

# HiveMQ Subscription 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.

## 2. 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”**
- **“Cluster”** means a collection of Customer’s physical and/or virtual nodes running HiveMQ Software used and configured by Customer as a single logical HiveMQ Software or service instance.
- **“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 Software 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 Software may be deployed and/or the maximum number of concurrent connections managed by HiveMQ Software and/or the physical locations at which the HiveMQ Software may be used.
- **“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 Software and which has originally, prior to such development, neither been a part or functionality of the HiveMQ Software, 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 Software and can be delivered to Customer as a separate software piece, independent of HiveMQ Software.
- **“Documentation”** means the documentation for the HiveMQ Software generally supplied by the Company to assist Customer in the use of the HiveMQ Software 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.
- **“Extensions”** means applications which provide additional functionalities to a Specific Version of HiveMQ Software 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 Software. Any references made in this Agreement to HiveMQ Software shall also apply to Extensions.
- **“Forseeable Damages”** has the meaning given to that term in Section **“Forseeable Damages”**.
- **“HiveMQ Software”** means a standard software of HiveMQ in the form of executable code which transmits and exchanges data between various devices as described in the applicable Quote, which is or will be delivered by Company to

Customer according to a Quote. HiveMQ Software also includes all related Documentation or Updates made available to Customer hereunder.

- **“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.
- **“License Files”** means license data according to the given Quote and a license key that is needed to use the HiveMQ Software sent to Customer in the form of an electronic file.
- **“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”**.
- **“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 Software and Extensions as agreed upon under a Quote.
- **“Quote”** means an order form issued by HiveMQ executed by Customer and HiveMQ specifying the HiveMQ Software and Services HiveMQ will provide to Customer under this Agreement.

- **“Renewal Term”** has the meaning given to that term in Section **“Quote Term”**.
- **“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 HiveMQ Software 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 Software 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 Software released by HiveMQ after the respective Subscription of HiveMQ Software, as further specified in Annex C.

### 3. Proprietary Rights

#### 3.1. Ownership

Company and its licensors shall be the sole and exclusive owner of all right, title and interest in and to HiveMQ Software and Intellectual Property Rights therein and thereto. All rights in HiveMQ Software not expressly granted to Customer hereunder are reserved to the Company and its licensors. There are no implied rights.

#### 3.2. Separate Licenses

HiveMQ Software 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 Software 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 Software and not Separately Licensed Third Party Technology to the same extent as Company is required to provide indemnification for HiveMQ Software under the terms of this Agreement. HiveMQ shall inform Customer of any notices and other instructions that are related to third party software components that are included in HiveMQ Software and will provide such notices and instructions in at least one of the following ways (i) automatically installed with the programs or in the installation details, (ii) in the program documentation or read me files, or (iii) listed in the file „licenses“ in the folder „third-party-licenses“ provided with HiveMQ Software or during the provision of Updates. Customer shall comply with all instructions and notices related to third party software components and shall reproduce all third party notices in an appropriate location in the application package and include any source code (to the extent source code is provided by HiveMQ) as required by the applicable notices or as otherwise directed by HiveMQ.

### **3.3. 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.

### **3.4. 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.

## **4. License Grant and Restrictions**

### **4.1. Grant of Rights**

Subject to Customer's material compliance with its obligations under this Agreement (including but not limited to Customer's on-time payment of Subscription Fees due under the given Quote), HiveMQ grants Customer a non-exclusive, non-sublicensable, non-transferable (except as expressly permitted by the Agreement or a Quote), limited license to use the HiveMQ Software, including Updates and Documentation, during the Subscription Period solely for the Contractual Use. HiveMQ Software may contain Separately Licensed Third Party Software which is licensed under Separate Terms. As far as the Separate Terms supersede this Agreement, such Separate Terms will govern Customer's use of that Separately Licensed Third Party Software.

### **4.2. Sublicenses to Affiliates/Third-Parties**

Customer may sublicense HiveMQ Software to Affiliates or third party suppliers or service provider solely for the provision of HiveMQ Software for the Contractual Use by Customer provided that (i) such right is limited to Customer's Contractual Use as specified in the Quote in which the Affiliate or third party is explicitly mentioned and (ii) the Affiliate will abide by all use restrictions and obligations applicable to Customer. Customer shall ensure its Affiliates and/or third party suppliers or service providers 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. Customer acknowledges that it may not create or receive separate License Files from HiveMQ for such sub-licensees.

### **4.3. Sublicense to Authorized Affiliates**

Customer may sublicense HiveMQ Software to Authorized Affiliates defined in a given Quote provided that (i) such right is limited to Authorized Affiliate's Contractual Use as



specified in the Quote and (ii) the Affiliate will abide by all use restrictions and obligations applicable to Customer. Customer shall ensure its 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 Authorized Affiliates as if they were Customer's own acts, defaults, omissions or negligence. Customer acknowledges that it may not create or receive separate License Files from HiveMQ for such sub-licensees. Section "**Sublicenses to Affiliates/Third-Parties**" does not apply to Authorized Affiliates.

#### **4.4. Restrictions**

Except as expressly permitted in this Agreement, Customer shall not (and shall not allow or authorize any third party to): (i) decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, underlying user interface techniques or algorithms of any portion of HiveMQ Software that is provided to Customer in object code form (unless permitted by applicable law); (ii) modify or create derivative works of HiveMQ Software, in whole or in part, (iii) incorporate, embed or bundle the HiveMQ Software, in whole or in part, with or into another product or other computer software code or permit End Customers to use HiveMQ Software other than in connection with and as a part of the Customer's Services, (iv) copy or reproduce HiveMQ Software, in whole or in part, other than a reasonable number of back-up copies, (v) remove, alter, cover or obscure any proprietary rights notice, copyright notice or any other notice or Company Mark that appears on or within HiveMQ Software; or (vi) disclose results of any benchmark tests without HiveMQ's prior written consent.

#### **4.5. Use of Test Versions of HiveMQ Software**

If HiveMQ provides any test or non-production license to HiveMQ Software (including sandboxes) under a given Quote, 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.

#### **4.6. Use of Extensions**

Extensions always refer to a specific Major, Feature and Maintenance Versions of the HiveMQ Software (“**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 HiveMQ Software as detailed in the applicable Quote. Unless otherwise provided for in a Quote, rights of use to the Extension are granted for the Subscription Period applicable to the Specific Version of the HiveMQ Software which they functionally extend.

#### **4.7. Technical Measures against Excessive Use**

HiveMQ reserves the right (but is under no obligation) to restrict the use of HiveMQ Software to Contractual Use by means of technical measures.

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

### **5.1. Discontinuance Right**

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

### **5.2. Deprecation Announcement**

In the event that HiveMQ intends to discontinue or make backwards incompatible changes to the HiveMQ Software, 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.

### **5.3. 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 Software from time to time. Such updates may relate to any features or functionality and/or the limitations of the HiveMQ Software. If HiveMQ makes a material change to the HiveMQ Software, 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.

## **6. Delivery**

At the beginning of the term of the Subscription, subject to the Receipt of the Initial Payment, HiveMQ will make the following information and files available to the Customer:

### **6.1. HiveMQ Software**

- a. HiveMQ shall make HiveMQ Software available to Customer for download. If HiveMQ Software has not already been downloaded by Customer, HiveMQ shall email Customer a URL link for the download.
- b. Customer shall be responsible for meeting the technical requirements for the use of HiveMQ Software in its Specific Version. The technical requirements are specified in the Documentation in each Specific Version made available to the Customer under "System Requirements".
- c. Customer acknowledges that the system requirements only refer to the use of HiveMQ Software itself. Customer shall be responsible to identify and implement any deviating or additional system requirements for the intended use case, including, but limited to, sufficient server resources, an adequate Internet connection.

## **6.2. Documentation**

HiveMQ shall provide Customer with an URL link to the Documentation via email.

## **6.3. License Files**

HiveMQ shall provide Customer with license data and license keys required for the HiveMQ Software in the form of an electronic file (hereinafter “**License File**”).

# **7. Pricing**

## **7.1. 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.

## **7.2. 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.

### **7.3. 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) on all late payments from the original due date due to the payment date plus the debt collection costs. In addition, if, after receipt of the late payment notice, Customer does not pay the applicable invoice within five (5) days, HiveMQ may suspend the Support Services. Further rights of HiveMQ, including but not limited to termination rights under Section “**Termination**”, shall remain unaffected.

### **7.4. 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 Software 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.

### **7.5. 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 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.

#### **7.6. 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. Information Requests and Audits**

### **8.1. 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 Software including the necessary details to assess the Contractual Use and (ii) any HiveMQ Software sub-licenses granted by Customer pursuant to Section "**Sublicenses to Affiliates/Third-Parties**". Customer shall provide HiveMQ with the information within fifteen (15) days of written notice.

### **8.2. 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 Hive Q 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.

## **9. Support and Professional Services**

### **9.1. 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.

### **9.2. 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.

## **10. 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.

## **11. Confidentiality**

### **11.1. Confidential Information**

"Confidential Information" means: (i) the non-public code portions of the HiveMQ Software 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.

### **11.2. 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.

### **11.3. 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.

#### **11.4. 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.

#### **11.5. 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**”.

## 12. Infringements

### 12.1. Indemnification by HiveMQ

Subject to the provisions of the Section “**Infringements**”, if a third party makes a claim against Customer alleging that HiveMQ Software (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.

### 12.2. Exclusions and Procedure

- a. In the event that HiveMQ Software 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 Software without loss of significant functionality, or (ii) procure a license for Customer to continue using HiveMQ Software 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 Software. 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 Software is the basis of the claim; (ii) the use or combination of HiveMQ Software or any part thereof with software, hardware, or other materials not developed by HiveMQ where HiveMQ Software or use thereof would not constitute infringement but for said combination; (iii) modification of HiveMQ Software by a party other than HiveMQ, where the use of unmodified HiveMQ Software would not constitute infringement; (iv) an allegation that the HiveMQ Software 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.

## **13. Warranty Disclaimer**

HIVEMQ SOFTWARE 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 Software will meet Customer's business requirements; (ii) HiveMQ Software 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 Software can be found or corrected.

## **14. Limitation of Liability**

### **14.1. Limitation of 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 SOFTWARE, 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.

## **14.2. 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 SOFTWARE, 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 SOFTWARE, 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.

## **14.3. 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.

# **15. Term and Termination**

## **15.1. 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.

## **15.2. 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**”.

## **15.3. 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

## **15.4. 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.

## **15.5. 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.

### **15.6. 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 “**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.

## **16. General**

### **16.1. Modification Right**

- a. HiveMQ may make changes to this Subscription Terms 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 Subscription Terms as set forth in Section “**Modification Rights**”:
  - i. If a change to the Subscription Terms (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 Subscription Terms 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.

## **16.2. 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 Software 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**” 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 Software.

## **16.3. 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.

#### **16.4. 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.

#### **16.5. 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.

#### **16.6. 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.

#### **16.7. 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.

#### **16.8. 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.

## **16.9. 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.