KONG
MASTER SOFTWARE LICENSE AGREEMENT

Version date: July 3, 2019

PLEASE READ THIS MASTER SOFTWARE LICENSE AGREEMENT CAREFULLY BEFORE DOWNLOADING, INSTALLING OR USING THE SOFTWARE (DEFINED BELOW). THIS AGREEMENT GOVERNS YOUR RIGHTS AS TO SOFTWARE AND ANY SERVICES SUPPLIED BY KONG INC., A DELAWARE CORPORATION, AND ANY SUCCESSOR IN INTEREST OR ASSIGNEE OF KONG ("**KONG**"). THIS AGREEMENT IS EFFECTIVE ON THE EARLIER OF THE DATE THAT YOU PLACE AN ORDER FOR SOFTWARE AND/OR SERVICES OR WHEN YOU RECEIVE A LICENSE KEY FOR ACCESS TO THE SOFTWARE AND/OR OBTAIN ANY SERVICES FROM KONG, WHICHEVER IS EARLIER ("**EFFECTIVE DATE**").

IF YOU ARE AN EMPLOYEE, CONSULTANT, OR CONTRACTOR TO AN ENTITY LISTED ON THE ORDER, YOUR AGREEMENT TO THESE TERMS WILL BE DEEMED TO BE THE AGREEMENT OF THAT ENTITY IDENTIFIED IN THE RELEVANT ORDER ("**CUSTOMER**") AND YOU AND THE CUSTOMER REPRESENT AND WARRANT THAT YOU HAVE AUTHORITY OR HAVE BEEN PROVIDED THE AUTHORITY TO BIND THE CUSTOMER TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

KONG IS ONLY WILLING TO LICENSE THE SOFTWARE TO THE CUSTOMER AND/OR PROVIDE SERVICES UPON THE CONDITION THAT CUSTOMER ACCEPTS ALL THE TERMS CONTAINED IN THIS AGREEMENT. BY USING THE SOFTWARE, OR BY ALLOWING ANY USER TO DOWNLOAD AND/OR USE THE SOFTWARE, THE CUSTOMER INDICATES THAT IT UNDERSTANDS THIS AGREEMENT AND ACCEPTS ALL OF ITS TERMS. IF YOU OR CUSTOMER DO NOT AGREE TO (OR CANNOT COMPLY WITH) ALL OF THE TERMS OF THIS AGREEMENT NEITHER YOU NOR THE CUSTOMER WILL BE AUTHORIZED TO USE OR ALLOW ANY USER TO USE ANY PART OF THE SOFTWARE.

KONG'S ACCEPTANCE OF ANY ORDER FOR THE SOFTWARE AND/OR SERVICES (WHETHER DIRECT OR INDIRECT VIA AN AUTHORIZED RESELLER) IS EXPRESSLY CONDITIONAL ON ASSENT TO THIS AGREEMENT TO THE EXCLUSION OF ALL OTHER TERMS (SPECIFICALLY INCLUDING ANY NEW OR DIFFERENT TERMS CONTAINED IN CUSTOMER'S PURCHASE ORDER). IF ANY OTHER TERMS ARE CONSIDERED AN OFFER BY THE CUSTOMER, ACCEPTANCE IS EXPRESSLY LIMITED TO THESE TERMS.

CUSTOMER AND KONG AGREE AS FOLLOWS:

1.   Certain Definitions. For purposes of this Agreement, the following definitions apply:

"Affiliate" means any entity controlling, controlled by or under common control with a party, where "control" and its variants means (i) the beneficial ownership of a majority of the outstanding equity entitled to vote for directors, or (ii) the power to otherwise direct or cause the direction of the management and policies of the entity whether by contract or otherwise.

"**Agreement**" means this Master Software License Agreement including all its attachments and exhibits, any SOWs referencing this Agreement, and any terms incorporated into this Agreement by reference.

"**Authorized Reseller**" means any authorized reseller of Software who validly sells Customer a license to the Software subject to the terms and conditions of this Agreement.

"**Documentation**" means Kong's technical documentation for the applicable Software made generally available by Kong to other Kong enterprise customers purchasing a license to the relevant Software.

"**Internal Business Purposes**" means use of the Software by Users on behalf of and for the benefit of Customer or Customer Affiliates, solely for the purposes of Customer's or Customer Affiliates' internal business projects and to deploy the projects in production mode for Customer's or Customer Affiliates' exclusive internal use and benefit. For clarity, use of the Software to expose to third parties the APIs of Customer or its Affiliates and related tools and documentation to enable third party software applications to programmatically access or consume the APIs of Customer or its Affiliates is deemed for this purpose only an Internal Business Purpose.

"License Parameter(s)" means any factor that serves as a basis for calculating the amount of fees payable for the license to the Software as identified in the Order, including, for example, where relevant: (i) the number of persons who may use the Software at the same time; (ii) number of API calls; (iii) the name or the type of persons and relevant count who may use the Software; (iv) the number or locations of sites where the Software may be deployed; (v) the number of servers on which the Software may be deployed or the processing power or number of CPUs in those servers; and/or (vi) the intensity of use, whether measured by time the Software is executing, processing power, or the types of functions being performed.

"**License Term**" means the term of the license granted with respect to the Software as identified on the relevant Order, or if no term is identified in the Order, then 1 year. For clarity, the License Term will be subject to the termination rights specified in this Agreement.

"**Order**" means an ordering document that identifies the commercial terms of the purchase, namely, for example, the Software licensed, and the Professional Services (if any) purchased under this Agreement, the applicable License Parameters, the License Term, and any pricing and payment terms relating to the same. Orders may be direct between Kong and Customer or indirect via an Authorized Reseller.

Multiple Orders may apply if additional licenses, products, or services are purchased, but unless expressly stated otherwise terms specified in an Order will apply only to that Order.

"**Professional Services**" means any professional services to be delivered by Kong personnel to Customer related to the Software which are outlined in a SOW or Order, such as training, configuration or implementation. For clarity, Professional Services do not include Support and Maintenance Services.

"**Software**" means the Kong software product identified in the Order, together with any Upgrades and related Documentation, all to the extent provided or made available to Customer under this Agreement. "Software" does not include plug-ins to the Software identified as provided by or originating from third parties.

"**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 delivered to Customer. Please see list available at https://konghq.com/copyright-kong-ee/ (or such updated URL provided by Kong from time to time).

"**Support and Maintenance Services**" means the standard support and maintenance services delivered by Kong to its customers under the Support Policy according to the support level purchased.

"**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 for Software.

 "**Upgrades**" means error corrections, bug fixes and updates and upgrades to the Software that are released during the relevant License Term and made generally available by Kong to other Kong enterprise customers purchasing a license to the relevant Software. "Upgrades" do not include software applications or modules commercially released by Kong that are sold for a separate fee under a different SKU or part number.

"**User**" means any individual authorized by Customer (or any Customer Affiliate or contractor) to access, use, or otherwise manipulate the Software.

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

2.   Ordering; Software Delivery; License Start Date. Customer may place Orders either with Kong or an Authorized Reseller. All Orders are subject to written acceptance by Kong or an Authorized Reseller. Software will be delivered to Customer electronically in a license file promptly after the Order is executed and becomes effective. The start date of the License Term will be the start date the license file is electronically delivered to Customer, unless a different date is specified in the Order.

3.   License.

3.1   Software License. Subject to the terms and conditions of this Agreement, during the License Term, Kong grants to Customer (and any Users authorized by Customer or Customer Affiliates to use the Software), a non-exclusive, non-transferable and non-sublicensable license to: (i) install instances of the Software on computers owned or controlled by Customer or its Affiliates or in cloud instances controlled by Customer or its Affiliates and hosted by third parties, and (ii) use the Software for Customer's and/or Customer Affiliates' Internal Business Purposes subject to the License Parameters set out in the applicable Order. Customer may maintain a reasonable number of copies of the Software on its systems for backup and recovery purposes, provided use of the copies is strictly limited to back up or disaster recovery purposes.

3.2   Evaluation Copies of Kong Software. The following terms will apply to any pre-release versions, or beta, evaluation or proof of concept copies, periods or trials of Kong proprietary software provided to Customer (notwithstanding any contrary term specified in any other sections of this Agreement): (i) the proprietary software will be deemed "Software" under this Agreement and the license to use the Software will terminate at the end of the period identified by Kong or Kong's Authorized Reseller (or if no period is identified then in 30 days from delivery of access to the Software) and use of the Software by Customer or Customer's Users will be for the limited purpose of evaluating the relevant Software and establishing Customer's desire to purchase licenses to Software or providing any feedback desired; (ii) the Software is provided "As Is" without any warranty of any kind; (iii) Customer will not be entitled to any Support and Maintenance Services or any Upgrades with respect to the Software unless a license is later purchased; and (iv) Kong and/or the Authorized Reseller may at any time terminate Customer's license to the Software by written notice to Customer and require Customer to promptly return the pre-release, beta, evaluation or proof of concept copies of the Software and remove all copies of the Software from its systems.

4.   Restrictions. Except as otherwise expressly permitted under this Agreement, Customer will not (and will not authorize or permit any third party including any Users to): (i) copy or use the Software or any portion of the Software beyond the License Parameters and other restrictions or limitations in this Agreement or the Order; (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) create a program or a set of programs similar or identical to the Software, using any elements or functionalities of the Software to do so; (iv) use the Software in any way that is unlawful or in violation of any applicable laws; (v) distribute, sell, or license the Software to third parties; (vi) use or permit the Software to be used for service bureau, software-as-a-service (SaaS) or time sharing purposes; (vii) install the Software on computers or systems which are not owned or controlled by Customer or its Affiliates or in cloud instances controlled by Customer or its Affiliates and hosted by third parties; (viii) release, publish, and/or otherwise make available to any third party the results of any performance or functional evaluation of the Software without the prior written approval of Kong; (ix) share user accounts for access to or use of the Software; (x) alter or remove any proprietary

notices or legends contained on or in the Software; or (xi) use the Software where failure or fault of the Software 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 Software apply to all components (including Documentation). There are no implied licenses granted by Kong under this Agreement. It is the responsibility of the Customer to ensure that all Users are aware of the terms and conditions (including the restrictions) of this Agreement. Customer agrees that all actions or inactions of Users will be deemed an action or inaction by Customer and that Customer will be liable and responsible for any action or inaction of the Users which is in violation of the terms of this Agreement.

5.   Support and Maintenance. During a License Term, Kong will provide Customer the Support and Maintenance Services for the Software set out in the Support Policy based on the subscription and support service level purchased by Customer under the applicable Order. The Support Policy is incorporated into this Agreement by reference. For clarity, the Support and Maintenance Services are included as part of the license fee specified in the applicable Order. The Support and Maintenance Services includes Upgrades to the Software as they become generally available to other Kong customers for the applicable Software during the relevant License Term. Kong may make changes to the Support Policy with 30 days' notice to Customer (via the support portal or otherwise), provided the change is in connection with a standard change made to the Support Policy and there is no material degradation of the support offering. Notwithstanding the foregoing, if Customer has placed its Order through an Authorized Reseller who is obligated to provide support directly to Customer, then the Support Policy will not apply to Customer, and Customer's support and maintenance services will be provided by the Authorized Reseller.

6.   Professional Services. Kong will provide Customer the Professional Services purchased, if any. The scope of Professional Services will be as set forth in a statement of work ("**SOW**" or "**Statement of Work**") or Order. Professional Services will be delivered subject to the terms and conditions of this Agreement and the applicable SOW or Order. Customer may use anything delivered as part of the Professional Services in support of its use of the Software during a License Term, but Kong will retain all right, title and interest in and to any such work product, code and deliverables and any derivative, enhancement or modification thereof created by or on behalf of Kong.

7.   Fees; Payment Terms; License Parameters; Reporting.

7.1   Fees; Payment Terms. Customer will make all payments identified on the Order in accordance with its terms. Unless otherwise stated in this Agreement, Orders are non-cancelable, and all payments are non-refundable, and payments are not subject to any deduction or set-off. If the Order is placed indirectly through an Authorized Reseller, then the Order entered into with the Authorized Reseller will identify the fees due and payment terms. If the Order is entered into directly with Kong and not through an Authorized Reseller, then the following terms will apply: (i) Customer will pay Kong invoices within 30 days after the effective date of the relevant Order, unless other payment terms are agreed to in the Order; (ii) all amounts are payable in U.S. Dollars; (iii) all fees outlined in the Orders are exclusive of all taxes, duties, shipping fees, and similar amounts, all of which are Customer's responsibility (excluding taxes based on Kong or its Authorized Reseller's income); and (iv) 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.

7.2   License Parameters; Reporting. In connection with the use of the Software, Customer will not exceed the License Parameters agreed to as part of the Order. At any time during the License Term, if Customer desires to increase the relevant License Parameters, or if Customer learns that Customer's actual usage ("**Actual Usage**") exceeds the relevant License Parameters paid for by Customer ("**Purchased Usage**"), then Customer will notify Kong (or the Authorized Reseller) and pay the incremental fees due, and after the relevant Order is placed, the relevant License Parameters will be deemed amended to reflect this change. Within 30 days of Kong's or its Authorized Reseller's written request, Customer will provide Kong or its Authorized Reseller (as relevant) a report, which report will identify usage required to show compliance with the License Parameters and compliance with licensing restrictions identified in this Agreement and in the Order. In order to verify compliance with this Agreement or to verify the report provided under this Agreement, upon Kong's written request to Customer, which request will not be made more than once per quarter, Customer will provide Kong access to the relevant product usage logs generated by the Software to show compliance with License Parameters and other license restrictions. Kong and/or its Authorized Resellers may invoice Customer if it learns that the Actual Usage is above the Purchased Usage. Unless otherwise mutually agreed in writing, the fees charged to Customer for the additional usage will be based on the then-current pricing charged to the Customer in the relevant Order and fees will be charged for the balance of the term so that the licenses may be coterminous with the existing licenses.

8.   Ownership. The Software is licensed and not sold. Kong and its licensors will own and retain all right, title, and (except as expressly licensed under this Agreement) interest in and to the Software and all copies or portions thereof, and any derivative works thereof (by whomever created). Customer is not required to provide any feedback or suggestions for improvement to or updates to the Software; however, to the extent provided, all suggestions or feedback relating to the Software provided by Customer, its employees, contractors or agents (including Users) to Kong will be Kong's property, and Customer hereby assigns the same to Kong.

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 ("**Disclosing Party**"), either directly or indirectly through third parties, to the other party ("**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 Software (and any performance data, benchmark results, and technical information relating thereto), the Documentation

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

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 Software) 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 less than reasonable care; and (iii) disclose the Disclosing Party's Confidential Information only to its Affiliates, and those employees, agents and contractors of the Receiving Party and those of its Affiliates who have a need to know the information for the purposes of this Agreement, provided that any such employee, agent or contractor must be subject to obligations of non-use and confidentiality with respect to the Confidential Information at least as restrictive as the terms of this Agreement, and the Receiving Party will remain liable for any non-compliance of such Affiliates, and its or their employees, agents or contractors with the terms of this Agreement.

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.   Term and Termination. The Order and the Software license granted as part of any Order will remain effective until terminated or until the License Term expires, whichever is earlier. This Agreement will be effective as of the Effective Date and will remain in effect until terminated or until the License Term for all Software licensed pursuant to any Order expires, whichever is earlier. This Agreement may be terminated by a party: (i) upon 30 days' written notice, if the other party materially breaches any provision of this Agreement and the breach remains uncured after the 30 day notice period expires; or (ii) effective immediately, if the other party ceases to do business, or otherwise terminates its business operations without a successor; or (iii) effective immediately, 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. Upon termination of this Agreement, Customer will destroy (or at Kong's option, return) all copies of Software in its possession or control. Sections 1, 4, 7, 8, 9, 10, 11, 12, 13, and 14 will survive any termination or expiration of this Agreement.

11.   Indemnification.

11.1 Indemnification by Kong. Kong will defend Customer and its Affiliates, and their respective officers and employees ("**Customer Indemnitees**") from and against any claim by a third party alleging that the Software infringes or violates third party intellectual property rights, and will indemnity 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 Software, or (ii) modify or replace the Software or infringing portions thereof to become non-infringing, or (iii) if neither (i) nor (ii) is commercially feasible, terminate Customer's right to use the affected portion of the Software and refund any license fees paid by Customer corresponding to such Software, pro-rated over the remainder of the relevant License Term. Notwithstanding the foregoing, Kong will have no obligations under this Section to the extent the claim is attributable to: (1) any modification of the Software not made by Kong or its contractors; (2) any combination or use of the Software with products or services not provided by Kong; (3) Customer's continuance of allegedly infringing activity a reasonable period after being notified thereof; (4) Customer's failure to use Upgrades made available by Kong; (5) use of the Software not in accordance with the applicable Documentation or outside the scope of the license granted under this Agreement; and/or (6) Third Party Open Source.   THE REMEDIES SET FORTH IN THIS SECTION CONSTITUTE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES, AND KONG'S ENTIRE LIABILITY, WITH RESPECT TO INFRINGEMENT OR VIOLATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

11.2 Indemnification by Customer. Customer will defend Kong, its Affiliates, and their respective officers and employees ("**Kong Indemnitees**") from and against any claim by a third party arising from or relating to use of the Software, 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 11.2 to the extent Kong is obligated to defend, indemnify and hold harmless Customer Indemnitees against any such claim pursuant to Section 11.1.

11.3 Indemnification Procedures. In the event of a potential indemnity obligation under this Section 11, 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 11 will not relieve the indemnifying party of its obligations under this Section 11; 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 in any matter that 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 11 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.

12. Limited Warranty; Disclaimer.

12.1 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.

12.2 Software Warranty. For a period of 60 days from the effective date of the relevant Order, Kong warrants that the Software materially conforms to its published specifications described in the relevant end user Documentation supplied by Kong. Customer's sole and exclusive remedy and the entire liability of Kong and its suppliers and licensors under this limited warranty will be, at Kong's option, repair or replacement of the Software, or if repair or replacement is not possible, to terminate the license and refund the license fee paid by Customer for the affected Software, provided Customer removes all copies of the relevant Software from its systems and ceases any further use of the Software.

12.3 Malicious Code. Kong will use standard industry practices to test and/or review the Software delivered or transmitted to Customer under this Agreement prior to its delivery or transmission for Malicious Code and Kong will remove any Malicious Code it discovers prior to delivery of Software to Customer. "**Malicious Code**" means any code which is designed to harm, or otherwise disrupt in any unauthorized manner, the operation of computer programs or computer systems or destroy or damage data in an unauthorized manner. For clarity, Malicious Code will not include standard routines in the Software which are intended to delete data and are implicit in the standard functionality of the Software, or any standard software bugs or errors handled through Support and Maintenance Services, or any license key or other equivalent code which may limit the functionality or scope of the use of the Software to the scope of the license purchased by Customer under this Agreement.

12.4 Professional Services Warranty. For a period of 30 days from the date of delivery of any Professional Services by Kong to Customer, Kong represents and warrants to Customer that the services provided will be professional, workmanlike and performed in a manner conforming to any requirements stated in this Agreement or in the relevant SOW or Order. Kong's entire liability and Customer's sole and exclusive remedy for any breach of this warranty will be for Kong to re-perform the nonconforming Professional Services, or if Kong is unable to deliver conforming Professional Services within a reasonable time, then refund any fees paid to Kong for the relevant non-conforming Professional Services, if any.

12.5 Warranty Limitations. The express warranties in this Agreement do not apply if the applicable Software, or any portion of the Software: (i) has been altered, except by Kong or its authorized representatives or its contractors; (ii) has not been used, installed, operated, repaired, or maintained in accordance with this Agreement and/or Documentation; or (iii) is licensed, for beta, evaluation, or testing purposes. Additionally, the warranties set forth in this Agreement only apply to a warranty claim made within the warranty period specified in this Agreement and do not apply to any bug, defect or error caused by or attributable to software or products or services not supplied by Kong.

12.6 DISCLAIMERS. EXCEPT FOR THE WARRANTIES EXPRESSLY SET OUT IN THIS AGREEMENT, THE SOFTWARE, SUPPORT AND MAINTENANCE 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.

13. Limitation of Liabilities. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT FOR ANY LIABILITY ARISING OUT OF ANY VIOLATION OF A PARTY'S PROPRIETARY RIGHTS (INCLUDING A VIOLATION OF ANY LICENSE OR LICENSE RESTRICTIONS SET OUT IN THIS AGREEMENT), OR ANY VIOLATION OF SECTION 9 (CONFIDENTIALITY):

(A) IN NO EVENT WILL CUSTOMER, KONG, OR KONG'S LICENSORS OR SUPPLIERS BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, PUNITIVE, CONSEQUENTIAL, INCIDENTAL DAMAGES, OR FOR ANY LOST REVENUE, LOST PROFIT, LOSS OF BUSINESS, LOSS OF CONTRACTS, ANTICIPATED SAVINGS, LOSS OF GOODWILL, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR ANY LOSS OR DAMAGE TO DATA, OR ANY BUSINESS INTERRUPTION ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ARISING FROM SOFTWARE OR ANY SERVICES DELIVERED UNDER OR RELATED TO THIS AGREEMENT, UNDER ANY CAUSE OF ACTION, WHETHER IN CONTRACT, UNDER STATUTE, TORT OR OTHERWISE, EVEN IF ADVISED BEFOREHAND OF THE POSSIBILITY OF SUCH; AND

(B) IN NO EVENT WILL THE AGGREGATE LIABILITY OF CUSTOMER, KONG, KONG'S LICENSORS OR SUPPLIERS ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, THE USE OF OR INABILITY TO USE SOFTWARE, ASSOCIATED SERVICES, PROFESSIONAL SERVICES OR OTHERWISE (UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, UNDER STATUTE, TORT OR OTHERWISE) EXCEED THE FEES RECEIVED BY KONG UNDER THE RELEVANT ORDER (OR IN THE CASE OF CUSTOMER'S LIABILITY EXCEED THE FEES PAID OR DUE TO KONG OR ITS

AUTHORIZED RESELLER UNDER THE RELEVANT ORDER), WHETHER ANY REMEDY SET FORTH IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE.

14. General.

14.1 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.

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

14.3 Usage and Performance Data. Customer acknowledges that the Software contains a self-reporting feature that, when not disabled by the Customer, will collect statistical and analytical data about Software performance and Customer's use of the Software (and Third-Party Open Source) (collectively "**Usage and Performance Data**"). Customer may choose to disable the feature in the Software which permits transmission of this Usage and Performance Data to Kong. Customer agrees that Kong (and its Affiliates, contractors, successors, and assigns) can collect, maintain, process, use and otherwise fully exploit the Usage and Performance Data in any way now or in the future for its legitimate business purposes, including to corrects errors in Software, to maintain and improve its products and services, to deliver support services, and to monitor license compliance. Additionally, to the extent that any information constitutes personal data under any applicable law, then Kong agrees that any such data will be treated as Confidential Information and processed by Kong only in accordance with all applicable laws and Customer represents and warrants that it has the necessary authority (or consent as relevant) to make such data available via the self-reporting feature and that it allows Kong to use and process the data on a worldwide basis.

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

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

14.6 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.

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

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

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

14.10 Entire Agreement; Modifications; Conflicts. This Agreement constitutes the entire agreement between the parties with respect to the license of the Software, delivery of Support and Maintenance Services, and delivery of any Professional Services outlined in a SOW or Order (where relevant). Except as expressly provided in this Agreement, this Agreement supersedes and cancels all previous written and previous or contemporaneous oral communications, proposals, representations, and agreements relating to the subject matter contained in this Agreement. This Agreement prevails over any pre-printed terms or other conflicting or additional terms of any purchase order, ordering document, acknowledgement, click through agreement or terms, or confirmation or other document issued or made available by Customer, even if signed and returned or otherwise accepted. Additionally, with respect to any Software licensed under this

Agreement, this Agreement supersedes and cancels any "click wrap" or "click accept" or any web-based agreement incorporated into the Software or accepted by User in connection with access to the license keys or otherwise. Except as expressly provided in this Agreement, this Agreement may be amended, or any term or condition of it waived, only by a writing executed by both parties. Unless otherwise specifically set out in this Agreement, in the event of a conflict between these terms and conditions and any SOW or Order, these terms and conditions will prevail.

14.11   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.

14.12   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.

14.13   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.

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

14.15   Notice. Any and all notices or other information to be given by one of the parties to the other will be deemed sufficiently given when sent by certified mail (receipt requested), or by courier, or by hand delivery to the other party to the address set forth in the signature lines of this Agreement or other such address provided by the parties from time to time. Such notices will be deemed to have been effective on the first business day following the day of delivery.

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

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

14.18   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 best efforts to notify the other party of the delay and will use reasonable efforts to minimize its effect.

14.19   Marketing. Customer agrees that during the License Term Customer name and/or approved logo may be included on customer lists on Kong websites or in marketing collateral.

14.20   Basis of the Bargain. Customer acknowledges and agrees that Kong has set its prices and entered into this Agreement in reliance upon the disclaimers of warranty and the limitations of liability set forth in this Agreement, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.