available at any given time, or that access to the Formlinks Product will be uninterrupted. Kim shall use reasonable endeavors to minimize any disruption due to planned or unscheduled maintenance, where possible carrying out such maintenance out of normal business hours.

5. Ownership/Title

Kim retains all right, title and interest to and in, and ownership of, the Formlinks Product , including, but not limited to, all copyrights, patents, trademarks and other intellectual property rights relating thereto. You will have no rights with respect to the Formlinks Product other than as expressly granted hereunder.

6. License to use the Formlinks Product

6.1 In consideration of and subject to you agreeing to abide by these terms, Kim hereby grants you a nonexclusive and non-transferable right to access and use the Formlinks Product during the subscription term, solely for your internal business purposes and those of your Affiliates and not for any resale purposes. "Affiliate" means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity.

6.2 Formlinks Product will be hosted on the servers of our third-party hosting provider, currently MS Azure (although Kim reserves the right to change from time to time), and you will not be provided with any copies of the Formlinks Product. You may choose the location of the hosting of your data in the UK, EU or US. Microsoft Azure standard terms are available: <https://azure.microsoft.com/en-us/support/legal/>

7. Usage Limitations

7.1 You and your Affiliates will not (and will not permit any third party to) (i) make any use of the Formlinks Product that is not expressly permitted under these terms; (ii) use the Formlinks Product in violation of any applicable law or regulation; (iii) disassemble, decompile, reverse-engineer or create derivative works, sublicense, make copies of, alterations to, or modifications of, the whole or any part of the Formlinks Product, nor permit the Formlinks Product or any part of it to be combined with, or become incorporated in, any other programs. Only your authorized users may access the Formlinks Product. You and your Affiliates may copy and use any documentation relating to the formlinks Product solely in connection with the permitted use under these terms.

7.2 You are solely responsible for the content of all the data that you input onto or use with the Formlinks Product. You will secure and maintain all rights in such data and content as necessary for us to provide the Formlinks Product to you without violating the rights of any third parties.

8. Feedback

You accept that any feedback is given voluntarily and to the extent you or any of your Affiliates provides Kim with any suggestions or other feedback regarding the Formlinks Product (collectively, "**Feedback**"), you (on behalf of yourself and your Affiliates) hereby grants to Kim an unlimited, non-exclusive, perpetual, irrevocable, royalty-free, transferable, worldwide license, with the right to grant sublicenses, under any and all intellectual property rights related to such Feedback, to use, modify, disclose and otherwise fully commercialize and exploit such Feedback for any and all purposes.

9. Data and Personal Information

9.1 You will retain ownership of all rights to any electronic records and data submitted or inputted via the Formlinks Product (the "**Customer Data**"). Additionally, you acknowledge that Kim may collect and maintain statistics regarding your use of the Formlinks Product, in a form that does not specifically identify you or any of your authorized users ("**Anonymous Usage Statistics**"). Kim shall be free to use and disclose Anonymous Usage Statistics for the purposes of improving Kim's products and services and Kim's other business purposes, both during and after the term of your subscription.

9.2 You consent to Kim processing of your personal data in order to provide you with the Formlinks Product. Under data protection legislation, Kim is required to provide you with certain information about how Kim processes the personal data of those individuals who use the Formlinks Product and for what purposes and those individuals' rights in relation to their personal data and how to exercise them. This information is provided in Kim's Privacy Policy and is available on Kim's website: <https://www.formlinks.net/public/documents/Formlinks-Privacy-Policy-2021.pdf>.

9.3 The parties agree that the Data Processing Agreement ("DPA"), available on Kim's website, sets forth their obligations with respect to the processing of personal data in connection with the Formlinks Product. The DPA is incorporated by reference into these Formlinks Terms and Conditions.

10. Maintenance & Support Services

10.1 Kim will make each Update to the Formlinks Product available to you at no additional charge when Kim generally releases its Update to its other Formlinks Product customers. "Update" means any and all new releases, new versions, patches and other updates for the Formlinks Product that Kim makes generally available to subscribers without additional charge.

10.2 Kim will respond to customer technical enquiries about the Formlinks Product via web-based submissions or email: support@kimtechnologies.com during its standard support hours:

8am-6pm US Eastern time

8am - 6pm BST

11. Prices

11.1 Prices for the Formlinks Product are as published and updated from time to time or available from Kim on request. All prices are in pounds sterling (£)(GBP) and include VAT at the applicable rate .

11.2 Prices for the Formlinks Product may change at any time. Except as set out in clause 11.3 below, such changes will not affect existing orders. Other than set out in clause 11.3, all payments are non-refundable.

11.3 If there has been an error regarding the published pricing of the Formlinks Product and this affects your order, we will try to contact you using the contact details you provided when you placed your order. We will give you the option to re-confirm your order at the correct price or to cancel your order and get a full refund. If we are unable to contact you, we will treat the order as cancelled and notify you by email.

12. Payment

12.1 We accept all major credit cards and PayPal. All credit card payments need to be authorized by the relevant card issuer.

12.2 We will take payment from you when you place your order. Billing will be in accordance with your plan.

12.3 We may suspend your access to the Formlinks Product in the event of non-payment of any fees due or your breach of any of these terms.

13. Duration of These Terms

The contract between us shall run on a month to month basis from when we provide you with confirmation of your subscription or the date on which your subscription is renewed for any modules of the Formlinks Product, as applicable . On expiry of each subscription term, this agreement shall automatically renew for a further subscription term unless either party gives at least sixty (60) days' written notice prior to the expiry of the then-current subscription term not to renew.

14. Termination

We may terminate this contract and your subscription immediately at any time if you breach any of these terms. We reserve the right to terminate this contract if we become aware that you are abusing the Formlinks Product and/or manipulating its pricing model. You may terminate this contract and your subscription at any time; however, you must pay all amounts due and owing before the termination is effective.

15. Consequences of Termination

Upon any termination or expiry of our contract, all rights and licenses granted hereunder to you and your Affiliates will immediately cease and you must immediately cease using the Formlinks Product, save that you shall have a period of seven (7) days in which to extract/export your data, including documents, files and work product from the Formlinks Product. Kim will have the right to delete of all your data in our possession or control after this seven (7) day period. You will not be entitled to a refund and we may seek to recover reasonable compensation from you according to law to cover losses resulting directly from any breach by you of these terms.

16. Confidentiality

16.1 "Confidential Information" means: (a) with respect to Kim, the Formlinks Product, any and all object code and source code relating thereto, all documentation and pricing relating to the Formlinks Product, as well as any non-public information or material regarding Kim's legal or business affairs, finances, technologies, customers, properties or data; and (b) with respect to you, your data and any other non-public information or material regarding your business. Notwithstanding any of the foregoing, Confidential Information does not include information which: (i) is or becomes public knowledge without any action by or on behalf of, or involvement of, the party to which the Confidential Information is disclosed (the "**Receiving Party**"); (ii) is documented as being known to the Receiving Party prior to its disclosure by the other party (the "**Disclosing Party**"); (iii) is independently developed by the Receiving Party without reference or access to the Confidential Information of the Disclosing Party and is so documented; or (iv) is obtained by the Receiving Party without restrictions on use or disclosure from a third person who, to the Receiving Party's knowledge, did not receive it, directly or indirectly, from the Disclosing Party. Notwithstanding anything to the contrary, your Confidential Information does not include any Feedback or the Anonymized Usage Statistics.

16.2 The Receiving Party of any such Confidential Information will: (i) use the Disclosing Party's Confidential Information only as permitted by these terms; (ii) restrict disclosure of such Confidential Information within the Receiving Party's organization to only those who have a need to know such Confidential Information and (iii) not disclose such Confidential Information to any third party unless authorized in writing by the Disclosing Party. Notwithstanding the foregoing, the Receiving Party will protect any Confidential Information using at least the degree of care that it uses to protect its own confidential information (but no less than a reasonable degree of care). The parties agree that any breach or threatened breach of this clause 16 may have no adequate remedy in damages and may cause irreparable damage to the Disclosing Party and, therefore, the Disclosing Party will have the right to seek equitable and injunctive relief without the need to post a bond or other security, in addition to any other rights available to it under applicable law.

16.3 This confidentiality provision in clause 16 shall survive for five (5) years post termination or expiry of this contract.

17. Disclaimer

17.1 KIM CANNOT GUARANTEE THAT ANY OR EVERY ERROR IN THE FORMLINKS PRODUCT OR PROBLEM RAISED BY YOU WILL BE RESOLVED. THE FORMLINKS PRODUCT (INCLUDING ITS COMPONENTS AND ANY UPDATES), THE DOCUMENTATION AND ANY OTHER ITEMS MADE AVAILABLE HEREUNDER, ARE PROVIDED "AS IS," AND KIM MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY OF THE FOREGOING OR OTHERWISE IN CONNECTION WITH THESE TERMS, AND HEREBY DISCLAIMS ANY AND ALL IMPLIED AND STATUTORY WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, ERROR-FREE OR UNINTERRUPTED OPERATION AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. TO THE EXTENT THAT KIM MAY NOT AS A MATTER OF APPLICABLE LAW DISCLAIM ANY IMPLIED WARRANTY, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.

17.2 Software Warranty. For a period of thirty (30) days from the date of the commencement of your Formlinks Product subscription, Kim warrants that the Formlinks Product substantially conforms to its published Service Specification. Your sole and exclusive remedy and the entire liability of Kim under this limited warranty will be to cancel your subscription within this first 30 day period and claim a refund for any subscription fee paid in advance beyond this thirty (30) day warranty period.

18. Liability

18.1 NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY (NOR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM THE OTHER PARTY'S RIGHTS) FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES OF ANY KIND, CHARGES OR EXPENSES, OR FOR ANY BUSINESS INTERRUPTION, LOST REVENUES, BUSINESS OR PROFITS, LOSS OF USE, LOSS OF COST OR OTHER SAVINGS, LOSS OF BUSINESS OPPORTUNITY, LOSS OF OR CORRUPTION OF DATA, SOFTWARE OR SYSTEMS, OR LOSS OF GOODWILL OR REPUTATION, WITH RESPECT TO ANY CLAIMS BASED ON CONTRACT, TORT OR OTHERWISE (INCLUDING NEGLIGENCE AND STRICT LIABILITY) ARISING OUT OF OR RELATING TO THE FORMLINKS PRODUCT, OR OTHERWISE ARISING OUT OF OR RELATING TO THESE TERMS, REGARDLESS OF WHETHER SUCH PARTY WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.

18.2 EACH PARTY'S MAXIMUM, CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THE FORMLINKS PRODUCT, ARISING OUT OF OR RELATING TO THESE TERMS, REGARDLESS OF THE CAUSE OF ACTION (WHETHER IN CONTRACT, TORT, INDEMNITY, BREACH OF WARRANTY, REPRESENTATION OR OTHERWISE), WILL NOT EXCEED, FOR ALL CLAIMS IN THE AGGREGATE, THE AMOUNTS PAID OR PAYABLE BY YOU TO KIM UNDER THESE TERMS DURING THE TWELVE (12) MONTHS PRECEDING THE DATE ON WHICH ANY CLAIM BY SUCH PARTY FIRST ARISES.

18.3 THE MAXIMUM CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO ANY BREACH OF DATA PROTECTION OR CONFIDENTIALITY PROVISIONS OF THIS CONTRACT SHALL BE A MAXIMUM OF THREE MILLION POUNDS (£3,000,000).

18.4 THE EXCLUSIONS AND LIMITATIONS SET FORTH IN THIS CLAUSE 18 WILL NOT APPLY TO ANY DAMAGES ARISING FROM A PARTY'S FRAUD, FRAUDULENT MISREPRESENTATION OR WILLFUL MISCONDUCT, OR FROM INFRINGEMENT OR MISAPPROPRIATION OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS AND WILL NOT LIMIT YOUR OBLIGATION TO PAY FEES. NOTHING IN THESE TERMS EXCLUDES THE LIABILITY OF EITHER PARTY FOR DEATH OR PERSONAL INJURY CAUSED BY THAT PARTY'S NEGLIGENCE.

19. Events Beyond Our Control

We are not liable to you if we fail to comply with these terms because of circumstances beyond our reasonable control, including, but not limited to, the elements, fires, acts of God, epidemics, pandemics, or acts or omissions or failures of carriers, utilities, or other third parties.

20. No Third-Party rights

No one other than us or you has any right to enforce any of these terms.

21. Governing Law and Jurisdiction

These terms and any dispute or claim arising out of, or in connection with, the terms, their subject matter or formation (including non-contractual disputes or claims) will be governed by, and construed in accordance with, the laws of England and Wales. You and us both irrevocably agree that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, these terms, their subject matter or formation (including non-contractual disputes or claims).

22. General terms

22.1 You are not allowed to transfer your rights under these terms to anyone without our prior written consent. We may transfer our rights under these terms to another business without your consent, but we will notify you of the transfer.

22.2 If any provision of these terms (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of these terms will not be affected.

22.3 If you breach these terms and we take no action, we will still be entitled to use our rights and remedies in any other situation where you breach these terms.

22.4 Any variation to these terms will not be binding unless expressly agreed in writing between you and us.

22.5 You and we both agree that these terms constitute the entire agreement between you and us in relation to your order. You acknowledge that you have not entered into these terms in reliance on any representation or warranty that is not expressly set out in these terms and that you will have no claim for innocent or negligent misrepresentation on the basis of any statement in these terms or elsewhere relating to the Formlinks Product.