

Kong Konnect Customer Agreement

Last updated: May 11, 2021

KONG KONNECT CUSTOMER AGREEMENT

PLEASE READ THIS AGREEMENT CAREFULLY AS IT GOVERNS YOUR USE OF THE KONNECT PLATFORM AND PROFESSIONAL SERVICES (EACH AS DEFINED BELOW), UNLESS WE HAVE EXECUTED A SEPARATE WRITTEN AGREEMENT WITH YOU FOR THAT PURPOSE. IF YOU ARE ACTING ON BEHALF OF AN ENTITY, THEN YOU REPRESENT YOU HAVE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF CUSTOMER DOES NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN IT MUST NOT PURCHASE OR USE THE KONNECT PLATFORM.

This Kong Konnect Customer Agreement is entered into by and between Kong Inc., a Delaware corporation with offices at 150 Spear Street, Suite 1600, San Francisco, CA 94015 and the purchaser or user of the Konnect Platform that accepts the terms of this Agreement. “Kong,” “we,” and “us,” refers to Kong Inc. “Customer,” “you” and “your” refers to the person, company or other legal entity entering into this Agreement with Kong.

YOU DEMONSTRATE CUSTOMER’S ASSENT TO BE BOUND BY THIS AGREEMENT, BY (1) CLICKING ON THE CHECKBOX OR DOWNLOAD BUTTON INDICATING ACCEPTANCE, (2) CREATING AN ACCOUNT TO USE THE KONNECT PLATFORM, (3) EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, OR (4) USING ANY PART OF THE KONNECT PLATFORM.

This Agreement is effective as of the date Customer accepts it or starts use of any part of the Konnect Platform (“Effective Date”).

If Customer has purchased the Konnect Platform from an Authorized Reseller, the following provisions of this Agreement will be superseded by the terms between Customer and the Authorized Reseller: Section 11 (Subscriptions and Usage), Section 12 (Payment and Taxes); and Section 15 (Term and Termination).

1. Definitions.

“Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with a party,

where “control” means having more than 50% ownership or the right to direct the management of the entity.

“Account Information” means information about Customer provided by or for Customer or its Authorized Users to Kong in connection with the creation, administration or support of Customer’s account with Kong. For example, Account Information includes names, usernames,

phone numbers, email addresses and billing information associated with your account with Kong.

“Agreement” means this Kong Konnect Customer Agreement including all its attachments and exhibits, any Order Form or SOWs referencing this Agreement, and any terms incorporated into this Agreement by reference.

“Authorized Reseller” means a company authorized by Kong to resell Kong products and services, including the Konnect Platform, who sells Customer a subscription to the Konnect Platform.

“Authorized User” means the persons designated and granted access to the Konnect Platform by or on behalf of Customer, including its and its Affiliates’ Contractors, except that Authorized Users do not include External Users.

“Contractor” means the independent contractors and consultants permitted by Customer to serve as Authorized Users of the Konnect Platform.

“Customer Content” means data and information submitted by or for Customer to the Konnect Cloud Service. For example, Customer Content includes configuration files for Customer’s Konnect Runtime. Customer Content does not include Account Information or Usage Data.

“Customer Network Environment” means the Customer-controlled network on which Customer deploys and operates the Software. This network may include the Customer’s own servers, servers of third party cloud provider services (such

as Amazon Web Services, Microsoft Azure or Google Cloud) or some combination of on-premises and cloud provider deployment.

“Customer Payload Data” means the actual Customer data (and not metadata or header data) contained within a packet or message that is processed by the Software. An analogy is the contents of an envelope as distinct from the address on the envelope.

“Data Protection Claims” means any claims arising from a party’s breach of Section 8 (Security and Data) or Section 14 (Confidentiality) where in any case such breach results in the unauthorized disclosure of Customer Content or Customer Payload Data.

“Documentation” means Kong’s technical documentation for the Konnect Platform located at <https://docs.konghq.com/> (and any successor or related locations designated by us), as such documentation may be updated by Kong from time to time.

“External User” has the meaning given that term in Section 5.6.

“Kong Technology” is defined in Section 9.1 (Kong Technology).

“Konnekt Cloud Services” means the Kong-hosted software-as-a service portions of the Konnekt Platform, including Konnekt ServiceHub and other functional SaaS modules, the use of which are purchased by Customer under an Order or used by Customer under a free trial or free subscription tier.

“Konnekt Platform” means Kong’s end-to-end Service connectivity platform for the configuration, deployment, management and securing of Services, including the Konnekt Cloud Services and the Software. Based on the subscription level and deployment choices by the Customer, the Konnekt Platform may be entirely self-hosted and self-managed by the Customer within the Customer Network Environment, or a hybrid model where the Customer may choose to use Konnekt Cloud Services to manage the Konnekt Runtime and other Software as applicable within the Customer Network Environment.

“Konnekt Runtime” means Kong’s proprietary API gateway, version 2.3 and subsequent releases.

“Konnekt ServiceHub” means a module within the Konnekt Cloud Service for the management and configuration of the

Customer’s Services processed through the Konnekt Runtime in the Customer Network Environment.

“Order Form” means an ordering document or online order specifying the commercial terms of a purchased subscription, namely, for example, the Subscription Term, the Professional Services (if any), any applicable usage or license parameters, and any pricing and payment terms relating to the same.

“Professional Services” means any professional services to be delivered by Kong to Customer related to the Konnekt Platform which are outlined in a SOW or Order Form, such as training, consulting or implementation. For clarity, Professional Services do not include Support Services.

“Service” means an API (application programming interface) for a discrete unit of programmatic functionality that is exposed for remote consumption and managed through the Konnekt Platform. Examples of Services include a data transformation microservice or a billing API. Within the Konnekt Cloud Service, a single Service is represented by a single Service object within the Konnekt ServiceHub.

“Software” means Kong’s proprietary software that Kong makes generally available as part of the Konnekt Platform that is ordered by Customer as set forth in the Order Form, or that Kong makes available to the Customer for a free trial or as a free usage tier, together with any Updates and related Documentation. “Software” does not include plug-ins to the Software identified as provided by or originating from third parties.

“SOW” means a statement of work referencing this Agreement and executed by both parties describing the Professional Services work to be performed, fees, and any applicable fees, dependencies and technical specifications or related information for Professional Services ordered under this Agreement.

“Subscription Term” means the term of the right of access or use granted with respect to the Konnect Platform purchased under an Order Form. For clarity, the Subscription Term will be subject to the termination rights specified in this Agreement.

“Third Party Open Source” means any publicly available third party open source software which may be delivered to Customer together with or as part of the Software. Please see list available at <https://konghq.com/copyright-kong-ee/> (or such updated URL provided by Kong from time to time).

“Support Services” means Kong’s support and maintenance services delivered by Kong under its support and maintenance policy found at <https://konghq.com/supportandmaintenancepolicy/> (or such updated URL provided by Kong from time to time), describing Kong’s current maintenance, support and service level policies based on the support purchased.

“Updates” means error corrections, bug fixes and updates and upgrades to the applicable Software that are released during the relevant Subscription Term and made generally available by Kong. “Updates” do not include software applications or modules commercially released by Kong that are sold for a separate fee under a different SKU or part number.

“Usage Data” means usage data, telemetry and any other data (other than Customer Content and Customer Payload Data) relating to the operation, support and/or about use of the Konnect Platform by Customer and its Authorized Users.

Other capitalized terms used have the meaning given them in the Agreement.

2. Access and License to Konnect Platform. If Customer purchases a subscription to the Konnect Platform, then subject to the terms and conditions of this Agreement and the applicable Order Forms, during the Subscription Term, Kong (a) will make the Konnect Cloud Services available to Customer and (b) grants to Customer a non-exclusive, non-transferable, worldwide, limited-term license to install and use the Software in the Customer Network Environment. Customer may maintain a reasonable number of copies of the Software on its systems for backup and recovery purposes, provided use of the copies is strictly limited to back up or disaster recovery purposes.

3. Free Trial. If Customer registers on Kong’s or an Affiliate’s website for a free trial of the Konnect Platform, or if we otherwise provide access to Customer to the Konnect Platform for a free proof of concept, evaluation or other trial, then subject to the terms and conditions of this Agreement, we (a) will make the Konnect Platform available to Customer, and (b) grant to Customer a non-exclusive, non-transferable, worldwide, royalty-free, limited-term license to install and use the Software, in the case of each of (a) and (b), on a trial basis free of charge for evaluation purposes only until the earliest of (i) the end of the free trial period for which Customer registered to use the Konnect Platform or Kong otherwise made the free trial available, (ii) the start date of any purchased subscriptions ordered by Customer for the Konnect Platform, (iii) the start date of Customer downgrading to a free usage tier (if offered by Kong in its sole discretion), or (iv) termination of the trial period by Kong in its sole discretion. Additional trial terms and conditions may appear on the trial registration web page or otherwise in the trial

signup process. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding. Customer agrees it will not transmit, manage or control production data or production environments through the Konnect Platform under a free trial. Kong will have no obligation to provide Support Services during the free trial or to provide Updates during a free trial. During a free trial the Customer may only use the Konnect Platform in a sandbox environment and only with mock data and Konnect Runtimes and other Software in a non-production environment. On termination of Customer's access and license to the Konnect Platform under a free trial, Customer must immediately stop using the Software and delete all copies of the Software from the Customer Network Environment, unless Customer continues its access and license to the Konnect Platform under a free tier (if applicable) or purchased subscription.

NOTWITHSTANDING ANY CONTRARY TERM SPECIFIED IN ANY OTHER SECTIONS OF THIS AGREEMENT, DURING THE FREE TRIAL, THE KONNECT PLATFORM IS PROVIDED "AS-IS" WITHOUT ANY WARRANTY OF ANY KIND (STATUTORY, EXPRESS OR IMPLIED) AND KONG WILL HAVE NO INDEMNIFICATION OBLIGATIONS OR LIABILITY OF ANY TYPE WITH RESPECT TO THE KONNECT PLATFORM OR OTHERWISE FOR ANY FREE PROOF OF CONCEPT, EVALUATION OR OTHER FREE TRIAL UNLESS THIS EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER

APPLICABLE LAW IN WHICH CASE KONG'S LIABILITY WITH RESPECT TO THE KONNECT PLATFORM PROVIDED DURING THE FREE TRIAL WILL NOT EXCEED \$1,000.00.

4. Free Access. Kong may in its discretion offer access or use to all or any part of the Konnect Platform for free up to certain usage limits. In such case Kong (a) will make the Konnect Cloud Services available to Customer, and (b) grants to Customer a non-exclusive, non-transferable, worldwide, royalty-free, limited-term license to install and use the Software, in the case of each of (a) and (b), without charge up to certain limits as described in Kong's materials for the free tier and subject to the terms and conditions of this Agreement. Usage over these limits requires Customer's purchase of a subscription or payment for the additional usage or services. Kong will have no obligation to provide Support Services or to provide Updates to Customer under the free tier. Customer agrees that Kong, in its sole discretion and for any or no reason, may terminate Customer's access and license to the Konnect Platform or any part of the Konnect Platform under a free tier. Customer agrees that any termination of Customer's access and license to the Konnect Platform under the free tier may be without prior notice, and Customer agrees that Kong will not be liable to Customer or any third party for the termination. Customer is solely responsible for exporting Customer Content from any free tier use prior to termination of Customer's access and/or license to the Konnect Platform for any reason, provided that if Kong terminates Customer's account, except as required by law Kong will provide Customer a reasonable opportunity to retrieve its Customer Content. On termination of Customer's access and license to the Konnect Platform under the free tier, Customer must immediately stop using the Software and delete all copies of the Software from the Customer Network Environment, unless Customer continues its access and license to the Konnect Platform under a purchased subscription. Use by Customer of the Konnect Platform under a free tier is subject to the terms

and conditions of this Agreement. In the event of a conflict between this section and any other portion of this Agreement, this section will control.

NOTWITHSTANDING ANY CONTRARY TERM SPECIFIED IN ANY OTHER SECTIONS OF THIS AGREEMENT, ANY FREE ACCESS OR USE OF THE KONNECT PLATFORM IS PROVIDED “AS-IS” WITHOUT ANY WARRANTY OF ANY KIND (STATUTORY, EXPRESS OR IMPLIED) AND KONG WILL HAVE NO INDEMNIFICATION OBLIGATIONS OR LIABILITY OF ANY TYPE WITH RESPECT TO THE KONNECT PLATFORM OR OTHERWISE FOR FREE ACCESS OR USE OF THE KONNECT PLATFORM UNLESS THIS EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE KONG’S LIABILITY WITH RESPECT TO THE KONNECT PLATFORM PROVIDED FOR FREE ACCESS OR USE WILL NOT EXCEED \$1,000.00.

5. Customer Obligations.

5.1 Use of Konnect Platform. Customer will ensure that its use of the Konnect Platform is at all times compliant with this

Agreement, the applicable Order Form and any applicable law.

5.2 Usage Limits. Subscriptions to the Konnect Platform are subject to usage limits set out in the Order Form or on or through a registration web page or otherwise in the signup process. Customer will comply with the usage limits, or purchase and pay for excess usage in accordance with Section 11 (Subscriptions and Usage) and Section 12 (Payment and Taxes) below.

5.3 Use of Konnect Platform by Contractors and Affiliates. Unless otherwise provided in an Order Form, Customer may permit its Contractors and Affiliates to serve as Authorized Users provided that any use of the Konnect Platform by each such Contractor or Affiliate is solely for the benefit of Customer or such Affiliate. Customer will be responsible for each Authorized User’s compliance with this Agreement.

5.4 User ID and Password Protection. Customer will require that all Authorized Users keep user ID and password information for Konnect Cloud Services strictly confidential and not share such information between Authorized Users and/or with any unauthorized person. Kong will have no liability for actions taken using Customer’s user IDs and passwords, including any unauthorized use or access caused by misuse or misappropriation of such user IDs and passwords. Customer will be responsible for restricting access by any Authorized User who is no longer authorized to access or use the Konnect Cloud Service.

5.5 Acceptable Use. Customer must not use the Konnect Cloud Service in any jurisdiction for unlawful, obscene, offensive or fraudulent content or activity, such as advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive, or deceptive messages, viruses or harmful code, or violating third party rights.

5.6 Access by Third Parties to Customer's Services. The Konnect Platform includes the capability for Customer, at its option and in its sole discretion, to expose Customer's Services to the programmatic applications of third parties (including, if Customer chooses, applications outside Customer's Network Environment) to interact with, access or consume Customer's Services, as further described in the Documentation. Any third party whose programmatic applications interact with, access or consume Customer's Services through the Konnect Platform is an "External User". Customer acknowledges and agrees that: (a) External Users will have the access designated by or for Customer to Customer's Services, and that it is Customer's sole responsibility to evaluate any risks related to its sharing of Services with External Users; and (b) Kong has no control over, and will have no liability for, any acts or omissions of any External User, including without limitation, with respect to Customer's enabling access to Services, or any data or information, including Customer Payload Data, that may be shared with External Users as a result of access to the Services. At all times Customer remains responsible for its Services and access to its data and network through the Konnect Platform as set forth in the Agreement.

5.7 Restrictions. Except as otherwise expressly permitted under this Agreement, or by an applicable third party license, Customer and its Affiliates must not and must not allow any third party to: (i) use the Konnect Platform or any portion of the Konnect Platform beyond the restrictions or limitations in this Agreement or the Order Form; (ii) modify the Software or create derivative works based upon the Software or reverse engineer or decompile, decrypt, disassemble or otherwise reduce the Software to human-readable form, except and only to the extent any foregoing restriction is prohibited by applicable law; (iii) use any elements or functionalities of the Konnect Platform to create a program or a set of programs similar or identical to the Konnect Platform or any part of the Konnect Platform; (iv) use the Konnect Platform in any way that is unlawful or in violation of any applicable laws; (v) sublicense, sell, rent, lease, license, transfer, assign or redistribute, or sell access to the Konnect Platform to any third party (except as expressly set forth in Section 5.2 (Use by Customer Contractors and Affiliates) and Section 5.6 (Access by Third Parties to Customer's Services); (vi) use or permit the Software to be used for or in a service bureau or outsourcing offering; (vii) install the Software outside the Customer Network Environment; (viii) release, publish, and/or otherwise make available to any third party the results of any performance or functional evaluation of the Konnect Platform without the prior written approval of Kong; (ix) alter or remove any proprietary notices or legends contained on or in the Software; (x) use the Konnect Platform where failure or fault of the Konnect Platform could lead to death or serious bodily injury of any person, or to severe physical, property or environmental damage; (xi) interfere with, disrupt, alter, or modify the Konnect Cloud Services or any part thereof, or create an undue burden on the Konnect Cloud Services or the networks or services connected to the Konnect Cloud Services; (xii) introduce software or automated agents or scripts into the Konnect Cloud Services so as to produce multiple accounts, generate automated searches, requests or queries, or to strip or mine data from the Konnect Cloud Services; or (xiii) store or transmit any Malicious Code through the Konnect Cloud Services. For the avoidance of doubt, all restrictions specified in this Agreement with respect to the Konnect Platform apply to all components (including all Software and Documentation). There are no implied licenses granted by Kong under this Agreement.

6. Support Services. During a Subscription Term, Kong will provide Customer the Support Services based on the subscription, deployment model and support service level purchased by Customer under the applicable Order Form. The Support Policy is incorporated into this Agreement by reference. The Support Services includes Updates to the Software as they become generally available to other Kong customers for the applicable Software during the relevant Subscription Term. For clarity, Kong is under no obligation to provide Support Services for free trials or for free subscription tiers. Kong may make changes to the Support Policy with 30 days' notice to Customer (via the support portal or otherwise), provided the change is in connection with a standard change made to the Support Policy and there is no material degradation of the support offering. Notwithstanding the foregoing, if Customer has placed its Order Form through an Authorized Reseller who is obligated to provide support directly to Customer, then the Support Policy will not apply to Customer, and Customer's agreement with such Authorized Reseller will govern with respect to the provision of support and maintenance services by the Authorized Reseller.

7. Professional Services. Kong will provide Customer the Professional Services purchased, if any. The scope of Professional Services will be as set forth in a SOW or Order Form. Professional Services will be delivered subject to the terms and conditions of this Agreement and the applicable SOW or Order Form. Kong will control the manner and means by which the Professional Services are performed and reserves the right to determine personnel assigned. Kong may use third parties to perform the Professional Services provided that Kong remains responsible for their acts and omissions. Any deliverables provided under a Professional Services engagement are not subject to the Support Policy.

8. Security and Data.

8.1 Rights in Customer Content. As between the parties, Customer or its licensors retain all right, title and interest (including any and all intellectual property rights) in and to the Customer Content, and any modifications made thereto in the course of the operation of Konnect Cloud Services as provided to Kong. Subject to the terms of this Agreement, Customer hereby grants to Kong a non-exclusive, worldwide, royalty-free right to process the Customer Content solely to the extent necessary to provide the services to Customer, or as may be required by law.

8.2 Kong's Security Measures. Kong will take reasonable and appropriate technical and organizational measures designed to protect Customer Content against unauthorized access, accidental loss or unauthorized disclosure while being processed by the Konnect Cloud Service. However, the use of Konnect Cloud Service necessarily involves transmission of Customer Content over networks that are not owned, operated or controlled by Kong, and Kong is not responsible for any Customer Content that is lost, altered, intercepted or stored across such networks.

8.3 Customer's Security Measures. Customer acknowledges that based on the subscription level and deployment choices by the Customer, the Konnect Platform may be entirely self-hosted and self-managed by the Customer within the Customer Network Environment, or a hybrid model where the Customer may choose to use Konnect Cloud Services to control the Konnect Runtime or other Software within the Customer Network Environment. In all cases, Kong does

not host the Software or control the Customer Network Environment, and the Customer acknowledges and agrees that Customer must undertake technical and organizational measures to protect the Software, the Customer Network Environment and Customer Payload Data. Customer is responsible for properly configuring and using the Konnect Platform and taking its own steps to maintain appropriate security, protection and backup of its data, including Customer Payload Data.

8.4 Customer Security Contact. Customer is responsible for ensuring Kong at all times has updated and accurate Customer contact information for the appropriate person for Kong to notify regarding data security issues relating to the Konnect Platform, with each such Customer contact's current information to be provided by Customer in the Customer account page for Konnect Cloud Services or Kong's support portal, if applicable.

9. Intellectual Property.

9.1 Kong Technology. Customer agrees that Kong or its suppliers retain all right, title and interest (including all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Konnect Platform, all Documentation, any Professional Services deliverables, and any and all related and underlying technology and documentation; and any derivative works, modifications, or improvements of any of the foregoing, including any Feedback that may be incorporated (collectively, "Kong Technology"). Except for the express limited rights set forth in this Agreement, no right, title or interest in any Kong Technology is granted to Customer. Further, Customer acknowledges that Konnect Cloud Service are offered as an online, hosted solution, and that Customer has no right to obtain a copy of the underlying computer code for Konnect Cloud Service. Notwithstanding anything to the contrary herein, Kong may freely use and incorporate into Kong's products and services any suggestions, enhancement requests, recommendations, corrections, or other feedback provided by Customer or by any users of Kong Cloud Services relating to Kong's products or services ("Feedback"). All Feedback is provided by Customer without warranties.

9.2 Usage Data. Notwithstanding anything to the contrary in this Agreement, Kong has the right to collect and use Usage Data to develop, improve, support, and operate its products and services during and after the term of this Agreement and to verify Customer's usage in compliance with this Agreement. If Customer has subscribed for a purely self-hosted deployment of the Konnect Platform, Customer may choose to disable the feature in the Software which permits transmission of this Usage Data to Kong, in which case Kong will not collect Usage Data automatically from the Software. Kong may not share any Usage Data that includes Customer's Confidential Information with a third party except (i) in accordance with Section 14 (Confidentiality) of this Agreement; or (ii) to the extent the Usage Data is aggregated and anonymized such that Customer and Customer's Authorized Users cannot be identified.

9.3 Marketing. Kong may use and display Customer's name, logo, trademarks, and service marks on Kong's website and in Kong's marketing materials in connection with identifying Customer as a customer of Kong. Upon Customer's written request, Kong will promptly remove any such logo, trademarks or service marks from Kong's website and, to the extent commercially feasible, Kong's marketing materials.

10. Software Delivery. Delivery of the Software will occur promptly after the Order Form becomes effective and will be deemed made when Kong makes the Software available for electronic download and provides the applicable license key. For the avoidance of doubt, Customer is responsible for installation of any Software and acknowledges that Kong has no further delivery obligation with respect to the Software after delivery of the license key. As Updates become available, Kong will make those available for download. The start date of the Subscription Term will be the date Kong first makes the Software and its license key available for download, unless a different date is specified in the Order Form.

11. Subscriptions and Usage.

11.1 Subscriptions. Customer may subscribe for access and license to the Konnect Platform under an Order Form that references this Agreement. All Order Forms are subject to acceptance by Kong. For purchased subscriptions with a fixed Subscription Term, unless otherwise provided in the applicable Order Form, the subscription is purchased for the Subscription Term and subject to the usage limits stated in the applicable Order Form. For purchased subscriptions with a rolling month-to-month Subscription Term (such as a subscription to the Konnect Plus offering), (where Kong offers such subscription alternative, Customer may subscribe under an Order Form to be billed based on usage in the prior rolling monthly period. Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Kong regarding future functionality or features.

11.2 Additional Usage. For purchased subscriptions with a fixed Subscription Term, unless otherwise provided in the applicable Order Form or Documentation, (a) Customer may purchase increased usage limits during a Subscription Term at the same pricing as the underlying subscription pricing, prorated for the portion of the Subscription Term remaining at the time the increased usage is added to the subscription, and (b) any increased or additional usage limits will terminate at the end of the Subscription Term for the underlying subscription. For purchased subscriptions with a rolling month-to-month Subscription Term (such as a subscription to the Konnect Plus offering), where Kong offers such subscription alternative, Kong will invoice and Customer will pay for usage as of the end of each monthly period in accordance with the “Payment and Taxes” section below, at the pricing then in effect for the Konnect Platform based on that usage level as set out in the Order Form or the online ordering portal.

11.3 Subscriptions by Affiliates. Customer Affiliates and Kong may elect to mutually execute Order Forms pursuant to this Agreement. If so, the Affiliate will be deemed a “Customer” under this Agreement, and any references to “Customer” will be deemed to refer to the Affiliate for the purposes of the Order Form, and the Affiliate will be bound by the terms of this Agreement. For the avoidance of doubt, pricing terms and conditions agreed between Kong and Customer in this Agreement or an accepted Order Form will not apply to an Order Form between Kong and a Customer Affiliate, unless specifically agreed.

12. Payment and Taxes.

12.1 Fees. Customer will pay properly invoiced fees and reimburse any business expenses as set forth on and in accordance with an Order Form, without deduction or set-off. Unless as otherwise provided in this Agreement all amounts paid are non-refundable. Unless otherwise provided in an Order Form (a) all fees owed to Kong will be paid in U.S. Dollars, (b) invoiced payments will be due within 30 days of the date of Customer's receipt of each invoice, and (c) fees for all fixed Subscription Terms will be invoiced in full upon execution of the applicable Order Form. For Subscription Terms for which Kong offers monthly payment by credit card (i) Customer authorizes a recurring monthly charge to its credit card, in arrears, based on its usage in the month based on the current fee schedule for the Konnect Platform, and (ii) Kong may bill more frequently for fees accrued if it believes there is a risk of non-payment or if it suspects the account is fraudulent. If Customer is in default of making any payment due to Kong, then Kong may, without prejudice to other remedies available, assess a late payment charge, at the lower rate of 1.5% per month, or the maximum rate under applicable law, and/or suspend delivery of any product or service under this Agreement.

12.2 Taxes. All fees and charges payable by Customer are exclusive of applicable taxes and duties, including VAT and applicable sales tax. Customer will provide Kong any information we reasonably request to determine whether we are obligated to collect VAT from you, including your VAT identification number. If Customer is legally entitled to an exemption from any sales, use, or similar transaction tax, Customer is responsible for providing us with legally-sufficient tax exemption certificates for each taxing jurisdiction. We will apply the tax exemption certificates to charges under your account occurring after the date we receive the tax exemption certificates. Nothing in this Agreement requires either party to pay any income taxes or similar charges of the other party. If applicable law requires you to withhold any amount from your payment, you will provide us with copies of documents related to your withholding upon our request.

13. Verification. For solely Customer-hosted deployments of the Konnect Platform, at Kong's request, Customer will promptly provide Kong with a Software-generated report verifying that Customer is using the Software in accordance with this Agreement and any purchased usage limits under an Order Form. Kong will invoice Customer for any excess or additional use, effective from the date Customer's use first exceeded the purchased usage limits, until the end of the applicable Subscription Term.

14. Confidentiality.

14.1 "Confidential Information" means any non-public data, information and other materials regarding the products, software, services, or business of a party (and/or, if either party is bound to protect the confidentiality of any third party's information, of a third party) provided by or made available by one party and/or its Affiliates ("Disclosing Party"), either directly or indirectly through third parties, to the other party and/or its Affiliates ("Receiving Party") where the information is marked or otherwise communicated as being "proprietary" or "confidential" or the like, or where the information should, by its nature, be reasonably considered to be confidential and/or proprietary. The parties agree that, without limiting the foregoing, the Konnect Platform (and any performance data, benchmark results, and technical information relating thereto), the Documentation and Kong's pricing information will be deemed the Confidential Information of

Kong, and the terms and conditions of this Agreement (but not its existence) will be deemed the Confidential Information of both parties. Notwithstanding the foregoing, Confidential Information will not include information which: (i) is already known to the Receiving Party prior to disclosure by the Disclosing Party; (ii) becomes publicly available without fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without restriction as to disclosure, or is approved for release by written authorization of the Disclosing Party; or (iv) is independently developed or created by the Receiving Party without use of the Disclosing Party's Confidential Information.

14.2 Duties. Except as expressly authorized in this Agreement, the Receiving Party agrees to: (i) use the Confidential Information of the Disclosing Party only to perform under this Agreement (including providing the features and services associated with the normal use of the Konnect Platform) or exercise rights granted to it under this Agreement; (ii) treat all Confidential Information of the Disclosing Party in the same manner as it treats its own similar proprietary information, but in no case with less than reasonable care; and (iii) disclose the Disclosing Party's Confidential Information only to its Affiliates, and those employees, agents and contractors of the Receiving Party and those of its Affiliates who have a need to know the Confidential Information for the purposes of this Agreement, provided that any such employee, agent or contractor must be subject to obligations of non-use and confidentiality with respect to the Confidential Information at least as restrictive as the terms of this Agreement, and the Receiving Party will remain liable for any non-compliance of such Affiliates, and its or their employees, agents or contractors with the terms of this Agreement.

14.3 Disclosures Required by Law. Either party may disclose Confidential Information of the other party if it is required to be disclosed by law or governmental regulation, provided that the Receiving Party provides reasonable notice to Disclosing Party of the required disclosure (to the extent permitted by law) and reasonably cooperates with the Disclosing Party in limiting the disclosure and ensuring confidential handling of the Confidential Information.

15. Term and Termination.

15.1 Term. This Agreement starts on the Effective Date and will remain in effect until terminated in accordance with its terms. Either party may terminate this Agreement upon written notice to the other party if there is no Order Form or SOW currently in effect as of the date of such termination. Each Order Form will terminate upon expiration of the applicable Subscription Term, unless expressly stated otherwise in the Order Form or in this Agreement. The term of an Order Form will be as set out in the Order Form. If you have purchased a month-to-month subscription to the Konnect Platform through an online Order Form (such as a subscription to the Konnect Plus offering), where Kong offers such subscription alternative, you may terminate this Agreement by terminating all Konnect Cloud Services under your account, and terminating all use of the Software, and we may terminate this Agreement for any reason by providing you 30 days' advance notice.

15.2 Termination for Cause. This Agreement (and all related Order Forms) may be terminated by a party: (i) if the other party materially breaches any provision of this Agreement (including a failure to pay properly invoiced fees) and the breach remains uncured 30 days after being

provided with a reasonably detailed notice of the breach; or (ii) effective immediately, if the other party ceases to do business, or otherwise terminates its business operations without a successor; or if the other party becomes insolvent or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is filed against it and not dismissed within 90 days.

15.3 Effect of Termination. Customer will have up to 30 calendar days from the effective date of termination or expiration of this Agreement or an Order Form (if not renewed), if it has paid all amounts due under this Agreement, to access the Konnect Cloud Service solely to retrieve available Customer Content, but may not use the Konnect Cloud Service to manage Software or for any other purposes, and for such retrieval purposes only this Agreement and the applicable Order Form will survive for such period. Thereafter, (i) Kong will have no further obligation to make the Konnect Cloud Service available or to retain Customer Content, (ii) Customer will have no further access to Customer Content held through the Konnect Cloud Service, and (iii) Customer will cease use of and access to Konnect Cloud Service for all purposes whatsoever and will delete all copies of Documentation, Konnect Cloud Services passwords or access codes, and any other Kong Confidential Information in its possession. Except where an exclusive remedy is specified, the exercise of either party of any remedy under this Agreement, including termination, will be without prejudice to any other remedies it may have under this Agreement, by law or otherwise. For any undisputed termination of this Agreement by Customer for cause in accordance with Section 15.2(i), Customer will be entitled to a prorated refund of any prepaid subscription fees attributable to the remaining applicable period of the Subscription Term under this Agreement. Upon termination of this Agreement, Customer will destroy (or at Kong's option, return) all copies of Software in its possession or control. Any terms or sections which by their nature should reasonably survive will survive the termination or expiration of this Agreement or an Order Form.

15.4 Suspension of Access. In addition to any of its other rights or remedies (including, without limitation, any termination rights) set forth in this Agreement, Kong reserves the right to suspend Customer's access to the Konnect Cloud Service if: (a) Customer (or Customer's Authorized Reseller, if applicable) is 30 days or more overdue on a payment, (b) Kong reasonably determines that Customer's use of the Konnect Cloud Service is in violation of Section 5.5 (Acceptable Use), (c) Kong reasonably determines that Customer's use of the Konnect Cloud Services may be unlawful, (d) Kong reasonably determines suspension is necessary to avoid material harm to Kong or its other customers, including if the Konnect Cloud Services are experiencing denial of service attacks, mail flooding, or other attacks or disruptions outside of Kong's control, or (e) required by law or at the request of governmental entities.

16. Indemnification.

16.1 Indemnification by Kong. Kong will defend Customer and its officers and employees ("Customer Indemnitees") from and against any claim by an unaffiliated third party alleging that the Konnect Platform, when used in accordance with this Agreement, infringes any intellectual property rights of such third party, and will indemnify and hold harmless Customer Indemnitees from and against any damages and costs finally awarded against Customer Indemnitees or agreed to by Kong in a monetary settlement (including reasonable attorneys' fees) resulting from such

claim. If such a claim occurs, or in Kong's opinion is reasonably likely to occur, Kong, at its expense and at its sole discretion, may, in addition to its indemnification obligations under this Agreement: (i) procure the right to allow Customer to continue to use the Konnect Platform, or (ii) modify or replace the Konnect Platform or infringing portions thereof to become non-infringing, or (iii) if neither (i) nor (ii) is commercially feasible, terminate this Agreement, or the applicable Order Form or SOW, and refund to Customer the prorated portion of fees that Customer has prepaid for the applicable part of the Konnect Platform attributable to the remaining applicable period of the Subscription Term. Notwithstanding the foregoing, Kong will have no obligations under this Section if the claim is attributable to: (1) any modification of the Konnect Platform not made by Kong or its contractors; (2) any combination or use of the Konnect Platform with products or services not provided by Kong; (3) Customer Content; (4) Customer's failure to use Updates made available by Kong; (5) use of the Konnect Platform not in accordance with this Agreement; or (6) Third Party Open Source. THE REMEDIES SET FORTH IN THIS SECTION ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES, AND KONG'S ENTIRE LIABILITY, WITH RESPECT TO INFRINGEMENT OR VIOLATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

16.2 Indemnification by Customer. Customer will defend Kong and its officers and employees ("Kong Indemnitees") from and against any claim by a third party arising from or relating to any Customer Content or any Customer-offered product or service used in connection with the Konnect Platform, and will indemnify and hold harmless Kong Indemnitees from and against any damages and costs finally awarded against Kong Indemnitees or agreed to by Customer in a monetary settlement (including reasonable attorneys' fees) resulting from such claim; provided, however, that Customer will have no obligations under this Section 16.2 to the extent Kong is obligated to defend, indemnify and hold harmless Customer Indemnitees against any such claim pursuant to Section 16.1.

16.3 Indemnification Procedures. In the event of a potential indemnity obligation under this Section 15, the indemnified party will: (i) promptly notify the indemnifying party in writing of the claim, (ii) allow the indemnifying party the right to control the investigation, defense and settlement (if applicable) of the claim at the indemnifying party's sole cost and expense, and (iii) upon request of the indemnifying party, provide all necessary cooperation at the indemnifying party's expense. Failure by the indemnified party to notify the indemnifying party of a claim under this Section 16 will not relieve the indemnifying party of its obligations under this Section 16; however, the indemnifying party will not be liable for any litigation expenses that the indemnified party incurred prior to the time when notice is given or for any damages and/or costs resulting from any material prejudice caused by the delay or failure to provide notice to the indemnifying party in accordance with this Section. The indemnified party may participate in the defense of the claim with its own counsel at its own expense. The indemnifying party may not settle any claim if the settlement would require obligation on the part of the indemnified party (other than payment or ceasing to use infringing materials), or any admission of fault by the indemnified party, without the indemnified party's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. Further, any indemnification obligation under this Section 16 will not apply if the indemnified party settles or makes any admission with respect to a claim without the indemnifying party's prior written consent.

17. Warranty.

17.1 Mutual Warranties. Each party represents and warrants to the other that (i) it has the full power to enter into this Agreement and that this Agreement constitutes a legal, valid and binding obligation of the party, enforceable against it, and (ii) this Agreement does not contravene, violate or conflict with any other agreement of the party with any third party.

17.2 Konnect Platform Warranty. Kong warrants that the Konnect Platform will materially perform in accordance with the applicable end user Documentation supplied by Kong. This warranty will apply for a period of 60 days (the “Warranty Period”) from the date the unmodified Software provided as part of the Konnect Platform is made available for initial download by Customer, provided the Customer provides written notice of a claim within the Warranty Period. If Kong is not able to correct any reported non-conformity with this warranty, either party may terminate the applicable Order Form and Customer, as its sole remedy, will be entitled to receive a refund of fees paid by Customer under the Order Form for the Konnect Platform, provided Customer removes all copies of the relevant Software from its systems and ceases any further use of the Software. This warranty will not apply if the error or non-performance was caused by: (a) modifications to the Konnect Platform other than by or for Kong; (b) misuse of the Konnect Platform or use not in accordance with this Agreement or the Documentation; or (c) third party hardware, software or services used in connection with the Konnect Platform.

17.3 Malicious Code Warranty. Kong warrants it will use standard industry practices to screen, identify and remove from the Software, as it is made available to Customer for download, any malware, viruses, worms, or other code or technology specifically designed to disrupt, disable, or harm Customer’s Network Environment. For clarity, Customer acknowledges and agrees that any license key or other equivalent code which may limit the duration, functionality or scope of the use of the Software to the scope of the subscription purchased by Customer is not code or technology which breaches this warranty. Kong’s only obligation, and Customer’s only remedy, for any breach of this warranty will be, at Kong’s option and expense, to either (a) repair the Software; (b) replace the Software; or (c) terminate the Order Form with respect to the defective Software, and refund to Customer the prorated portion of fees that Customer has prepaid for the defective Software attributable to the remaining applicable period of the Subscription Term, provided Customer removes all copies of the relevant Software from its systems and ceases any further use of the Software.

17.4 Professional Services Warranty. For a period of 30 days from the date of delivery of any Professional Services by Kong to Customer, Kong represents and warrants to Customer that the services and deliverables will be provided in a professional and workmanlike manner and substantially in accordance with the specifications in the applicable SOW. Customer will notify Kong of any non-conformity with this warranty within the warranty period. Kong’s entire liability and Customer’s sole and exclusive remedy for any breach of this warranty will be for Kong to re-perform the nonconforming Professional Services, or if Kong is unable to deliver conforming Professional Services within a reasonable time, then refund any fees paid to Kong for the relevant non-conforming services and/or deliverables, if any.

17.5 DISCLAIMERS. EXCEPT FOR THE WARRANTIES EXPRESSLY SET OUT IN THIS AGREEMENT, THE KONNECT PLATFORM, SOFTWARE, SUPPORT SERVICES, PROFESSIONAL SERVICES AND ALL OTHER KONG SERVICES AND DELIVERABLES PROVIDED BY KONG UNDER OR RELATED TO THIS AGREEMENT, ARE PROVIDED WITHOUT WARRANTY OF ANY KIND, EXPRESS, STATUTORY OR IMPLIED. EXCEPT AS EXPRESSLY SET OUT IN THIS AGREEMENT, ALL EXPRESS, STATUTORY OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, NON-INTERFERENCE, OR ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED, TO THE EXTENT ALLOWED BY APPLICABLE LAW. KONG DOES NOT WARRANT THAT THE KONNECT PLATFORM OR THE SOFTWARE WILL BE ERROR FREE OR THAT THEIR USE WILL BE UNINTERRUPTED OR ERROR FREE.

18. Limitation of Remedies and Damages.

18.1 To the maximum extent permitted by applicable law, and except as to “Excluded Claims” (as defined below):

1. **18.1.1** IN NO EVENT WILL A PARTY OR ITS AFFILIATES BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR ANY SPECIAL, INDIRECT, PUNITIVE, CONSEQUENTIAL, RELIANCE, EXEMPLARY OR INCIDENTAL DAMAGES OF ANY KIND, OR FOR ANY LOST REVENUE, LOST PROFIT, LOSS OF BUSINESS, LOSS OF CONTRACTS, LOSS OF ANTICIPATED SAVINGS, LOSS OF GOODWILL, COST OF DELAY, OR FOR ANY LOST, INACCURATE OR DAMAGED DATA, OR ANY BUSINESS INTERRUPTION, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ARISING FROM THE KONNECT PLATFORM OR ANY SERVICES DELIVERED UNDER OR RELATED TO THIS AGREEMENT, EVEN IF ADVISED BEFOREHAND OF THE POSSIBILITY OF THE DAMAGES OR LOSS.
2. **18.1.2** SUBJECT TO SUBSECTION 18.1.3 BELOW, IN NO EVENT WILL THE AGGREGATE LIABILITY OF EACH PARTY AND ITS AFFILIATES TO THE OTHER PARTY AND ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, THE USE OF OR INABILITY TO USE THE KONNECT PLATFORM, ASSOCIATED SERVICES, PROFESSIONAL SERVICES OR OTHERWISE EXCEED THE FEES RECEIVED BY KONG (OR IN THE CASE OF CUSTOMER’S LIABILITY, EXCEED THE FEES PAID OR DUE TO KONG OR ITS AUTHORIZED RESELLER), IN EACH CASE UNDER THE RELEVANT ORDER FORM TO WHICH THE LIABILITY RELATES IN THE TWELVE MONTH PERIOD PRIOR TO THE EVENT FIRST GIVING RISE TO THE LIABILITY (“GENERAL LIABILITY CAP”).
3. **18.1.3** IN THE CASE OF “DATA PROTECTION CLAIMS” AND EXPRESS OBLIGATIONS UNDER SECTION 16 (Indemnification), EACH PARTY’S AND ITS AFFILIATES’ TOTAL LIABILITY TO THE OTHER PARTY AND ITS AFFILIATES

FOR ALL CLAIMS IN THE AGGREGATE (FOR DAMAGES OR LIABILITY OF ANY TYPE) WILL NOT EXCEED TWO TIMES (2X) THE “GENERAL LIABILITY CAP” (“INCREASED LIABILITY CAP”).

4. **18.1.4** IN NO EVENT WILL EITHER PARTY (OR ITS RESPECTIVE AFFILIATES) BE LIABLE FOR THE SAME EVENT UNDER BOTH THE GENERAL LIABILITY CAP AND THE INCREASED LIABILITY CAP. SIMILARLY, THOSE CAPS WILL NOT BE CUMULATIVE; IN OTHER WORDS, IF A PARTY (AND/OR ITS AFFILIATES) HAS ONE OR MORE CLAIMS SUBJECT TO EACH OF THOSE CAPS, THE MAXIMUM TOTAL LIABILITY FOR ALL CLAIMS IN THE AGGREGATE WILL NOT EXCEED THE INCREASED LIABILITY CAP.
5. **18.1.5** THE PARTIES AGREE THAT THIS SECTION 18.1 WILL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE AND WILL APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

18.2 The limitations set out in Section 18.1 above do not apply to the following (“Excluded Claims”)

1. **18.2.1** A party’s breach of its obligations in Section 14 (Confidentiality) (but, for clarity, excluding Data Protection Claims).
2. **18.2.2** Claims for breach of license terms and restrictions.
3. **18.2.3** Liability which, by law, cannot be limited, such as for fraud or willful misconduct.

19. General.

19.1 Language. This Agreement, any disputes under this Agreement, and any services to be provided under this Agreement by Kong to Customer will be conducted and provided in the English language.

19.2 Third Party Open Source. In addition to the terms of this Agreement, Third Party Open Source is subject to the relevant third-party license, including the relevant proprietary notices, disclaimers, requirements and/or extended rights which are relevant to the Third Party Open Source. For a list of Third Party Open Source please see <https://konghq.com/copyright-kong-ee>. To the extent the terms of open source licenses applicable to Third Party Open Source prohibit any of the restrictions in this Agreement, such restrictions will not apply to such Third Party Open Source. Kong represents that Software delivered under this Agreement will not contain Third Party Open Source subject to any terms or conditions which when used as contemplated in this Agreement necessarily require that Customer grant to any third party any rights to, or immunities under any intellectual property rights of Customer, or that Customer disclose or make available to third parties any of its own proprietary source code or intellectual property (or any part or derivative work thereof) under any circumstances.

19.3 Export Law Assurances. Customer understands that the Konnect Platform is subject to export control laws and regulations. Customer may not download or otherwise export or re-export the Konnect Platform or any underlying information or technology except in full

compliance with all applicable laws and regulations, including United States export control laws. None of the Konnect Platform or any underlying information or technology may be downloaded or otherwise exported or re-exported: (i) into (or to a national or resident of) any country to which the United States has embargoed goods; or (ii) to anyone on the U.S. Treasury Department's list of specially designated nationals or the U.S. Commerce Department's list of prohibited countries or debarred or denied persons or entities. Customer hereby agrees to the foregoing and represents and warrants that customer is not located in, under control of, or a national or resident of any such country or on any such list.

19.4 U.S. Government End User Purchasers. The Konnect Platform and Documentation qualify as "commercial items," as that term is defined at Federal Acquisition Regulation ("FAR") (48 C.F.R.) 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212. Consistent with FAR 12.212 and DoD FAR Supp. 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which this Agreement may be incorporated, Customer may provide to Government end user or, if this Agreement is direct, Government end user will acquire, the Konnect Platform and Documentation with only those rights set forth in this Agreement. Use of either the Konnect Platform or Documentation or both constitutes agreement by the Government that the Konnect Platform and Documentation are "commercial computer software" and "commercial computer software documentation," and constitutes acceptance of the rights and restrictions in this Agreement.

19.5 Anti-Bribery or Anti-Corruption Laws. In carrying out activities pursuant to this Agreement, each party agrees that it will comply with and will not commit, authorize, or permit any action by its personnel which would violate any anti-bribery or anti-corruption laws, such as the United States Foreign Corrupt Practices Act or the UK Bribery Act or any similar relevant law or regulation.

19.6 Choice of Law; Venue. This Agreement will be exclusively governed by and construed in accordance with the laws of the State of California, without reference to or application of choice of law rules or principles. The sole and exclusive jurisdiction and venue for actions arising under this Agreement will be the State and Federal courts in San Francisco, California. Customer and Kong hereby consent to personal jurisdiction of such courts and waive all defenses of forum non conveniens. Notwithstanding any choice of law provision or otherwise, the Uniform Computer Information Transactions Act (UCITA) and the United Nations Convention on the International Sale of Goods will not apply.

19.7 Headings. Headings and captions are for convenience only and are not to be used in the interpretation of this Agreement.

19.8 Counterparts. This Agreement may be executed and delivered in one or more counterparts (including PDF or other electronic counterparts), with the same effect as if the parties had signed the same document. Each counterpart so executed will be deemed to be an original, and all such counterparts will be construed together and will constitute one agreement.

19.9 Entire Agreement; Modifications; Conflicts. This Agreement constitutes the entire agreement between the parties with respect to the license of the Konnect Platform, delivery of Support Services, and delivery of any Professional Services outlined in a SOW or Order Form (where relevant). Except as expressly provided in this Agreement, this Agreement supersedes and cancels all previous written and previous or contemporaneous oral communications, proposals, representations, and agreements relating to the subject matter contained in this Agreement. This Agreement prevails over any pre-printed terms or other conflicting or additional terms of any purchase order, ordering document, acknowledgement, click through agreement or terms, or confirmation or other document issued or made available by Customer, even if signed and returned or otherwise accepted. Additionally, with respect to any Software licensed under this Agreement, this Agreement supersedes and cancels any “click wrap” or “click accept” or any web-based agreement incorporated into the Software or accepted by an Authorized User in connection with access to the license keys or otherwise. Except as expressly provided in this Agreement, this Agreement may be amended, or any term or condition of it waived, only by a writing executed by both parties. Unless otherwise specifically set out in this Agreement, in the event of a conflict between these terms and conditions and any SOW or Order Form, these terms and conditions will prevail.

19.10 Illegality. Should any term of this Agreement be declared invalid, void or unenforceable by any court of competent jurisdiction, that provision will be modified, limited or eliminated to the minimum extent necessary to effectuate the original intent and such declaration will have no effect on the remaining terms of this Agreement, which will continue in full force and effect.

19.11 Waiver. The failure of either party to enforce any rights granted under this Agreement or to take action against the other party in the event of any breach under this Agreement will not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

19.12 Assignment. This Agreement may not be assigned or transferred without the other party’s prior written consent, provided each party expressly reserves the right to assign this Agreement to a successor in interest of all or substantially all of its business or assets to which this Agreement relates. Any action or conduct in violation of the foregoing will be void and without effect. All validly assigned rights and obligations of the parties under this Agreement will be binding upon and inure to the benefit of and be enforceable by and against the successors and permitted assigns.

13. **19.13 Legal Fees.** The party prevailing in any dispute under this Agreement will be entitled to its costs and legal fees.

14. **19.14 Notice.** All communications and notices to be made or given pursuant to this Agreement must be in English. We may provide any notice to you under this Agreement by posting a notice on the website for the applicable Konnect Cloud Service or sending a message to the email address associated with your account. You will be deemed to have received any email sent to the email address then associated with your account when we send the email, whether or not you actually receive the email. To give us notice under this Agreement, you must (1) email us at legal@konghq.com, or (2) send us your notice by

certified mail, return receipt requested, to Kong Inc., 150 Spear Street, 16th Floor, San Francisco CA 94105, Attention: Legal Department.

19.15 Equitable Relief. The parties agree that a material breach of this Agreement adversely affecting Kong's or its licensors' intellectual property rights in the Konnect Platform or the Confidential Information of either party may cause irreparable injury to the party for which monetary damages would not be an adequate remedy and the non-breaching party will be entitled to seek equitable relief (without a requirement to post a bond) in addition to any remedies it may have under this Agreement or at law.

19.16 Independent Contractors. The parties are independent contractors for all purposes under this Agreement, and neither party will be deemed an employee, partner, or agent of the other. Each party will be solely responsible for any and all obligations and payments due with respect to their personnel, including any wages, salaries and amount due or payable to its personnel in connection with this Agreement. This Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between the parties.

19.17 Force majeure. Except as expressly provided in this Agreement, neither party will be liable for any delay in performance due to act of God, nature or a public enemy, earthquake, flood, fire, government order, riot, civil disobedience, labor strife, or any other cause beyond its reasonable control and without its fault or negligence, including, by way of example and not limitation, interruption of electricity, communication or transportation (a "Force Majeure Condition"). However, the party whose performance is delayed by such Force Majeure Condition will use its reasonable efforts to notify the other party of the delay and to minimize its effect.