

KONG CUSTOMER AGREEMENT

Last updated: September 26, 2023

Including Product-Specific Terms for: Kong Konnect, Kong Konnect Plus

PLEASE READ THIS AGREEMENT INCLUDING THE PRODUCT-SPECIFIC TERMS CAREFULLY AS IT GOVERNS YOUR USE OF THE PRODUCT, SUPPORT SERVICES 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 YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN YOU MUST NOT PURCHASE OR USE THE PRODUCT.

This Kong Customer Agreement is entered into by and between Kong Inc., a Delaware corporation and the purchaser or user of the Product that accepts the terms of this Agreement. “**Kong**,” “**we**” and “**us**” and like terms refer to Kong Inc. “**Customer**,” “**you**” and like terms 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 PRODUCT, (3) EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, OR (4) USING ANY PART OF THE PRODUCT.

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

1. License and Access Grants to the Products.

1.1 Products. Subject to the terms and conditions of this Agreement and the applicable Order Form, during the Subscription Term, Kong hereby grants to Customer a non-exclusive, non-transferable, worldwide, limited-term right and license: (i) if Customer has purchased a subscription to the Cloud Services, to access and use the Cloud Services and to install and use the applicable Software in the Customer Network Environment, and (ii) if Customer has purchased a license to the Software without Cloud Services, to install and use the Software in the Customer Network Environment.

2. Customer Obligations.

2.1 Use of the Product. Customer will use the Product in compliance with this Agreement and the applicable Order Form.

2.2 Usage Limits. Subscriptions to the Product are subject to usage limits set out in the Order Form or on or through a registration or administrative 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 7 (Subscriptions and Usage) and Section 8 (Payment, Taxes and Indirect Orders) below.

2.3 Use of Product 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 (i) any use of the Products by each such Contractor or Affiliate is solely for the benefit of Customer or such Affiliate, (ii) such Affiliate is not already an existing Kong customer for the Products under a separate agreement, and (iii) Customer will be responsible for each Authorized User’s compliance with this Agreement.

2.4 Restrictions. Except as otherwise expressly permitted under this Agreement, or by an applicable Third Party Open Source license, Customer and its Affiliates must not and must not allow any third party to: (i) use the Product or any portion of the Product 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 Product to create a program or a set of programs similar or identical to the Product or any part of the Product; (iv) use the Product 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 Software to any third party (except as expressly set forth in Section 2.3 (Use of Product by Contractors and Affiliates) and Section 5.3 (Access by Third Parties to Customer's APIs); (vi) use or permit the Product 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 Product without the prior written approval of Kong; (ix) alter or remove any proprietary notices or legends contained on or in the Product; or (x) use the Product where failure or fault of the Product could lead to death or serious bodily injury of any person, or to severe physical, property or environmental damage. For the avoidance of doubt, all restrictions specified in this Agreement with respect to the Product apply to all components (including all Software and Documentation). There are no implied licenses granted by Kong under this Agreement.

3. Support Services. During a Subscription Term, Kong will provide Customer the Support Services based on the subscription and support service level purchased by Customer under the applicable Order Form or as set out in the Product-Specific Terms. The Support Policy is incorporated into this Agreement by reference. The Support Services includes Updates to the Product as they become generally available to other Kong customers for the applicable Product during the relevant Subscription Term. For clarity, Kong is under no obligation to provide Support Services for free trials. 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.

4. 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. Kong hereby grants to Customer a non-exclusive, non-transferable, worldwide, limited-term license during the Subscription Term to install, use, copy and modify any Professional Services deliverables solely for use with the Product under and in accordance with this Agreement and which such restrictions will survive termination or expiration of this Agreement.

5. Security and Data.

5.1 Kong's Security Measures. Kong will maintain and implement technical and organizational measures and applicable policies and procedures to help protect any personal data, Customer Content and Customer Confidential Information collected by it in performance of this Agreement against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected. Further, Kong will maintain a security program under which Kong documents, implements and maintains the physical, administrative, and technical safeguards necessary to comply with the law, including applicable data protection laws, that applies to Kong's provision of the Products, Support Services and/or Professional Services to Customer under this Agreement. Kong's Technical and Security Measures are made available at <https://konghq.com/wp-content/uploads/2023/04/kong-technical-org-security-measures.pdf>

5.2 Customer's Security Measures. 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 help protect the Software, the Customer Network Environment and Customer Payload Data. Customer is responsible for properly configuring and using the Product and taking its own steps to maintain appropriate security, protection and backup of its data, including Customer Payload Data.

5.3 Access by Third Parties to Customer's APIs. The Product may include the capability for Customer, at its option and in its sole discretion, to expose Customer's APIs 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 APIs, as further described in the applicable Documentation. Customer acknowledges and agrees that: (a) External Users will have the access designated by or for Customer to Customer's APIs, and that it is Customer's sole responsibility to evaluate any risks related to its sharing of APIs with External Users; and (b) Kong has no control over, and unless caused by our breach of this Agreement will have no liability for, any acts or omissions of any External User, including without limitation, with respect to Customer's enabling access to its APIs, or any data or information, including Customer Payload Data, that may be shared with External Users as a result of access to the Customer's APIs.

5.4 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 Product, with each such Customer contact's current information to be provided by Customer in the Customer account page for Cloud Services or through Kong's support portal or included in the Order Form, if applicable.

6. Intellectual Property.

6.1 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 Products, all Documentation, any Professional Services deliverables, and any and all related and underlying technology and documentation; 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. Notwithstanding anything to the contrary in this Agreement, 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 Authorized Users relating to Kong's products or services ("**Feedback**"). All Feedback is provided without warranties.

6.2 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. Kong may not share any Usage Data that includes Customer's Confidential Information with a third party except (i) in accordance with Section 9 (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 reasonably be identified.

7. Subscriptions and Usage.

7.1 Subscriptions. Customer may subscribe to the Products under an Order Form. All Order Forms are subject to acceptance by Kong. The subscription is purchased for the Subscription Term and subject to the usage limits stated in the applicable Order Form. The start date of the Subscription Term will be the date Kong first makes the Cloud Services available for access by the Customer or, if applicable, the date Kong first makes the Software and its license key available for download, unless in either case a different date is specified in the Order Form. 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.

7.2 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 the 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.

7.3 Additional Usage. Customer may purchase increased usage limits during a Subscription Term at the same pricing as the underlying subscription pricing or at the pricing set out in the applicable Order Form, prorated for the portion of the Subscription Term remaining at the time the increased usage is added to the subscription, and any increased or additional

usage limits will terminate at the end of the Subscription Term for the underlying subscription. 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.

7.4 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.

8. Payment, Taxes and Indirect Orders.

8.1 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 after the date of Customer's receipt of each invoice, (c) fees for all fixed Subscription Terms will be invoiced in full upon execution of the applicable Order Form, and (d) subscription fees are based on Products and Support Services purchased and not actual usage. If Customer wishes to dispute an invoice, it must provide written notice to Kong with details of the disputed amount and bases for the dispute, within 30 days after the date of Customer's receipt of the invoice. 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.

8.2 Taxes. All fees and charges payable by Customer are exclusive of applicable taxes and duties, such as VAT and applicable sales tax. Customer will provide Kong any information reasonably requested by Kong to determine whether Kong is obligated to collect VAT from Customer, including Customer's VAT identification number. If Customer is legally entitled to an exemption from any sales, use, or similar transaction tax, Customer is responsible for providing Kong with legally sufficient tax exemption certificates for each taxing jurisdiction. Kong will apply the tax exemption certificates to charges under Customer's account occurring after the date Kong receives 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 Customer to withhold any amount from its payment to Kong, Customer will provide Kong with copies of documents related to such withholding upon Kong's request.

8.3 Indirect Orders. Sections 8.1 and 8.2 only apply to Order Forms placed directly with Kong. If Customer purchases any Products through an Authorized Reseller, Customer will pay the Authorized Reseller for the purchase and different terms may apply.

9. Confidentiality.

9.1 "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 Products (and any performance data, benchmark results, and technical information relating thereto) 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.

9.2 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 Products) 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, service providers, 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, service provider, 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, service providers, agents or contractors with the terms of this Agreement.

9.3 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.

10. Free Trials. If Customer registers on Kong's or an Affiliate's website for a free trial of the Product, or if Kong otherwise provide access to Customer to the Product for a free proof of concept, evaluation or other trial, then subject to the terms and conditions of this Agreement, Kong hereby grants to Customer a non-exclusive, non-transferable, worldwide, royalty-free, limited-term right and license to access and use the Cloud Services, if applicable, and to install and use the applicable Software on a trial basis free of charge for evaluation purposes only during the Evaluation Period. The Evaluation Period begins on the first day of evaluation access to the Cloud Services or initial download by Customer of the Software under evaluation until the earliest of (i) the end of the free trial period for which Customer registered to use the Product or Kong otherwise made the free trial available, (ii) the start date of any purchased subscriptions ordered by Customer for the Product, or (iii) 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 Product 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. At the end of the Evaluation Period, Customer must immediately stop using the Product and/or delete all copies of the Software from the Customer Network Environment, unless Customer continues its subscription to the Product 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 KONG PRODUCT 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 KONG PRODUCT 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 KONG PRODUCT PROVIDED DURING THE FREE TRIAL WILL NOT EXCEED \$1,000.00.

11. Term and Termination.

11.1 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.

11.2 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 and undisputed 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.

11.3 Effect of Termination. 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 11.2(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. Any terms or sections which by their nature should reasonably survive will survive the termination or expiration of this Agreement or an Order Form.

12. Indemnification.

12.1 Indemnification by Kong. Kong will defend Customer, its Affiliates, and its and their officers and employees (“**Customer Indemnitees**”) from and against any claim by an unaffiliated third party alleging that the Products, 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 Products, or (ii) modify or replace the Products or infringing portions thereof to become non-infringing, or (iii) if neither (i) nor (ii) is commercially feasible, either party may 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 Products 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 Products not made by Kong or its contractors; (2) any combination or use of the Products with products or services not provided by Kong; (3) Customer’s failure to use Updates made available by Kong at no additional cost; (4) use of the Products not in accordance with this Agreement; or (5) 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. THE PARTIES AGREE THAT KONG WILL HAVE NO INDEMNIFICATION OBLIGATIONS UNDER THE AGREEMENT OR OTHERWISE IF THE CLAIM IS ATTRIBUTABLE TO THE CUSTOMER CONTENT.

12.2 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-offered product or service used in connection with the Products, 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 12.2 to the extent Kong is obligated to defend, indemnify and hold harmless Customer Indemnitees against any such claim pursuant to Section 12.1.

12.3 Indemnification Procedures. In the event of a potential indemnity obligation under this Section 12, 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 12 will not relieve the indemnifying party of its obligations under this Section 12; 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 12 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.

13. Warranty.

13.1 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.

13.2 Product Warranty. Kong warrants that during the Subscription Term, the Products will materially perform in accordance with the applicable end user Documentation supplied by Kong. 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 for the prorated portion of fees that Customer has prepaid for the defective Product attributable to the remaining applicable period of the Subscription Term, provided Customer ceases any further use of the Products and removes all copies of the relevant Software from its systems. This warranty will not apply if the error or non-performance was caused by: (a) modifications to the Product other than by or for Kong; (b) misuse of the Product or use not in accordance with this Agreement or the Documentation; or (c) third party hardware, software or services used in connection with the Product.

13.3 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 Product to the scope of the subscription purchased by Customer is not code or technology which breaches this warranty. If Kong is not able to correct any reported non-conformity with this warranty, either party may terminate the applicable Order Form with respect to the defective Product, and Customer, as its sole remedy, will be entitled to receive a refund for the prorated portion of fees that Customer has prepaid for the defective Product attributable to the remaining applicable period of the Subscription Term, provided Customer removes all copies of the Software from its systems and ceases any further use of the Product.

13.4 Professional Services Warranty. For a period of 30 days from the date of delivery of any Professional Services by Kong to Customer, Kong 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, terminate the applicable SOW and refund any fees paid to Kong for the relevant non-conforming services and/or deliverables, if any.

13.5 DISCLAIMERS. EXCEPT FOR THE WARRANTIES EXPRESSLY SET OUT IN THIS AGREEMENT, THE PRODUCTS, 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 PRODUCTS WILL BE ERROR FREE OR THAT THEIR USE WILL BE UNINTERRUPTED OR ERROR FREE.

14. Limitation of Remedies and Damages.

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

- 14.1.1 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 PRODUCTS OR ANY SERVICES DELIVERED UNDER OR RELATED TO THIS AGREEMENT, EVEN IF ADVISED BEFOREHAND OF THE POSSIBILITY OF THE DAMAGES OR LOSS.
- 14.1.2 SUBJECT TO SUBSECTION 14.1.3 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 PRODUCTS, 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**”).
- 14.1.3 EACH PARTY’S AND ITS AFFILIATES’ TOTAL LIABILITY TO THE OTHER PARTY AND ITS AFFILIATES WILL NOT EXCEED TWO TIMES (2X) THE “GENERAL LIABILITY CAP” FOR ALL CLAIMS IN THE AGGREGATE (FOR DAMAGES OR LIABILITY OF ANY TYPE) ARISING OUT OF OR RELATED TO A DATA BREACH, INFORMATION SECURITY OR PRIVACY (“**INCREASED LIABILITY CAP**”).
- 14.1.4 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.
- 14.1.5 THE PARTIES AGREE THAT THIS SECTION 14.1 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.

14.2 The limitations set out in Section 14.1 above do not apply to the following (“**Excluded Claims**”)

- 14.2.1 A party’s express obligations under Section 12 (Indemnification).
- 14.2.2 A party’s breach of its obligations in Section 9 (Confidentiality) other than any liability subject to the Increased Liability Cap.
- 14.2.3 Customer’s payment obligations.
- 14.2.4 Violation of the other party’s intellectual property rights.
- 14.2.5 Liability which, by law, cannot be limited, such as for fraud or willful misconduct.

15. General.

15.1 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.

15.2 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. 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.

15.3 Open Source Materials; Other Licenses. The Product may include software modules, libraries or elements that are provided by Kong subject to the Apache 2.0 license or under a separate license agreement, and the Apache 2.0 or separate license agreement will govern the use of such software modules, libraries or elements in the event of a conflict with this Agreement. Any such license may be indicated in the license, notice, or readme files distributed with the applicable software modules, libraries or elements or in related documentation.

15.4 Export Law Assurances. Customer understands that the Product is subject to export control laws and regulations. Customer may not download or otherwise export or re-export the Software or the Product 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 Software or Product 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.

15.5 U.S. Government End User Purchasers. The Product 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 Products and Documentation with only those rights set forth in this Agreement. Use of either the Products or Documentation or both constitutes agreement by the Government that the Products and Documentation are "commercial computer software" and "commercial computer software documentation," and constitutes acceptance of the rights and restrictions in this Agreement.

15.6 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.

15.7 Governing law. This Agreement will be governed by the Applicable Law (without regard to the conflicts of law provisions of any jurisdiction), and claims arising out of or in connection with this Agreement will be subject to the exclusive jurisdiction of the Applicable Jurisdiction based on the Customer's residence, as provided in the following table:

Customer Residence	Applicable Law	Applicable Jurisdiction
North America & South America	State of California	San Francisco, California
Asia-Pacific, including Australia and New Zealand	Singapore	Singapore
Nordics and Benelux	Sweden	Stockholm, Sweden
Any other jurisdiction	England and Wales	London, United Kingdom

Each party irrevocably submits to the personal jurisdiction and venue of and agrees to service of process issued or authorized by any court in the Applicable Jurisdiction in any action or proceeding. The United Nations Convention of Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply to this Agreement.

15.8 Entire Agreement; Modifications; Conflicts. This Agreement constitutes the entire agreement between the parties with respect to the Product, 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. 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 this Agreement and (i) any Product-Specific Terms, the Product-Specific Terms will govern, and (ii) any Order Form or SOW, the terms of the Order Form or SOW will prevail but only to the extent the applicable term in the Agreement is expressly superseded in the Order Form or SOW.

15.9 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.

15.10 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.

15.11 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.

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

15.13 Notice. All communications and notices to be made or given pursuant to this Agreement must be in English. Kong may provide any notice to Customer by sending an email to the email address identified in an Order Form. Customer will provide notice to Kong by sending an email to legal-notices@konghq.com. Notice will be deemed to have been received when the email is sent to the email address then associated with the other party's account.

15.14 Relationship of the Parties 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. Each Party may identify the other as a customer or supplier, as applicable.

15.15 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.

16. Definitions.

“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 Customer’s account with Kong.

“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.

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

“API” means an application programming interface.

“Authorized Reseller” means a company authorized by Kong to resell the Products and Professional Services, who sells Customer a subscription to the applicable Product. “Authorized Reseller” includes any third-party marketplace platform, such as AWS Marketplace.

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

“Cloud Services” means the Kong-hosted software-as-a service products and services that Kong makes generally available and that are purchased by Customer for use under an Order Form or used by Customer under a free trial or free subscription tier.

“Contractor” means the independent contractors and consultants (including third party service providers) permitted by Customer to serve as Authorized Users of the Products.

“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 Content” means data and information submitted by or for Customer to the Cloud Services. Customer Content does not include Account Information or Usage Data.

“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 Product. An analogy is the contents of an envelope as distinct from the address on the envelope; Customer Payload Data in this analogy is the contents of the envelope.

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

“External User” means any third party whose programmatic applications may or do interact with, access or consume Customer’s APIs through the Products.

“Kong Technology” has the meaning given to that term in Section 6.1 (Kong Technology).

“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.

“Products” means the Cloud Services or Software, or both, that are purchased by Customer for use under an Order Form or used by Customer under a free trial or free subscription tier (but for the avoidance of doubt excluding any Professional Services or Support Services), together with any Updates.

“Product-Specific Terms” means terms and conditions that are indicated as applying to a specific Product.

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

“Software” means Kong’s software that Kong makes generally available for use with the Cloud Services, or that is ordered by Customer as set forth in the Order Form, or that Kong makes available to the Customer for a free trial. “Software” does not include plug-ins to the Software developed by or for the Customer or that are identified as provided by or originating from third parties.

“SOW” means a statement of work or datasheet referencing or entered into in connection with this Agreement describing the Professional Services work to be performed 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 use granted with respect to the Product 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. The Third Party Open Source applicable to the Software may be included in a software bill of materials (SBOM) provided with the Software, referenced in a readme or similar file included with the Software, or referenced in a URL or other resource referenced in the Product-Specific Terms.

“Support Policy” means Kong’s 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 Product and support purchased.

“Support Services” means Kong’s support and maintenance services delivered by Kong under its Support Policy.

“Updates” means error corrections, bug fixes and updates and upgrades to the applicable Product that are released during the relevant Subscription Term and made generally available by Kong. “Updates” do not include software applications, or products or services features, functionality 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 Product by Customer and its Authorized Users.

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

PRODUCT-SPECIFIC TERMS

Kong Konnect

User ID and Password Protection. Customer will require that all Authorized Users keep user ID and password information for Cloud Services 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 Cloud Services.

Acceptable Use. Customer must not use the Cloud Services 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.

Restrictions. In addition to any other restrictions included in the Agreement, Customer and its Affiliates must not and must not allow any third party to (i) interfere with, disrupt, alter, or modify the Cloud Services or any part thereof, or create an undue burden on the Cloud Services or the networks or services connected to the Cloud Services; (ii) introduce software or automated agents or scripts into the Cloud Services so as to produce multiple accounts, generate automated searches, requests or queries, or to strip or mine data from the Cloud Services; or (iii) store or transmit any malicious code through the Cloud Services.

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 to Customer Content in the course of the operation of Cloud Services as provided to Kong. Subject to the terms of the 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.

Suspension of the Cloud Services. In addition to any of its other rights or remedies (including, without limitation, any termination rights set forth in the Agreement), Kong reserves the right to suspend Customer's access to the Cloud Services 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 Cloud Services are in violation of Section "Acceptable Use" above, (c) Kong reasonably determines that Customer's use of the 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 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.

Customer Content Retrieval and Deletion. Customer will have up to 30 calendar days from the effective date of termination or expiration of the Agreement or an Order Form (if not renewed), if it has paid all amounts due under the Agreement, to access the Cloud Services solely to retrieve available Customer Content, but may not use the Cloud Services to manage Software or for any other purposes, and for such retrieval purposes only the Agreement and the applicable Order Form will survive for such period. Thereafter, (i) Kong will have no further obligation to make the Cloud Services available or to retain Customer Content, (ii) Customer will have no further access to Customer Content held through the Cloud Services, and (iii) Customer will cease use of and access to Cloud Services for all purposes whatsoever

and will delete all copies of Documentation, Cloud Services passwords or access codes, and any other Kong Confidential Information in its possession.

Kong Konnect Plus

In addition to the Kong Konnect Product-Specific Terms above, the following are additional terms that apply to the Kong Konnect Plus Product:

Fees. Kong calculates and bills fees and charges as described on the site specific to the Kong Konnect Plus service. For monthly charges, Kong may bill Customer more frequently for fees accrued if Kong believes there is a risk of non-payment or if Kong suspects that the account is fraudulent. If Customer chooses monthly billing by credit card, direct bank deposit or similar payment method, Customer authorizes a recurring monthly charge to the Customer's credit card, bank account or similar payment method based on Kong's current fee schedule for the Cloud Services or Support Services, as applicable. Customer will pay Kong the applicable fees and charges for use of the Cloud Services, Support Services or Professional Services, if applicable, as described on the Kong Konnect Plus site. Kong may increase or add new fees and charges for Kong Konnect Plus, Support Services or Professional Services by updating the applicable site. In the event that Kong changes the pricing for Kong Konnect Plus, Support Services or Professional Services, the fees payable by Customer will increase or decrease in accordance with any such modification upon the date specified on the applicable site.

Credits. Kong may offer time-limited, no-cost credits for new or other users of Kong Konnect Plus to use to consume Konnect Plus services. These credits have no cash value, may be revoked by Kong at any time, and if not revoked will expire at the later of 30 days after issuance and the end of the following month after issuance, or such other period as described on the site specific to the Kong Konnect Plus service.

Limitation of Liability. **Notwithstanding anything in the Agreement to the contrary, Kong's total liability to the Customer arising out of or related to the Kong Konnect Plus services under the Agreement is limited to the fees paid by Customer to Kong in the twelve-month period prior to the event first giving rise to the liability.**

Termination. The Customer may terminate the Agreement by terminating all Cloud Services under its account. Kong may terminate Customer's account for any reason by providing Customer 30 days' advance notice.

Amendment. Kong may amend this Agreement at any time by posting a revised version on the site for Kong Konnect Plus or by otherwise notifying Customer by email. Amended terms become effective upon posting on the site for the Konnect Plus service or as stated in Kong's email notice message. By continuing to use the Cloud Services, Support Services, or Professional Services after the effective date of any amendment to this Agreement, Customer agrees to be bound by the amended terms. Please check the site for Kong Konnect Plus regularly. We last amended this Agreement on the date listed at the beginning of this Agreement.