

HIVEMQ AWS MARKETPLACE TERMS

These Marketplace Terms (the “**Agreement**”) govern the provision and purchase of Enterprise a SaaS Service (defined below) and/or Enterprise Self-Managed Service (defined below) (collectively, the “**Services**”) as well as any ancillary services, between HiveMQ GmbH or HiveMQ Inc. (as applicable below) and its affiliates (“**Provider**”) and the entity accessing or using the Services under this Agreement (“**Customer**”).

Customer may purchase Services through the AWS Marketplace owned and operated by Amazon Web Services, Inc. and its affiliates (collectively, “**AWS**”), available at <https://aws.amazon.com/marketplace> (the “**Marketplace**”), either by click-through acceptance or by completing an online self-service checkout on the Marketplace (each, an “**Order**”). This Agreement is incorporated by reference into any Order and Customer agrees to be bound by its terms.

THE SERVICES ARE PROVIDED BY PROVIDER AND NOT BY AWS.

Customer acknowledges that (i) it is purchasing Services via the Marketplace, where separate third-party terms, including AWS terms, may apply in addition to this Agreement; (ii) Provider will provide the Services directly to Customer in accordance with the applicable Order; and (iii) Customer’s access to and use of the Services is governed by this Agreement and any limitations set forth in the applicable Order.

1. SCOPE

1.1. Relationship with AWS. Customer acknowledges that the Services are provided by Provider, and that AWS’s role is limited to facilitating the Marketplace and, where applicable, collecting payment on behalf of Provider. AWS is not a reseller of the Services and does not provide, support, or assume any responsibility for the Services.

Customer’s purchase of the Services remains subject to this Agreement, and Provider is solely responsible for the provision of the Services, including performance, support, and any related obligations. AWS’s terms applicable to use of the Marketplace may apply separately to Customer’s use of the Marketplace platform, but such terms do not modify or supersede this Agreement with respect to the Services.

Provider disclaims all liability arising from AWS’s operation of the Marketplace or any acts or omissions of AWS unrelated to the Services. Customer’s sole and exclusive rights with respect to the Services are as set forth in this Agreement.

1.2. Order Incorporation. Customer’s rights to access and use the Services are limited to the scope set forth in the applicable Order. Provider’s obligations to Customer extend only to the Services expressly stated in such Order.

2. THE SERVICES

2.1. Enterprise SaaS Service

2.1.1. Enterprise SaaS Service. The Enterprise SaaS Service is offered under a software-as-a-service model. Under this model, the core features and functionality provided by the Enterprise SaaS Service are provided as a cloud-based service on which Customer accesses the features and functionality provided by the Enterprise SaaS Service (the “**Enterprise SaaS Service**” or “**SaaS**”).

2.1.2. Provision and License of the SaaS. Provider will provide Customer with access to the SaaS in accordance with the Order and grants Customer the right to access and use the SaaS, for its internal business purposes in accordance with the terms of this Agreement and for the duration set forth in an Order.

2.1.3. Use of the SaaS by Customer. Customer will only access the SaaS through its documented access points and will only use the SaaS in accordance with the Documentation and subject to the limits established in the Orders (such as limits on instances, MQTT connections, messages consumed, user counts, or duration etc.).

2.2. Enterprise Self-Managed Service

2.2.1. Enterprise Self-Managed Service. The Enterprise Self-Managed Service is software that is licensed to Customer and installed within the Customer's IT environment through an On-Premise software model—which is downloaded, hosted and managed by Customer for the duration of an Order (the “**Enterprise Self-Managed Service**” or “**On-Prem Software**”).

2.2.2. Provision and License of On-Prem Software. Provider will deliver the On-Prem Software to Customer by making it available for Customer to download and grants Customer the right to download, install, access, and use the On-Prem Software for its internal business purposes, in accordance with the terms of this Agreement and the Order.

2.2.3. Use of the On-Prem Software by Customer. Customer will only access and use the On-Prem Software in accordance with the Documentation and subject to the limits established in the Orders (such as limits on instances, MQTT connections, messages consumed, user counts, or duration etc.).

2.3. Elements of the Services

2.3.1. Documentation. The Services documentation is available online at <https://docs.hivemq.com/hivemq/latest/user-guide/index.html> together with any additional documentation provided by Provider to Customer (collectively the “**Documentation**”).

2.3.2. Separately Licensed Software. Additional software programs and technology (including open-source software) may be available to Customer to use in conjunction with the Services (“**Separately Licensed Software**”). Separately Licensed Software is governed by separate terms, which the Services may contain or require for operation, and will be identified or made available to Customer as part of or along with the Services. If the Separately Licensed Software contains open-source terms, such terms will be licensed under an open-source license model (such as Apache 2.0, BSD-3, MIT) (“**Open-Source License Model**”).

2.3.3. Future Functionality. Provider may make future improvements to the Services, which may include creating new features that are outside of the scope of Customer's Orders or sunsetting features that are within the scope of Customer's Orders. Customer will receive, at no additional charge, all future features and functionality that are sold to new customers as an element of the SKU purchased by Customer. If Provider sunsets material features within the scope of Customer's Order, it will provide any successor features at no additional charge or, if no such successor features are available, then Customer may terminate the Order and receive a pro-rata refund of its prepaid fees. Customer Orders are not contingent on the delivery of future features. Upgrades to the Self-Managed Service subject to this clause will be available for downloading by the Customer in the Provider Support Portal.

3. FREE SERVICES, TRIALS AND BETA SERVICES

- 3.1. Free Services and Starter Packs.** Provider's free services and self-serve starter packs (purchased via credit card on the Provider's websites) are governed by separate terms and provided "as is."
- 3.2. Trials and Evaluations.** Provider may make the Services available to Customer on a free, evaluation or trial use basis under an Order. Unless stated otherwise in an Order, Provider disclaims all liability or obligations with regard to such offerings and grants Customer a limited right to download one (1) copy of the Enterprise Self-Managed Service or access the Enterprise SaaS Service in a non-production environment, as applicable, for the sole purpose of internal evaluation and testing.
- 3.3. BETA Services.** Provider may make new features of the Services available to Customer prior to its general release at no charge for the purpose of beta testing. Provider's obligations with regard to security and privacy obligations will apply to such features, but they are otherwise provided "as is," such that the Services Warranty will not apply. Provider may discontinue access to such features at any time, and participation in the beta will not give Customer any right to such features upon general release.
- 3.4. Disclaimer.** All free, trial, evaluation, and beta offerings are provided "as is", without warranties, and may be modified, suspended, or discontinued at any time.

4. SERVICES PERFORMANCE; AND PROFESSIONAL SERVICES

4.1. Services Warranty

- 4.1.1. General Performance Standard.** For the full term of Customer's Order, the Services will perform as described in the Documentation (the "**General Performance Standard**").
- 4.1.2. Process and Remedy for Failure of the General Performance Standard.** If the Services fail to meet the General Performance Standard, Customer may seek a remedy by providing a reasonably detailed notice of the failure, after which Provider will have 30 days to correct the failure. If Provider cannot do so, then Customer may terminate any or all Orders for the Services immediately upon notice and receive a prorated refund for its prepaid but unused fees, measured from the date of the failure notice.

4.2. Disclaimers

- 4.2.1. Disclaimer of the UCC and Implied Warranties.** The Parties acknowledge that this Agreement does not constitute a contract for the sale of goods under the laws of the United States. EXCEPT AS EXPRESSLY SET OUT IN THIS AGREEMENT, THE PROVIDER EXCLUDES, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ALL WARRANTIES, CONDITIONS, OR OTHER TERMS, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE."
- 4.2.2. The following statutory warranty rights under the German Civil Code (Bürgerliches Gesetzbuch – BGB) are expressly excluded:**
- a. The Customer shall not have any warranty rights in respect of insignificant defects of any Provider Products or services.
 - b. Strict liability pursuant to Section 536a (1) BGB for defects that already existed at the time of conclusion of the Agreement is excluded.
 - c. The application of Section 536a (2) BGB (Customer's right of self-remedy) is excluded.

4.2.3. NOTHING IN THIS AGREEMENT SHALL OPERATE TO EXCLUDE OR RESTRICT ANY WARRANTIES OR REMEDIES THAT CANNOT BE EXCLUDED UNDER MANDATORY PROVISIONS OF EUROPEAN UNION OR MEMBER STATE LAW.

4.3. Third-Party Links and Services Disclaimer. The Services or related materials may contain links to or enable access to third-party websites, services, or resources, including the AWS Marketplace (collectively, "Third-Party Services"). Such Third-Party Services are not owned or controlled by Provider and are provided solely for Customer's convenience. Provider does not endorse, monitor, or have any control over Third-Party Services and is not responsible or liable for their content, availability, accuracy, or practices. Access to and use of any Third-Party Services is at Customer's own risk and subject to the terms and conditions of the applicable third party. Provider shall have no responsibility or liability arising from or related to Customer's access to or use of any Third-Party Services.

4.4. Professional Services

4.4.1. Professional Services. All professional services will be provided according to industry standards and in a good and workmanlike manner.

5. UPTIME & ISSUE MANAGEMENT

5.1. Uptime & Issue Management. Provider's obligations regarding uptime and issue management for the Enterprise SaaS Service are established in the Service Level Agreement ("**SLA**") attached to the Order.

5.2. Support Services. Provider will provide the support services based on Customer's Order in accordance with the Support and Maintenance Policy ("**Support and Maintenance**") attached to the Order.

6. CUSTOMER RESPONSIBILITIES

6.1. Authorized Users. All persons authorized by Customer to access and use the Services by or on behalf of Customer ("**Authorized Users**") shall be the responsibility of Customer.

6.2. Unauthorized Access and Credentials. Customer is responsible for (a) ensuring that only Authorized Users access the Services using the credentials provided on its behalf, and (b) maintaining the confidentiality and security of all usernames, passwords, and other access credentials used to access the Services. Customer agrees to promptly notify Provider of any unauthorized use or suspected breach of security.

6.3. Restrictions. Customer may only access, use, download and make copies of the applicable Services and Documentation in accordance with this Agreement and an Order.

6.4. Monitoring of Contractual Use. To verify compliance with the Agreement and capacity limits set forth in an Order ("Contractual Use"), Provider may: (a) monitor use of the Services on an ongoing basis, including by connecting Customer's brokers to Provider's license server; and (b) no more than once every six (6) months, request in writing information reasonably necessary to verify Customer's use, which Customer will provide within fifteen (15) days. Monitoring and verification are limited to data needed to confirm use in accordance with the Agreement; As it related to the Self-Managed Service, message payloads are not inspected, Personal Data is not collected, and Customer will have equivalent access to such data for its own license management. Provider will use reasonable efforts to minimize business disruption.

6.5. Excessive Contractual Use. If Customer's use of the Services exceeds the capacity, metrics, or other limitations set forth in this Agreement or an applicable Order Form ("Excess Contractual Use"),

Customer shall notify Provider in writing within thirty (30) days after becoming aware of such Excess Contractual Use. Upon such notice, the parties will work together in good faith to execute an updated Order Form reflecting the increased capacity and applicable fees, and Customer will not be subject to any Excess Contractual Use Charges for the disclosed excess use during such period. If Customer fails to timely notify Provider of any Excess Contractual Use, Provider reserves the right to invoice Customer for such excess use at Provider's then-current rates ("Excess Contractual Use Charges") and/or suspend the applicable Services until the parties execute an updated Order Form, in addition to any other rights or remedies available under this Agreement.

6.6. Statutory Decompilation. Nothing in this Agreement shall restrict rights of decompilation to the extent expressly permitted by Section 69e of the German Copyright Act (Urheberrechtsgesetz – UrhG). This applies in particular to the On-Prem Software and any software components made available for download or local use.

7. COMPLIANCE

7.1. Compliance with Laws. Each party shall comply with all applicable laws, codes, rules and regulations in performing its obligations under this Agreement.

7.2. Export Control and Sanctions. Each party will comply with all applicable export-control and economic-sanctions laws (including the U.S. EAR/OFAC programs and comparable EU/UK measures). Customer will not export, re-export, transfer, or provide access to the Services, On-Prem Software, or related technical data to embargoed jurisdictions, restricted parties, or for prohibited end uses; the Services are not designed for ITAR-controlled (or similar) data.

7.3. Security and Privacy Controls

7.3.1. Security. Provider shall implement and maintain administrative, physical, and technical safeguards designed to comply with industry-standard security practices, including access controls, encryption, network security, vulnerability management, and incident response measures appropriate to the nature of the data and the Services provided. Provider shall review and update its security controls periodically to address evolving threats and maintain compliance cybersecurity requirements.

7.3.2. Privacy. The Enterprise SaaS Service will be hosted on enterprise-grade cloud infrastructure that provides industry-standard privacy controls. If applicable, the latest Data Protection Agreement available on Provider's Legal webpage (<https://www.hivemq.com/legal/>): ("**DPA**") will apply to the processing of Customer Personal Data (as defined in the DPA). The DPA only applies to Enterprise SaaS Service. No Personal Data is processed with Customer's use of the Self-Managed Service.

7.4. Protection Against Unwanted Code and Licenses. The Services will not expose Customer to (i) malicious software code, such as code that is designed to secretly penetrate Customer's IT infrastructure or to create vulnerabilities within that infrastructure that can be exploited for such purpose or (ii) licensing terms that would require the Customer's technology to be disclosed or distributed to the public (such as "copyleft" open source licensing terms).

7.5. Insurance. Upon the Customer's request, the Provider will deliver to the Customer a copy of its current Certificates of Insurance. Provider will maintain insurance that is at least commensurate with the coverage described in such certificates.

8. BUSINESS CONTINUITY AND DISASTER RECOVERY (BCDR)

9. BCDR

9.1. Continuity and Recovery Investments. Provider will maintain business continuity and disaster recovery plans, infrastructure, and processes that conform to the industry standards for enterprise providers. Provider will test its business continuity and disaster recovery plans no less than annually and will provide Customer upon request with notice indicating (i) the date on which the plans were tested, (ii) a summary of the test results, and (iii) a summary of any actions that Provider will be taking in response to the test results.

9.2. Force Majeure. Failure to perform will be excused for up to 30 days if caused by unforeseeable events of force majeure (“höhere Gewalt”) recognized under German law. If such event exceeds 30 days, either party may terminate this Agreement upon written notice to the other Party and Provider will provide Customer with a pro-rata refund of its prepaid fees upon receipt of such notice.

10. TERM AND TERMINATION

10.1. Term. This Agreement is effective as of the effective date of the Order (“**Effective Date**”). Unless terminated earlier in accordance with this Agreement, this Agreement will terminate naturally 60 days after the last day of the term set forth on Customer’s last Order. Unless stated otherwise in an Order or this Agreement, fees are nonrefundable and non-concealable.

10.2. Termination

10.2.1. Termination for Breach of the Agreement. If a party breaches this Agreement, and if the breach is capable of being cured and is not a breach of the Intellectual Property, Confidentiality, or Use of the Services by Customer provisions, then the non-breaching party, prior to terminating for breach, will provide notice of breach and intended termination of (i) any one or more Orders or (ii) this Agreement and all Orders. If the breach is not cured within 30 days of the date of such notice, then the intended termination will become automatically and immediately effective.

10.2.2. Termination for Breach of an Order. If a party breaches an Order (but not this Agreement), then the non-breaching party, prior to terminating for breach, will provide notice of breach and intended termination of the Order. If the breach is not cured within 30 days of the date of such notice, then the intended termination will become automatically and immediately effective.

10.3. Suspension of Services. Provider may temporarily suspend the Services to an Authorized User or Authorized Users in response to misuse or as necessary to preserve the integrity or availability of the Services.

10.4. Effects of Termination

10.4.1. Refunds Upon Termination. In addition to any refunds stated elsewhere in this Agreement, upon termination by Customer for Provider’s breach, Provider will issue a prorated refund to the Customer for prepaid but unused fees for a period measured from the date of the breach notice. In the event Customer terminates this Agreement in a manner entitling Customer to a pro-rata refund of prepaid fees, such refund shall be remitted by Provider to the AWS through the Marketplace, in accordance with Marketplace terms and conditions. Customer acknowledges and agrees that its sole remedy with respect to such refund is against once remitted by Provider is with AWS, and that Provider’s payment obligation is satisfied upon remittance of any refunds directly to AWS.

10.4.2. Payments Upon Termination. Upon termination, Customer will issue a payment (if any) for all amounts owed on the Order or for professional services performed up the date of termination.

10.4.3. Survival of Terms. If the term of an Order extends beyond the term of the Agreement, then the Agreement will remain in effect for the limited purpose of providing continuity of terms for that

Order until the end of that Order's current term. Rights and obligations established under this Agreement that must survive termination in order to have their customarily intended effect (such as rights and obligations related to confidentiality, indemnification, limitation of liability and damages, and data and intellectual property) will so survive.

11. INVOICES AND PAYMENTS

11.1. Invoices and Payment. All payments are to be made by Customer to AWS. Provider is not responsible for invoicing or collecting fees from Customer. Customer's non-payment to AWS may result in suspension or termination of Services by Provider.

11.2. Taxes. All fees and charges set forth in any Order are exclusive of all taxes, duties, levies, and similar governmental assessments, including without limitation value-added, sales, use, and withholding taxes (collectively, "**Taxes**"). Taxes shall be the responsibility of Customer and/or AWS only in accordance with the Marketplace terms.

11.3. Data Transfer Fees. Customer's use of the SaaS Service may incur data transfer, network egress, or similar bandwidth-related charges ("**Data Transfer Fees**") based on the rates of the underlying cloud infrastructure provider used for Customer's deployment (e.g., AWS, Azure, or similar). Such Fees are not listed in an Order. Data Transfer Fees are measured based on the total volume of data transmitted from the Cloud Service and charged per gigabyte (GB) at cost.

12. DATA OWNERSHIP AND USE

12.1. Customer Data. All data that is either (i) transmitted to the Services by or on behalf of Customer or (ii) is added to a Customer-facing dataset within the Services through the use of the Services by or on behalf of Customer (collectively, "**Customer Data**") is and will remain the property of Customer. Customer grants Provider the right to use Customer Data to provide the services in this Agreement.

12.2. Outputs. Data generated by the Enterprise SaaS Service based on Customer Data ("**Outputs**") is and will remain the property of Customer. For clarity, Outputs do not include Usage and System Data.

12.3. Aggregated and Anonymized Data. Provider may collect data from Outputs or Customer Data that has been modified so as to be attributable neither to the Customer nor to any personally identified individual ("**Aggregated and Anonymized Data**"). Aggregated and Anonymized Data is and will remain the property of Provider.

12.4. Usage and System Data. Provider may collect and process technical and operational data relating to the access to, use of, operation, performance, security, and entitlement to the Services, including system logs, telemetry, metrics, diagnostic data, license and entitlement information, configuration metadata, and similar data ("**Usage and System Data**"). Usage and System Data is not Customer Data, Outputs, or Aggregated and Anonymized Data and is and will remain the sole and exclusive property of Provider, and Provider may use such data for its lawful business purposes. For the avoidance of doubt, Usage and System Data does not include Customer Data or personal data and is not derived from Customer Data or Outputs.

13. INTELLECTUAL PROPERTY

13.1. The Enterprise SaaS Service. The Enterprise SaaS Service (including, for example, its algorithms, calculations, organization, look and feel, and the underlying software code) is and will remain the sole property of Provider, and Provider is and will remain the sole owner of all intellectual property embodied or practiced by the SaaS.

13.2. The Enterprise Self-Managed Service. The Enterprise Self-Managed Service (including, for example, its algorithms, calculations, organization, look and feel, and the underlying software code) is and will remain the sole property of Provider, and Provider is and will remain the sole owner of all intellectual property embodied or practiced by the On Prem-Software.

13.3. Feedback. Suggestions for improvements to any element of the Services that are provided by Customer will be provided without restriction and will not operate to grant the Customer an ownership interest in any intellectual property embodied or practiced by the Services. If a conveyance of intellectual property rights (such as an assignment or license) is required to achieve this result, Customer will grant such a conveyance.

13.4. Reservation of Rights. Each party reserves all intellectual property rights not expressly granted in this Agreement.

14. CONFIDENTIALITY

14.1. Relationship to NDA. If the Parties have previously executed a nondisclosure agreement, then the terms related to confidential information established in this Agreement will supersede that nondisclosure agreement as of the Effective Date.

14.2. General Definition of Confidential Information. “Confidential Information” is defined to include all information, regardless of the medium through which it is conveyed, that is provided by one party to the other in relation to this Agreement and that a reasonable industry participant would deem likely to be confidential.

14.3. Exclusions from Confidential Information. Confidential Information is defined to exclude information that a) as publicly available at the time of disclosure or becomes publicly available through no fault of the receiving Party; b) was already known to the receiving party prior to disclosure, as evidenced by written records; c) is disclosed to the receiving party by a third party who is not in breach of any confidentiality obligation; or d) Is independently developed by the receiving Party without reference to or reliance on the Confidential Information.

14.4. Use and Protection of Confidential Information. A receiving party will use the Confidential Information of the disclosing party only as necessary to perform its obligations and exercise its rights under this Agreement and will use reasonable care to protect such Confidential Information. At the termination of this Agreement, or upon the disclosing party’s request, the receiving party will destroy the disclosing party’s Confidential Information that is then in its possession.

14.5. Legally Compelled Disclosure. If the receiving party reasonably anticipates that it will be legally required to disclose Confidential Information, it will use its best efforts: (i) to timely notify the disclosing party; (ii) to limit the disclosure, such as by seeking a protective order in relation to the Confidential Information disclosed.

14.6. Trade Secrets. The receiving party’s obligation to maintain the confidentiality of the disclosing party’s trade secrets will survive the termination of this Agreement, enduring until such time as the information no longer satisfies the requirements of a trade secret.

14.7. Stipulation Regarding Preliminary Injunctions and Temporary Restraining Orders. The parties stipulate that the unauthorized use or disclosure of Confidential Information would result in immediate and irreparable injury, loss, or damage to the disclosing party.

15. DISPUTES & REMEDIES

15.1. Indemnification

15.1.1. Definition of Indemnification. To “Indemnify” is defined to mean (i) to defend against all third-party claims (construed broadly, so as to include, for example, complaints and causes of action both when filed and when threatened) and regulatory actions (construed broadly, so as to include investigations and disciplinary actions by any government entity with the power to investigate or impose a penalty of any kind) and (ii) to pay all amounts (construed broadly, so as to include, for example settlements, judgments, fines, and attorneys fees awarded under all available theories of liability and damages) owed to such third-party claimants or regulators.

15.1.2. Procedure. A party seeking to be Indemnified will provide timely notice to the Indemnifying party, although untimely notice will relieve the Indemnifying party of its obligations only to the extent that the delay has prejudiced its ability to defend the claim. The Indemnifying party will have the right to control the defense, including the right to reach a settlement with the claimant; however, the Indemnified party will have a right to participate through its own counsel at its own expense and the Indemnifying party will not enter into a settlement that requires the Indemnified party to pay any amount or admit to any liability without the written consent of that Indemnified party.

15.1.3. Customer’s Indemnifiable Claims. Provider will Indemnify Customer for a claim that the Services infringe a patent or copyright, provided that the infringement arises through the Customer’s licensed use of the Services, either alone or (when the Provider would be liable for indirect or contributory infringement) in combination with other technology or processes.

15.1.4. Provider’s Indemnifiable Claims. Customer will Indemnify Provider for a claim that Customer Data, when used by Provider to provide Customer with the services, infringe a patent or copyright or other intellectual property right.

15.2. Limitations of Liability

15.2.1. General Principle. Except as expressly provided in *Non-Excludable Liabilities* Section 15.2.3, and for amounts awarded for a breach of confidentiality obligations (other than as applied to a breach of the DPA) under this Agreement, each Party shall be liable to the other Party only for direct damages only. Claims for indirect, consequential, or special damages, loss of profit, loss of anticipated savings, loss of reputation or goodwill, loss of business opportunity, or the cost of replacement services are excluded.

15.2.2. Limitation on Total Amount. Except as provided in *Non-Excludable Liabilities* Section 15.2.3, the total liability of each Party, whether in contract, tort (including negligence), or otherwise under any theory of law, arising out of or in connection with this Agreement shall be limited to foreseeable damages and shall not exceed the fees paid or payable by Customer under the Order(s) in the contract year in which the event giving rise to the claim occurred.

15.2.3. Non-Excludable Liabilities. Nothing in this Agreement shall exclude or limit liability:

- (a) for intent (*Vorsatz*);
- (b) for gross negligence (*grobe Fahrlässigkeit*) to the extent such exclusion would be invalid under applicable law;
- (c) for injury to life, body, or health;
- (d) if applicable, under the German Product Liability Act (*Produkthaftungsgesetz*);
- (e) if applicable, for breach of a guarantee (*Beschaffenheitsgarantie*);
- (f) for fraud or fraudulent misrepresentation;
- (g) for amounts owed under an obligation to indemnify;
- (h) for a Party’s payment obligations under this Agreement; and
- (i) if applicable, for liability due to a defect of rented Services already existing at the Effective Date in accordance with § 536a BGB.

15.2.4. Cardinal Obligations. If applicable under German law, in cases of simple negligence (*einfache Fahrlässigkeit*), each Party shall only be liable where a duty has been breached that is essential for the performance of this Agreement and on which the other Party regularly relies (*Cardinal*

Obligation / Kardinalpflicht). In such cases, liability shall be limited to foreseeable damages and shall not exceed the fees paid or payable by Customer under the Order(s) in the contract year in which the event giving rise to the claim occurred.

15.2.5. Free, Trial and Beta. For Free, Trial and Beta services, Provider shall be liable only for (i) intent and gross negligence, and (ii) damages resulting from injury to life, body or health, and (iii) claims under the German Product Liability Act (Produkthaftungsgesetz) and in cases of fraudulent concealment. Any further liability—particularly for simple negligence—is excluded.

15.3. Remedies for IP Infringement. In the event any portion of the Services is enjoined, or in Provider's reasonable opinion is likely to be enjoined due to proceeding alleging that the Services infringe, misappropriate, or otherwise violate any third party intellectual property rights, Provider shall, at its own expense and as Customer's sole and exclusive remedy: (a) procure for Customer the right to continue using the Services; (b) replace or modify the Services so that they become non-infringing while providing substantially equivalent functionality; or (c) if neither (a) nor (b) is commercially reasonable, terminate the affected Services and refund to Customer any prepaid fees for the unused portion of the terminated Services.

16. GOVERNING LAW, JURISDICTION, AND FORUM DISPUTES

16.1 Contracting Entity and Jurisdiction. Where Customer is established in a member state of the European Union or the European Economic Area (Norway, Iceland, or Liechtenstein) (collectively, the "EU/EEA"), the Provider under this Agreement is HiveMQ GmbH. Where Customer is established outside the EU/EEA, the Provider under this Agreement is HiveMQ Inc., and references in this Agreement to "Provider" shall be construed accordingly.

16.2 Substantive Law. Where Customer is established in the EU/EEA, the Agreement and all Orders will be governed by the law of the Federal Republic of Germany, excluding conflict-of-laws rules and CISG. Where Customer is established outside the EU/EEA, the Agreement and all Orders will be governed by the law of the State of New York, excluding conflict-of-laws rules and CISG.

16.3 Forum. Where Customer is established in the EU/EEA, the exclusive place of jurisdiction is Munich, Germany. Where Customer is established outside the EU/EEA, the exclusive place of jurisdiction is New York, New York.

16.4 Language. Unless agreed otherwise by the parties, the language of all proceedings and related documentation shall be English.

16.5 Attorneys Fees and Costs. An authority that decides a dispute between the Customer and the Provider will have discretion to award the prevailing party attorney's fees and costs.

16.6 No Waiver. A party's delay in exercising its rights under this Agreement will not be deemed a waiver of its rights, and a party's waiver of any right under this Agreement will not be deemed a waiver of any other right.

17 THE PARTIES AND OTHER PERFORMING ENTITIES

17.1 Notices. Notices will be sent to the Address or email of Customer set forth in the Order. Notices to Provider shall be sent to the following address:

HiveMQ GmbH,
Attn: HiveMQ Legal

c/o Mindspace Friedrichstr. 68 10117 Berlin, Germany

With CC copy to legal@hivemq.com

Or

HiveMQ Inc.,

Attn: HiveMQ Legal

600 N Broad Street, Suite 5

553 Middletown DE 19709

USA

With CC copy to legal@hivemq.com

Any written notice, request, demand shall be in writing and shall be deemed given when; 1) delivered in person; 2) sent by email; or 3) sent by certified mail, return receipt requested, or by a nationally recognized overnight courier service.

17.2 Affiliates

17.2.1 Affiliate Defined. An “Affiliate” is defined as an entity that controls, that is controlled by, or that is under common control with a party.

17.2.2 Provider’s Affiliates. Customer agrees and consents to the provision of services under this Agreement by Provider’s Affiliate HiveMQ GmbH or HiveMQ Inc. respectively.

17.3 Subcontractors

17.3.1 Subcontractor defined. A “Subcontractor” is defined as a third party that provides the professional services delivered to Customer as a complement to the Services.

17.3.2 Performance Requirements. The Provider will only use Subcontractors who (i) stated or disclosed on an Order; (ii) have passed industry standard quality and security reviews; and (iii) are bound to contracts that are reasonably calculated to ensure performance according to the Provider’s obligations under this Agreement. Notwithstanding the use of Subcontractors, Provider will remain liable for any failure by a Subcontractor to perform according to the Provider’s obligations under this Agreement.

17.4 Assignment

17.4.1 Assignment by the Provider Prohibited Absent Consent. Provider may not assign this Agreement or any Order without the Customer’s written consent, and any attempted assignment made without such consent will be void. Customer hereby provides written consent to an assignment that is (i) made to an Affiliate or (ii) made to a successor entity during a merger or acquisition.

17.4.2 Assignment by the Customer Prohibited Absent Consent. Customer may not assign this Agreement or any Order without the Provider’s written consent, and any attempted assignment made without such consent will be void. Provider hereby provides written consent to an assignment that is (i) made to an Affiliate or (ii) made to a successor entity in the course of a merger or acquisition.

18 INTERPRETATION OF THE AGREEMENT

18.1 Complete Agreement. This Agreement, attachments to this Agreement (such as exhibits and addenda), and Orders contain the complete agreement between the Parties in relation to its subject matter, superseding all prior or contemporaneous written or oral contracts. Neither party enters into this agreement based on any representation not stated herein. This agreement may only be amended in a writing that references it and states the Parties' intent that it be amended through an executed writing.

18.2 Third-Party Beneficiaries. Except as expressly set forth in this Section, this Agreement is entered into solely between Provider and Customer, and no other person or entity shall be deemed a third-party beneficiary of this Agreement. Notwithstanding the foregoing, Customer acknowledges and agrees that AWS, solely in its capacity as operator of the Marketplace and, where applicable, payment facilitator, are intended third-party beneficiaries of the provisions of this Agreement that expressly disclaim AWS's liability or otherwise limit or exclude obligations or responsibilities of AWS with respect to the Services, and AWS shall be entitled to enforce such provisions directly.

18.3 Severability. If any part of this Agreement (including entire provisions or any part thereof) is determined to be unenforceable (for any reason) but the remainder of the Agreement contains lawful distinct objects, then the unlawful part of the Agreement will be severed, and the lawful objects will remain enforceable.

18.4 Conflicts Between Documents. The Agreement, attachments to this Agreement (such as exhibits and addenda), and Orders will be interpreted as a single agreement, such that, silence on a topic in any one document will not be interpreted as a conflict with an explicit statement on that same topic in another document. For example, the absence of a limitation of liability provision in a Data Processing Agreement will not be interpreted as an intention to prevent the application of a limitation of liability provision stated in the Agreement to claims arising from a breach of that Data Processing Agreement. If explicit statements in different documents conflict with one another, then the order of precedence will be (i) a document that explicitly notes the conflict and states an intention to control or (ii) if no such note and statement exist, then, an attachment to an Order, an Order, followed by an attachment to this Agreement, followed by the main body of this Agreement.

AGREED AND ACCEPTED:

BY ACCESSING AND USING THE SERVICES UNDER AN ORDER THAT REFERENCES THIS AGREEMENT THROUGH THE MARKETPLACE, CUSTOMER ACKNOWLEDGES HAVING READ AND AGREED TO ALL ITS TERMS AND CONDITIONS.