

# HiveMQ SaaS Terms

## 1. Introduction

HiveMQ Inc., 600 N Broad Street, Suite 5, 553 Middletown DE 19709, USA (“**Company**”) and its customer as specified in the given Quote (“**Customer**”) agree upon the provision of the Services by executing a Quote, each Party's rights and obligations regarding the provision of the Service are exclusively governed by the following HiveMQ Subscription Terms (“General Terms”) and the accompanying Annexes listed below (“**Services Terms**”). The General Terms and the Service Terms only enter into effect once a corresponding Quote has been executed by both Parties. The Quote, the General Terms and the Service Terms shall together be referred to as the "Agreement". In the event of any conflict or inconsistency between the provisions of the General Terms and the provisions of any Quote or Service Terms, the provisions positioned higher in the following list shall take precedence only to the extent of any such conflict or inconsistency:

1. These General Terms
2. Services Terms
  - **Annex B** – Professional Services Schedule (if applicable)
  - **Annex C** – Support Policy
3. Quote

Deviations to these General Terms in a Quote shall have precedence over the General Terms if the Parties have agreed expressly to such deviation in the specific Quote referring to the respective provision(s) in these General Terms. Any deviation(s) set forth in a Quote shall apply to that particular order only.

## 1. Definitions

Unless otherwise defined herein, the following terms shall have the meaning set out below:

- **“Authorized Affiliate”** has the meaning given to that term in Section **“Sublicense to Authorized Affiliates”**
- **“Company Marks”** means the trademarks, trade names, service marks, logos, and/or service names of the Company.
- **“Confidential Information”** has the meaning given to that term in Section **“Confidential Information”**.
- **“Contract Year”** means every 12-month period during the Term of a Quote or the Agreement, calculated from its Effective Date.
- **“Contractual Use”** means the use of the HiveMQ Platform for the permitted use cases or any further license volume description detailed in the given Quote. By way of example (but not limited to), a Quote may set forth the permitted maximum number of CPU cores and/or clusters, on which HiveMQ Platform may be deployed and/or the maximum number of concurrent connections managed by HiveMQ Platform and/or the physical locations at which the HiveMQ Platform may be used.
- **“Customer Data”** means any data uploaded into the HiveMQ Platform (whether manually, or automatically via APIs) by or on behalf of Customer or an Authorized Affiliate, or generated through Customer’s, or an Authorized Affiliate’s, use of the HiveMQ Platform in accordance with this Agreement, including any modifications to such data. For clarity, Service Generated Data is not Customer Data.
- **“Customer Marks”** means the trademarks, trade names, service marks, logos, and/or service names of the Customer.

- **“Deliverables”** means any software work product, which is and / or will be developed on behalf of Customer as a separate technical functionality to any HiveMQ Platform and which has originally, prior to such development, neither been a part or functionality of the HiveMQ Platform, nor has been scheduled for development under any product roadmap by HiveMQ’s own initiative. A Deliverable is and stays legally and technically separated from the HiveMQ Platform and can be delivered to Customer as a separate software piece, independent of HiveMQ Platform.
- **“Documentation”** means the documentation for the HiveMQ Platform generally supplied by the Company to assist Customer in the use of the HiveMQ Platform and which includes user and functional reference manuals and other written materials, including application notes.
- **“Effective Date”** means the date on which either this Agreement or a Quote enters into force. In both cases, this is the date of the last signature on the respective contractual document.
- **“Excess Volume”** has the meaning given to that term in Section **“Volume Fees”**.
- **“Extensions”** means applications which provide additional functionalities to a Specific Version of HiveMQ Platform and, if any, are subject to a Subscription according to a Quote. Extensions are provided by HiveMQ only in connection with the Subscription of a Specific Version of HiveMQ Platform. Any references made in this Agreement to HiveMQ Platform shall also apply to Extensions.
- **“Foreseeable Damages”** has the meaning given to that term in Section **“Foreseeable Damages”**.

- **“GDPR”** means General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016.
- **“HiveMQ Platform”** means collectively the functionalities of HiveMQ’s software-as-a-service platform which transmits and exchanges data between various devices, which Customer subscribed to under the applicable Quote, as further described in the applicable Quote, and as updated from time to time, including Updates of HiveMQ’s software-as-a-service platform.
- **“Initial Term”** means, unless specified otherwise in an applicable Quote, a period of three consecutive years, starting on the Effective Date of each Quote.
- **“Intellectual Property Rights”** or “IP” means intellectual property or proprietary rights, including but not limited to copyright rights (including rights in audiovisual works), moral rights, patent rights (including patent applications and disclosures), know-how, rights of priority, trademark rights, and trade secret rights recognized in any country or jurisdiction in the world.
- **“Term”** means the period in time during which the Agreement or a Quote is in effect, subject to the provisions under Section **“Term and Termination”**.
- **“Personal Data”** means personal data that (a) has the meaning given to it in the GDPR and (b) would cause HiveMQ to be subject to GDPR as a data processor for Customer.
- **“Person Day”** means the efforts of one of Company’s employees conducted within 8 (eight) hours.

- **“Professional Services”** means consulting and professional services designed to help Customer use of the HiveMQ Platform and Extensions as agreed upon under a Quote.
- **“Quote”** means an order form issued by HiveMQ and executed by Customer and HiveMQ specifying the HiveMQ Platform and Services HiveMQ will provide to Customer under this Agreement.
- **“Renewal Term”** has the meaning given to that term in Section **“Quote Term”**.
- **“SaaS”** means provision of (i) the access to and use of the functionalities of the HiveMQ Platform remotely via APIs and (ii) support to Customer’s use of the HiveMQ Platform as further described in Annex C.
- **“Service Generated Data”** means data or information about the operation, delivery, usage or performance of the SaaS, including, for clarity, activity logs or other data or information about Customer’s usage of the SaaS. Such data or information may be generated or derived automatically by the SaaS or tools associated with it, or manually by or on behalf of HiveMQ.
- **“Separately Licensed Third Party Software”** has the meaning given to that term in Section **“Separate Licenses”**.
- **“Separate Terms”** has the meaning given to that term in Section **“Separate Licenses”**.
- **“Subscription”** means the Customer subscribing to the SaaS and/or Extensions as well as accompanying Support Services under a Quote.

- **“Subscription Fees”** means the remuneration for the Subscription as specified in the given Quote.
- **“Subscription Period”** means the contractual term detailed in each given Quote for which Customer is granted the rights in accordance with Section **“License Grant and Restrictions”** starting from the Effective Date of each given Quote. If no Subscription Period is specified in a given Quote, the Initial Term shall apply.
- **“Support”** or **“Support Services”** means the provision of support services and provision of Updates for HiveMQ Platform as further described in Section **“Support Services”** and Annex C.
- **“Specific Version”** has the meaning given to that term in Section **“Use of Extensions”**.
- **“Updates”** means new versions of the HiveMQ Platform released by HiveMQ after the respective Subscription of HiveMQ Platform, as further specified in Annex C.
- **“Volume Fees”** means the amounts payable for usage of the HiveMQ Platform for Excess Volume , as specified in the applicable Quote.

## 2. Proprietary Rights

### 2.1. Retention of Rights.

Save as expressly set out in this Agreement, neither Party shall receive any right, title or interest in or to any Intellectual Property Rights owned by the other Party (including any modifications or enhancements made thereto). All rights not expressly granted in this Agreement are reserved by the Parties or their respective licensors. For the avoidance of doubt, HiveMQ (or its suppliers, where applicable) owns any Intellectual Property Rights

in the HiveMQ Platform and the Documentation and all modifications, enhancements, improvements, derivative works, upgrades, new releases and other alterations of either of the foregoing (even if paid for, or requested or directed, by Customer), and Customer (or the relevant Authorized Affiliate) owns any right, title or interest, including any Intellectual Property Rights in Customer Data.

## **2.2. Feedback License**

Customer grants, and ensures that every Authorized Affiliate grants, to HiveMQ a worldwide, royalty-free, transferable, sublicensable, irrevocable, perpetual license to use and incorporate into the HiveMQ Platform and the Documentation, and otherwise to freely exploit without restriction, any recommendations, enhancements, requests, corrections, suggestions or other feedback provided by or on behalf of Customer or an Authorized Affiliate relating to the functionality or operation of the Mambu Platform and the Documentation.

## **2.3. Separate Licenses**

HiveMQ Platform may contain third party technology (including open source software) listed in the file „licenses” in the folder „third-party-licenses“ which will be made available to Customer as part of HiveMQ Platform or during the provision of Updates (“**Separately Licensed Third Party Software**”) and which are governed by separate license terms (“**Separate Terms**”). Customer’s rights to use Separately Licensed Third Party Technology under the Separate Terms are not restricted in any way by this Agreement. HiveMQ will provide indemnification for third party technology that is part of HiveMQ Platform and not Separately Licensed Third Party Technology to the same extent as Company is required to provide indemnification for HiveMQ Platform under the terms of this Agreement.

## **2.4. Use of Customer’s Name**

Customer agrees that the Company may use Customer’s name and may disclose that Customer is a customer of the Company in advertising, press, promotion and similar public disclosures upon the prior written consent of Customer (such consent not to be

unreasonably withheld or delayed). Customer also hereby grants the Company a non-exclusive license during the Term of this Agreement and Company shall list Customer's name and display Customer Marks on its home page and in the "partner," "customer" or similar sections of the Company's website. The Company may also publicly issue and distribute a "case study" relating to this Agreement and the Company's services performed on behalf of Customer, provided that it first obtains Customer's prior written consent, such consent not to be unreasonably withheld or delayed. Customer agrees to act as a "reference account" with respect to the Company's marketing and promotional initiatives.

## **2.5. Trademarks**

Company may use the then current Customer Marks, provided that Company shall: (i) only use Customer Marks in the form and manner, and in accordance with the quality standards, that Customer prescribes (and which it may change from time to time) and (ii) upon termination of this Agreement for any reason, immediately cease all use of the Customer Marks. All goodwill associated with Customer Marks and Company's use of such Customer Marks shall inure to the Customer. Company will not use, register or attempt to register, or take other action with respect to any name, logo, trademark, service mark, or other identifier used anywhere in the world by Customer (or a mark confusingly similar thereto), except to the extent authorized in writing by Customer in advance. For the avoidance of doubt, nothing in this Agreement grants Company any Intellectual Property Rights belonging to Customer.



## 3. Right to Access and Use

### 3.1. Customer's Usage Right

Subject to Customer's material compliance with its obligations under this Agreement, HiveMQ grants Customer, on a limited, non-exclusive and (subject to the Sections "**Use by Affiliates and Third Parties**" and "**Use by Authorized Affiliates**") non-transferable basis, the right to access and use the SaaS, the Documentation and any output of the Related Services solely for the Purpose.

### 3.2. Use by Affiliates and Third Parties

Customer may allow its third party suppliers or service providers, and its Affiliates, to access and use the SaaS on Customer's behalf, provided that: (i) such access or use must be solely for the benefit of Customer and not for the benefit of that supplier, service provider or Affiliate, (ii) the supplier's, service provider's or Affiliate's access or use must be limited solely to what is required to provide its services to Customer in support of the Purpose and otherwise in accordance with the Agreement, and (iii) any such use must not be intended, in whole or in part, to circumvent any of the license restrictions in this Agreement or the applicable Order Form.

### 3.3. Use by Authorized Affiliates.

If an Authorized Affiliate is designated in a given Quote, Customer may allow such Authorized Affiliate to access and use the SaaS, provided that: (i) such right is limited to the Contractual Use specified in the Quote in which the Authorized Affiliate is mentioned, (ii) such use is limited to use by that Authorized Affiliate for that Authorized Affiliate's own Contractual Use and (iii) the Authorized Affiliate will abide by all use restrictions and obligations applicable to Customer. Section "**Use by Affiliates and Third Parties**" does not apply to Authorized Affiliates.

### **3.4. Responsibility**

Customer shall ensure Customer's Affiliates, third party suppliers or service providers and Authorized Affiliates are bound by written agreements incorporating terms and conditions that are at least as protective and restrictive as those in this Agreement. Customer shall be responsible and liable for the acts, defaults, omissions and negligence of any such parties as fully as if they were Customer's own acts, defaults, omissions or negligence.

### **3.5. Restrictions**

Neither Customer nor any Authorized Affiliate nor any person acting on their behalf may use, directly or indirectly, the SaaS, the Documentation, materials or intellectual property provided or accessed under this Agreement in any manner or for any purpose other than as permitted by this Agreement. Without limiting the foregoing, the following are prohibited (including any attempt to do any of the following): (i) reverse engineering, disassembling, or decompiling the SaaS, or parts thereof or any underlying code, methodology or intellectual property, or applying any other process or procedure to derive the code of any software included in the SaaS, (ii) accessing or using the SaaS in a way intended to avoid incurring any applicable fees or charges or purchasing additional licenses or access rights, (iii) reselling of the SaaS or (iv) any misappropriation or unauthorized use or disclosure of the SaaS, Documentation or other HiveMQ intellectual property. The provisions on decompiling pursuant to Section 69e UrhG shall remain unaffected by the above provisions.

### **3.6. Use of HiveMQ Platform Non-Production Versions**

If HiveMQ provides non-production access to the HiveMQ Platform (including sandboxes) under a given Quote or subsequently, its use is limited solely to evaluation purposes within Customer's own business environment and must not be used on production systems. HiveMQ shall not be liable for any damages arising out of or in connection with a use in productive systems.

### **3.7. Use of Extensions**

Extensions always refer to a specific Major, Feature and Maintenance Versions of the HiveMQ Platform (“**Specific Version**”) and must be used in conjunction with that Specific Version. To clarify, Extensions have no stand-alone capability and must only be used within the Contractual Use of the Specific Version of the SaaS as detailed in the applicable Quote. Unless otherwise provided for in a Quote, access rights to the Extension are granted for the Subscription Period applicable to the Specific Version of the SaaS which they functionally extend.

## **4. Modification and Deprecation of Services**

### **4.1. Discontinuance Right**

Subject to Section “**Deprecation Announcement**”, HiveMQ may discontinue any of the HiveMQ Platform features or functionality for any reason at any time without liability to Customer.

### **4.2. Deprecation Announcement**

In the event that HiveMQ intends to discontinue or make backwards incompatible changes to the HiveMQ Platform, HiveMQ will notify Customer of such intention in advance. HiveMQ will then use commercially reasonable efforts to continue to operate those affected versions, features or functionalities without the noted changes for at least three months after that announcement, unless (as HiveMQ determines in its reasonable good faith judgment) (i) required by law or third-party relationship (including if there is a change in applicable law or relationship), or (ii) such continued operation could create a security risk or substantial economic or material technical burden.

### **4.3. Modification of the Service**

In order to maintain a progressive and modern product experience and/or in order to keep up with good industry standards regarding security, reliability or regulatory compliance, HiveMQ reserves the right to make reasonable updates to the HiveMQ Platform from time to time. Such updates may relate to any features or functionality and/or the limitations of the HiveMQ Platform. If HiveMQ makes a material change to the HiveMQ Platform, HiveMQ will inform Customer reasonably in advance, but no later than 30 days before such change becomes effective. This does not apply in cases where such changes are required in order to solve security issues or to address regulatory changes or changes of the law.

## **5. Customer's Obligations**

### **5.1. Prevention of Unauthorized Access**

Customer shall implement and maintain processes and procedures to prevent unauthorized access to and use of the SaaS and shall notify HiveMQ as soon as practicable after Customer becomes aware of any such unauthorized access and use. Customer shall at all times use industry standard and up-to-date firewall and virus protection programs designed to ensure that no malicious code, such as viruses, worms, time bombs, Trojan horses, are uploaded to the SaaS.

### **5.2. Access Credentials**

Customer or, as the case may be, an Authorized Affiliate, will create a username and a password for the initial access to the SaaS, which thereafter will be required for any further use of the SaaS. Customer, any Authorized Affiliate, third party suppliers or service providers shall keep the username and the password confidential and prevent any unauthorized access thereto. Any log-in credentials and private keys generated by the SaaS are for Customer's and any Authorized Affiliate's internal use only and Customer and any Authorized Affiliate may not sell or transfer them to any other entity or person, except that Customer and any Authorized Affiliate may disclose its private key

to any individual or entity that requires to use the SaaS in accordance with the permissions granted in this Agreement. Except to the extent caused by HiveMQ's breach of this Agreement, Customer is responsible for all activities that occur under its or an Authorized Affiliate's log-in credentials or private keys, regardless of whether the activities are authorized or undertaken by Customer or the Authorized Affiliate, or by their respective employees, contractors, agents or end clients.

## **6. Customer Data**

### **6.1. General**

As between the parties, Customer or, as the case may be, an Authorized Affiliate owns all right, title and interest in and to all Customer Data and shall have sole responsibility for the legality, accuracy and maintenance of Customer Data. Without limiting the foregoing, Customer shall obtain and maintain all necessary licenses, consents and other permissions (including those required under applicable laws), to authorize the processing of Customer Data (including any content protected by Intellectual Property Rights) by HiveMQ and HiveMQ's sub-processors in accordance with the terms of this Agreement. Customer hereby authorizes HiveMQ and HiveMQ's sub-processors to use, copy and process Customer Data for the purpose of providing the SaaS, Professional Services and performing its obligations under this Agreement.

### **6.2. Service Generated Data**

Notwithstanding anything to the contrary, HiveMQ may aggregate, collect and analyze Service Generated Data and will be free (during and after the term of the Agreement) to: (i) use the Service Generated Data to develop and improve the HiveMQ Platform, Professional Services and any other HiveMQ offerings, and for other internal business purposes from time to time, and (ii) disclose the Service Generated Data solely in an anonymized format that does not identify Customer or any individual.

### **6.3. Backups**

Customer acknowledges that the SaaS does not produce regular backups of Customer Data. Thus, Customer is solely responsible for regular and sufficient backups of all Customer Data on an environment other than the SaaS.

## **7. Suspension Right**

HiveMQ has the right to immediately suspend Customer's and/or Customer's Affiliate's and/or Authorized Affiliate's use of the SaaS and/or Support Services (partially or in full) if HiveMQ assumes a: (i) violation of Section "**Prevention of Unauthorized Access**"; (ii) violation with applicable law; or (iii) Customer's breach of Section "**Restrictions**" or (iv) of its material payment obligations. HiveMQ will notify Customer of the reason for the suspension without undue delay. This notification obligation shall not apply where such notification would/may violate any applicable laws or regulations. HiveMQ will terminate any such suspension as soon as HiveMQ determines that the risk underlying the suspension has been mitigated to HiveMQ's satisfaction.

## **8. Pricing**

### **8.1. Subscription Fees**

Customer shall pay the Subscription Fees in accordance with the relevant Quote and this Agreement within thirty (30) days from the receipt of the invoice. Unless otherwise defined in a given Quote, HiveMQ will invoice the Subscription Fees annually in advance upon the Effective Date of each Quote and every anniversary thereof. Any special requirements of Customer regarding the form or content of invoices (including any required supporting documentation), or the process for issuing invoices, must explicitly be stated in the applicable Quote. Customer is not entitled to withhold or delay payment of any invoice on the grounds that HiveMQ has failed to comply with a requirement not stated in the applicable Quote.

## **8.2. Tax**

All Subscription Fees exclude taxes, including VAT, GST or IVA, and any withholding tax, except for HiveMQ's income taxes. If any withholding or deduction is required under applicable laws, Customer shall, when making payment of the Subscription Fees to which the withholding or deduction relates, pay to HiveMQ such additional amount as will ensure that HiveMQ receives the same total amount of the Subscription Fees that it would have received if no such withholding or deduction had been required.

## **8.3. Late Payment**

If Customer fails to pay an invoice in a timely manner, HiveMQ will give Customer written notice. If such notice has been provided and payment has not been made within 5 (five) days of the receipt of the notice by Customer, then HiveMQ may charge Customer interest at the rate of 12% per year (or the highest rate permitted by law, whichever is lower). If HiveMQ initiates efforts to collect any payment due to it under any Quote, Customer shall be responsible for and pay all costs and expenses incurred by HiveMQ, including reasonable attorneys' fees.

## **8.4. Volume Fees**

Unless otherwise agreed in a Quote, if Customer exceeds the Contractual Use specified in the Quote, HiveMQ will charge Customer at the Volume Fee rate specified in the Quote for any use of HiveMQ Platform over the Contractual Use ("**Excess Volume**"). Volume Fees for Excess Volume will be reviewed and invoiced quarterly in arrears. Excess Volume will be reviewed annually at the end of each Contract Year, and following such review, the amount of Excess Volume will be automatically added to the Contractual Use, and the Subscription Fee will be increased by an amount equal to the associated Volume Fees, for all future Contract Years unless Customer notifies HiveMQ in writing, prior to the end of the relevant Contract Year, that Customer expects its usage volume will decrease under the Contractual Use level going forward. For clarity, Volume Fees are annual fees and will be prorated accordingly. In case the Parties have not

agreed upon Volume Fees in the applicable Quote, Customer shall promptly execute a Quote covering the Excess Volume.

### **8.5. Price Revisions**

HiveMQ may modify the prices of Subscriptions at any time up to an amount of eight (8) percent of the annual aggregate pricing of the preceding Contract Year, unless otherwise expressly agreed in a Quote explicitly mentioning this Section. HiveMQ will notify Customer at least 30 days in advance of any such price increases. If HiveMQ notifies Customer of any price increase for a Subscription or Professional Services that Customer has used prior to receipt of such notification, Customer may terminate the respective Quote on 30 days' prior written notice to HiveMQ on condition that Customer provides such notice within 30 days of being informed of the respective price increases by HiveMQ. Customer's outstanding payment commitments (if any) that have accrued before the effective date of such termination are not affected.

### **8.6. Travel and Expenses.**

Any Subscription Fees exclude travel and accommodation expenses for any business travel agreed by the Parties. Customer shall reimburse HiveMQ for reasonable and evidenced travel and accommodation cost upon Customer's prior approval.

### **8.7. Non-Payment**

HiveMQ may suspend the provision of the SaaS or the Professional Services, or both, or terminate the Agreement for Customer's breach (either immediately or after a period of suspension), if Customer has failed to pay any Fees and the following conditions are met: (i) HiveMQ has served upon Customer two notices, each of which specifies the undisputed invoiced amount that is then unpaid and states HiveMQ's intention to suspend the SaaS or the Related Services, or both, or to terminate the Agreement for non-payment, and gives Customer 30 days to pay, with the second notice served no earlier than 30 days after the date of the first, (ii) 30 days have elapsed since the date of the second notice and Customer has failed to pay in full the undisputed invoiced amount specified in that notice. After suspension, access to the SaaS and the Related



Services will be re-established promptly upon receipt of the sums referred to in the notices. HiveMQ and Customer shall discuss the overdue payment as soon as possible after HiveMQ has served the first notice.

## 9. Information Requests and Audits

### 9.1. Information Requests

No more than once per 6-month period, HiveMQ may request the Customer to provide information in written form about (i) the scope of use of HiveMQ Platform including the necessary details to assess the Contractual Use and (ii) any HiveMQ Platform sub-licenses granted by Customer pursuant to Sections “**Sublicenses to Affiliates/Third-Parties**” or “**Use by Authorized Affiliates**”. Customer shall provide HiveMQ with the information within fifteen (15) days of written notice.

### 9.2. Audit Right

Should the Customer delay or fail to comply with the information obligation pursuant to Section “**Information Requests**”, HiveMQ or an independent certified public accountant selected by HiveMQ may, at HiveMQ’s sole expense, and no later than upon a five (5) days’ advance written notice to Customer and during Customer’s normal business hours, inspect the records of Customer related to its activities set forth in Section “**Information Requests**”. If, upon performing such audit, it is determined that Customer has underpaid the Company by an amount greater than five (5) percent of the payments due the HiveMQ in the period being audited, Customer will bear all reasonable expenses and costs of such audit in addition to its obligation to make full payment under the given Quote. Company shall use commercially reasonable efforts to minimize any interference with Customer’s business while such audit is conducted.

## **10. Support and Professional Services**

### **10.1. Support Services**

HiveMQ shall provide Support Services during the Subscription Period of each given Quote in accordance with Annex C and covered by the Subscription Fees.

### **10.2. Additional Professional Services**

Customer may purchase additional services or order deliverables from HiveMQ by executing a separate Quote referencing this Agreement and Annex B. Such services are subject to further terms and conditions set forth in each Quote. The fees per Person Day shall be determined in each applicable Quote.

## **11. Data Protection**

The Parties shall comply with applicable data protection laws during the Term of the Agreement and each given Quote. If required by law, the Parties shall enter into a data protection agreement governing the data processing operations.

## **12. Confidentiality**

### **12.1. Confidential Information**

"Confidential Information" means: (i) the non-public code portions of the HiveMQ Platform and any accompanying Documentation; and (ii) any business, financial or technical information of either Party communicated to the other in connection with this Agreement, including but not limited to any information relating to such Party's product plans, designs, costs, product prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how.

## **12.2. Exceptions**

Confidential Information shall not include information that: (i) is in or enters the public domain without breach of this Agreement through no fault of the receiving party; (ii) the receiving party was demonstrably in possession of prior to first receiving it from the disclosing party; (iii) the receiving party can demonstrate by objective evidence was developed by the receiving party independently and without use of or reference to the disclosing party's Confidential Information; or (iv) the receiving party receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation.

## **12.3. Obligations**

Each Party will maintain the Confidential Information of the other Party in strict confidence and will exercise due care with respect to the handling and protection of such Confidential Information, consistent with its own policies concerning protection of its own Confidential Information of like importance (but in no event less than reasonable care). Each Party will use and disclose the Confidential Information of the other Party only as expressly permitted herein, and will disclose such Confidential Information only to its employees and consultants as is reasonably required in connection with the exercise of its rights and obligations under this Agreement. However, each Party may disclose Confidential Information of the other party pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the receiving party gives reasonable notice to the other party to afford such Party an opportunity to intervene and contest such order or requirement. Any such disclosure by the receiving party of the Confidential Information of the disclosing party, will, in no way, be deemed to change, affect or diminish the confidential and proprietary status of such Confidential Information. The obligations of the Parties set forth in the Section **“Confidentiality”** shall survive the termination or expiration of this Agreement.

## **12.4. Destruction or Deletion**

Within five (5) days of a termination or expiration of this Agreement, each Party will destroy all Confidential Information (and all copies and extracts thereof) of the other in its control or possession. Customer will certify to the Company that all copies of Confidential Information of the Company have been returned to the Company or destroyed, and the Company will certify to Customer that all copies of any Confidential Information of Customer have been returned to Customer or destroyed. Notwithstanding the foregoing, the receiving party may retain copies of Confidential Information stored on backup disks or in backup storage facilities automatically produced in the ordinary course of business which are not, in the ordinary course of business, accessible from employee workstations. Any such Confidential Information so retained will be held subject to the confidentiality and use limitations of this Agreement and will not be accessed by any person except information technology systems administrators (if technically required) nor used for any purpose except necessary data storage systems maintenance.

## **12.5. Injunctive Relief**

Each Party acknowledges that the unauthorized use or disclosure of the Confidential Information of the other Party would cause substantial harm to such other Party that could not be remedied by the payment of damages alone. Accordingly, the non-breaching Party will be entitled to seek preliminary and permanent injunctive relief and other equitable relief for any breach of the Section “**Confidentiality**”.

# **13. Infringements**

## **13.1. Indemnification by HiveMQ**

Subject to the provisions of the Section “**Infringements**”, if a third party makes a claim against Customer alleging that HiveMQ Platform (except for Separately Licensed Third Party Software) when used in accordance with its Documentation and this Agreement infringes the Intellectual Property Rights of any third party arising under U.S. or E.U. law,

HiveMQ shall defend Customer against the claim and shall pay all damages awarded by a court of competent jurisdiction or agreed to in settlement of the claim.

### **13.2. Indemnification by Customer**

Subject to the provisions of the Section “**Infringements**”, if a third-party makes a claim against HiveMQ alleging that Customer Data infringes or misappropriates that third party’s patent, copyright, trademark or trade secret, Customer shall defend HiveMQ against the claim and shall pay all damages awarded by a court of competent jurisdiction or agreed to in settlement of the claim.

### **13.3. Exclusions and Procedure**

- a. In the event that HiveMQ Platform is likely to, in HiveMQ’s sole opinion, become the subject of a claim described in Section “**Indemnification by HiveMQ**”, HiveMQ shall, in its sole discretion, either (i) modify or replace HiveMQ Platform without loss of significant functionality, or (ii) procure a license for Customer to continue using HiveMQ Platform as licensed herein. If HiveMQ determines that neither of the foregoing is commercially practicable, HiveMQ may terminate this Agreement and all licenses granted hereunder by written notice to the Customer, and Customer will cease all use of HiveMQ Platform. HiveMQ will have no liability to Customer as a result of such termination.
  
- b. HiveMQ shall have no liability for any claim or demand arising from (i) an allegation that does not state with specificity that HiveMQ Platform is the basis of the claim; (ii) the use or combination of HiveMQ Platform or any part thereof with software, hardware, or other materials not developed by HiveMQ where HiveMQ Platform or use thereof would not constitute infringement but for said combination; (iii) modification of HiveMQ Platform by a party other than HiveMQ, where the use of unmodified HiveMQ Platform would not constitute infringement; (iv) an allegation that the HiveMQ Platform consists of a function, system or method that utilizes functionality that is in general use in the industry; or (v) an allegation made against Customer prior to the execution of this Agreement or any

allegation based upon actions taken by Customer prior to the execution of this Agreement, or relating to any patent that Customer was aware of prior to the execution of this Agreement. Customer shall bring to HiveMQ's attention any such prior or existing or known patent or other intellectual property claims, demands or allegations made on it that are material to the Section "**Infringements**", in writing, prior to the execution of this Agreement.

- c. The obligations under the Section "**Infringements**" and any other indemnification obligations set forth in this Agreement shall be subject to the following conditions: (i) Customer shall notify HiveMQ in writing within ten (10) days of learning of any claim for which indemnification is sought, provided however, that any failure to provide such notice shall relieve HiveMQ of its indemnification obligations hereunder only to the extent of any demonstrable prejudice suffered by HiveMQ as a result of such failure; (ii) HiveMQ shall have sole control of the defense or settlement of such claim, provided that Customer shall have the right to participate in such defense or settlement with counsel of its selection and at its sole expense and provided further that HiveMQ shall not enter into any settlement of any claim without Customer's prior, written approval, which approval shall not be unreasonably withheld, conditioned or delayed; and (iii) Customer shall reasonably cooperate with Company in the defense and settlement of the claim, at HiveMQ's expense.
  
- d. Subject to Section "**Limitation of Liability**", the Section "**Infringements**" states the sole remedy of Customer and the entire liability of HiveMQ with respect to any infringement of Intellectual Property Rights.

## 14. Warranty Disclaimer

HIVEMQ PLATFORM AND ALL SERVICES ARE PROVIDED BY COMPANY AS IS AND, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, COMPANY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, ORAL OR WRITTEN, INCLUDING, BUT

NOT LIMITED TO, THE IMPLIED WARRANTIES AND CONDITIONS OF NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY COMPANY, ITS EMPLOYEES OR AGENTS SHALL CREATE ANY WARRANTIES.

Further, HiveMQ does not represent or warrant that: (i) HiveMQ Platform will meet Customer's business requirements; (ii) HiveMQ Platform will be error-free or uninterrupted or that the results obtained from its use will be accurate or reliable; or (iii) all deficiencies in HiveMQ Platform can be found or corrected.

## **15. Limitation of Liability**

### **15.1. Limited Liability**

EXCEPT FOR AMOUNTS DUE HEREUNDER, LIABILITY ARISING FROM A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION "CONFIDENTIALITY", USE BY CUSTOMER OF HIVEMQ PLATFORM, IN WHOLE OR IN PART, OUTSIDE OF THE SCOPE OF THE LICENSES GRANTED HEREIN, OR A PARTY'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY AND DUE FROM CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH SUCH CLAIM OR CAUSE OF ACTION AROSE.

### **15.2. Exclusion of Consequential and Related Damages**

EXCEPT FOR AMOUNTS DUE HEREUNDER, LIABILITY ARISING FROM A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION

“CONFIDENTIALITY”, USE BY CUSTOMER OF HIVEMQ PLATFORM, IN WHOLE OR IN PART, OUTSIDE OF THE SCOPE OF THE LICENSES GRANTED HEREIN, OR A PARTY’S GROSS NEGLIGENCE OR WILFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY OR ITS EMPLOYEES OR AGENTS BE LIABLE TO THE OTHER PARTY OR ANY OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION DAMAGES DUE TO LOSS OF DATA, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF USE COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR COMPUTER FAILURE ARISING FROM THIS AGREEMENT OR THE USE OF THE HIVEMQ PLATFORM, HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY REMEDY. SOME STATES AND JURISDICTIONS DO NOT ALLOW LIMITATIONS ON DURATION OR THE EXCLUSION OF AN IMPLIED WARRANTY, SO THE ABOVE LIMITATION MAY NOT APPLY.

### **15.3. Limitation of Action**

Except for actions for non-payment or breach of either Party's intellectual property rights, no action (regardless of form) arising out of this Agreement may be commenced by either Party more than one (1) year after the cause of action has accrued.

## **16. Term and Termination**

### **16.1. Agreement Term**

This Agreement commences on the Effective Date and continues in force and effect until all Quotes have been terminated or have expired, subject to the termination rights under the Agreement.

### **16.2. Quote Term**

Subject to earlier termination as provided herein, each Quote shall be in force for the Initial Term. Thereafter each Quote shall automatically renew on an annual basis on



each anniversary of its Effective Date for one year periods (“**Renewal Term**”), unless a Party hereto provides written notification of its termination to the other Party no later than three (3) months immediately preceding the date on which the Quote would otherwise renew or unless earlier terminated as provided herein. During the Initial Term and Renewal Term an Quote can only be terminated in accordance with Section “**Termination**”.

### **16.3. Termination**

Either Party may terminate this Agreement or a Quote for cause immediately by written notice upon the occurrence of any of the following events:

- I. if the other Party ceases to do business, or otherwise terminates its business operations;
- II. if the other Party is adjudicated as bankrupt, or if a petition in bankruptcy is filed against the other party and such petition is not discharged within sixty (60) days of such filing; or
- III. if the other Party breaches any material provision of this Agreement and fails to fully cure such breach within thirty (30) days of written notice describing

### **16.4. Effect of Termination**

Termination shall not relieve Customer of the obligation to pay any Subscription Fees accrued or payable to Company prior to the effective date of termination. Upon termination or expiration of this Agreement and/or a Quote, the rights and licenses granted to Customer hereunder shall automatically terminate.

### **16.5. Separation Damages**

Upon expiration of this Agreement or termination in accordance with the Section “**Term and Termination**”, Customer shall not be entitled to any separation compensation or damages of any kind, including indemnification, compensation, reimbursement, or damages for loss of prospective compensation, goodwill or loss thereof, or expenditures, investments, leases, or any type of commitment made in connection with the business of such party or in reliance on the existence of this Agreement including,

but not limited to advertising and promotion costs, costs of supplies, termination of employees, employee salaries, and other such costs and expenses.

### **16.6. Survival**

Termination or expiration of this Agreement shall not relieve either party of any payment or other obligation under this Agreement which was to have been performed by such party prior to the termination. All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement including, without limitation, the provisions of an applicable Quote and Sections Sections “**Information Requests and Audits**”, “**Confidentiality**”, “**Proprietary Rights**”, “**Limitation of Liability**”, “**Effect of Termination**”, “**Separation Damages**”, “**Survival**” and “**General**” will survive the termination of this Agreement.

## **17. General**

### **17.1. Modification Right**

- a. HiveMQ may make changes to this Agreement from time to time subject to the following conditions:
  - i. Unless noted otherwise, material changes to the Agreement will become effective 30 days after they are communicated to Customer.
  - ii. If the changes will apply to new features or functionalities or the changes are required by a court order or applicable law, they will be effective immediately.
- b. HiveMQ shall have the following objection right in connection to changes to the Agreement as set forth in Section “**Modification Rights**”:
  - i. If a change to the Agreement (other than as described in Section “**Modification Rights**”, point 2) has a material adverse impact on Customer, then Customer may object to the change by notifying HiveMQ within 30 days after HiveMQ provides notice.
  - ii. If Customer so notifies HiveMQ, then Customer, in case a Subscription Period was agreed between the Parties, will remain governed by the

Agreement in effect immediately before the change until the earlier of: (a) the end of the then-current Subscription Period; or (b) 12 months after the notice was given.

## **17.2. Compliance with the Law**

Customer is responsible for compliance with legal obligations, especially any regulatory and security requirements. Customer acknowledges and agrees that the HiveMQ Platform and other technical data provided hereunder may be subject to restrictions and controls imposed by the United States Export Administration Act of 1979, as amended and the regulations promulgated thereunder. Customer represents that Customer, any of its Affiliates or other third parties receiving a sublicense in accordance with Section “**Sublicenses to Affiliates/Third-Parties**” or “**Use by Authorized Affiliates**“ are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties, including but not limited to the lists maintained by the United Nations Security Council, the U.S. Government (e.g., the U.S. Department of Treasury’s Specially Designated Nationals list and Foreign Sanctions Evaders list, and the U.S. Department of Commerce’s Entity List), the European Union or its member states, or other applicable government authority. A breach of this Section is a material breach of the Agreement. Customer further agrees to comply with all laws and regulations of all jurisdictions in Customer’s use of the HiveMQ Platform.

## **17.3. Choice of Law**

This Agreement will be governed by and construed in accordance with the laws of the State of New York without regard to conflicts of laws principles and specifically excluding the provisions of the United Nations Convention on the International Sale of Goods or the UCITA. Any legal action or proceeding with respect to this Agreement will be brought in the United States District Court for the Southern District of New York or any state court located in such Southern District. By execution and delivery of this Agreement, each of the Parties hereto accepts for itself and in respect of its property, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts.

#### **17.4. Assignment**

Customer may not assign this Agreement, in whole or in part, without the Company's prior written consent. Any attempt to assign this Agreement without such consent will be null and void. Company may freely assign this Agreement without Customer's consent. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

#### **17.5. Notices**

All notices in connection with this Agreement shall be in writing in English and shall be delivered by email to the contact specified in the Quote.

#### **17.6. Severability**

If any provision of this Agreement is found by any court, tribunal or administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from this Agreement and will be ineffective without, as far as is possible, modifying any other section or part of this Agreement, and the legality and enforceability of the other provisions of this Agreement will not be affected.

#### **17.7. Waiver**

No failure of either Party to exercise or enforce any of its rights under this Agreement will act as a waiver of such rights.

#### **17.8. Independent Contractors**

The Parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency between the Parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

#### **17.9. Force Majeure**

Neither Party will be responsible for any failure to perform due to causes beyond its reasonable control, including, but not limited to, acts of God, war, riot, embargoes, acts of civil or military authorities, denial of or delays in processing of export license

applications, fire, floods, earthquakes, accidents, strikes, or fuel crises, pandemics provided that such party gives prompt written notice thereof to the other Party.