Kinsta Inc. Terms of Service

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Thank you for choosing Kinsta!

By clicking the acceptance checkbox during your signup process or using the Kinsta Services, you agree to these Terms of Service. If you do not accept these Terms, do not register for an Account, or purchase, access, or use the Kinsta Services in any way.

PLEASE READ THESE TERMS OF SERVICE CAREFULLY, INCLUDING THE BINDING ARBITRATION CLAUSE AND CLASS ACTION WAIVER IN SECTION 12 WHICH AFFECTS HOW DISPUTES ARE RESOLVED.

1. Introduction

A. **Key Definitions**. Kinsta Inc. (hereinafter, "**Kinsta**," "**we**," "**us**," or "**our**") provides hosting services, software, and support through our MyKinsta application; DevKinsta local website development software; Beta Services (defined below); and other related websites (including kinsta.com), forums, courses, communities, events, applications, services, software, and personnel (collectively, the "**Services**"). The individuals or organizations which purchase, access, or use the Services are referred to in the Agreement as "**Customer**", "**you**", or "**your**". The websites, applications, databases, and any other services or technologies created and managed by our Customers through our Services are referred to in the Agreement as "**Customer Applications**".

B. **Agreement; Precedence**. These Terms of Service ("**Terms**"), the Service Level Agreement ("**SLA**"), the Data Processing Addendum ("**DPA**") (each located at https://kinsta.com/legal/), the Kinsta documentation (located at https://kinsta.com/docs/) ("**Kinsta Documentation**"), and any proposal, quote, or order form issued by Kinsta and mutually executed by the parties ("**Order Form**") form a binding legal agreement

between Kinsta and you. The Terms, SLA, DPA, Kinsta Documentation, and any Order Form are collectively referred to as the "**Agreement**", which is effective on the date Customer clicks the acceptance checkbox and completes the sign up process for the applicable Services. If there is any conflict among the documents which comprise the Agreement, the order of precedence shall be as follows:

a. Order Form
b. DPA
c. Terms
d. SLA
e. Kinsta Documentation

C. **Your Authority**. You represent, warrant, and agree that you have the full power and authority to enter into and perform under the Agreement and form a binding contract on behalf of yourself or on behalf of the person, organization, entity, or group that you represent.

D. **Updates to the Terms**. We may make changes to these Terms at any time at our discretion. We will provide email notice of any material changes to these Terms to the Company Owner (defined below). We may also or alternatively post a notice of material changes to these Terms in MyKinsta. Your continued use of our Services for more than 30 days following the earlier of our email or MyKinsta notification will constitute your acceptance of our changes to these Terms. If you do not agree to any changes to these Terms, you may terminate your Account and the Agreement pursuant to Section 8 of these Terms.

2. Account and Eligibility

A. **Hosting Plan and Users**. Customer is required to subscribe to one or more hosting Services (the "**Hosting Plan**"), and all users of the Hosting Plan, regardless of the level of access or permission they are granted, must register a user account ("**User Account**") and agree to be bound by these Terms. A User Account and a Hosting Plan are collectively referred to as an "**Account**" in the Agreement.

B. **Company Owners**. The user who initially creates the Hosting Plan is the company owner (the "**Company Owner**") and may grant different levels of access and permission to other authorized users of the Hosting Plan. **Please note that only the Company**

Owner can (i) terminate a Hosting Plan or (ii) transfer control or ownership of the Hosting Plan to another user. If there is a dispute about the identity of the Company Owner or the ownership of an Account, we reserve the right to investigate and determine ownership of the Account, including the identity of the legitimate Company Owner, based on our reasonable judgment in accordance with applicable law.

C. **Account Notifications**. You agree that the email address you provide when you create your Account ("**Designated Email Address**") shall be used for official notification purposes related to your Account and the Services. You agree to verify that email sent by Kinsta successfully reaches the inbox associated with your Designated Email Address and to update your Designated Email Address when necessary. In addition, you acknowledge that Kinsta may post official notifications related to your Account and the Services within MyKinsta. You agree that if you do not read email sent by Kinsta, regularly log into MyKinsta to read posted notifications, and take corresponding action, Kinsta's provision of the Services may be negatively impacted and any such impact will not be covered by the SLA.

D. **Age Restrictions**. You must be at least 13 years of age (or any higher minimum age in the jurisdiction where you reside) to access or use the Services. If you are at least 13 years of age (or any higher minimum age in the jurisdiction where you reside) but have not yet reached the age of majority in your jurisdiction (usually 18 years of age) (a "**Minor**"), then please read these Terms with your parent or legal guardian. The parent or legal guardian of a Minor shall be bound by these Terms and responsible for all access and use of the Account or Services, including purchases, by the Minor.

E. **Trade Sanctions**. You are not eligible to use the Services or register for an Account if you are - and you may not use the Services for or on behalf of any person or organization - (i) located in, under the control of, or a national or resident of any country to which the United States has embargoed goods or services, including, but not limited to, Iran, Syria, Cuba, North Korea, and the the Crimea, Donetsk People's Republic (DNR), or Luhansk People's Republic (LNR) regions of Ukraine or (ii) subject to sanctions by the United States, European Union, United Kingdom, United Nations, or any other applicable government or international body.

F. **Your Account Obligations**. By using the Services or registering for an Account, you agree to (i) provide accurate, truthful, current, and complete information; (ii) maintain and promptly update your Account information upon any changes; (iii) maintain the security

of your Account by protecting your password and restricting access to your Account; (iv) promptly notify Kinsta if you discover or otherwise suspect any security breaches or unauthorized access related to your Account or the Services; (v) take responsibility for all activities that occur under your Account and accept all risks of any access to your Account; and (vi) not open multiple Accounts in order to bypass any restrictions or overage charges set forth by Kinsta.

3. Fees, Auto Renewal, and Payment

A. **Your Obligation to Pay Fees**. Customer shall timely pay all required fees as determined by Kinsta in its sole discretion (the "**Fees**") by a valid payment method. Fees are non-refundable, except as expressly stated otherwise in the Agreement. Kinsta may terminate or suspend your Account for failure to timely pay Fees, disputed charges, or chargebacks. If you use the Services for or on behalf of your own third-party customers to design, build, or manage Customer Applications, you remain fully responsible for all payments of Fees in connection with those Services, even if your own customers fail to make payment to you. Fees are stated in U.S. Dollars and, except as otherwise indicated at checkout, do not include any taxes. You are responsible for paying any taxes or international transaction fees, and you agree to indemnify Kinsta for any such taxes or fees.

B. **Fee Disputes**. Disputes about Fees must be raised in writing with Kinsta within thirty (30) days after the earlier of (i) your receipt of an applicable invoice or other notification of the Fees or (ii) your payment of the Fees. Customer hereby waives any disputes about Fees that are not timely raised.

C. **Types of Fees and Auto Renewal**. Services may be either prepaid or postpaid depending on the Services to which you subscribe.

    a. **For any *prepaid* Services to which you subscribe, you acknowledge and agree that (i) Fees will be paid at the beginning of the subscription period, and (ii) that your prepaid Services will renew automatically.**

    b. **For any *postpaid* Services to which you subscribe, you acknowledge and agree that (i) Fees will accrue and be paid once per month or when your use of the Services reaches a preset billing threshold, whichever occurs first, and (ii) that all postpaid Services will renew automatically.**

c. **Fees will be automatically charged to the valid payment method you provided. To avoid automatic payments and renewal, you may terminate your Services prior to renewal.**

D. **Fees May Change. Kinsta reserves the right to increase its Fees upon reasonable prior notice to you.** You may avoid the increased Fee by terminating your Services prior to the new Fee taking effect. **If you received a promotional Fee, promotional credit, or free trial, Kinsta will automatically renew your Services and charge your payment method at the standard Fee upon expiration of the promotion or free trial period.**

4. Customer Content

A. **Definition**. "**Customer Content**" means text, data, information, code, software, domain names, materials, designs, photos, images, media files, logos, or any other content transmitted, stored, or otherwise processed by or on behalf of Customer through the Services for the purpose of creating, managing, and operating your Customer Applications. For the avoidance of doubt, your Customer Applications constitute your Customer Content.

B. **You Own Customer Content**. You retain all rights to and ownership of your Customer Content. You will provide Kinsta with Customer Content in a form requiring no processing or modification by Kinsta.

a. **YOU ARE SOLELY AND FULLY RESPONSIBLE FOR CUSTOMER CONTENT.** Without limiting the foregoing, you are solely and fully responsible for (i) the design and development of the Customer Content (ii) all necessary changes to the Customer Content, such as changes to the appearance of Customer Applications; (iii) all code development, creation, editing, writing, testing, auditing, modification, and optimization necessary or desirable for the operation of the Customer Content; and (iv) optimizing the performance of the Customer Content. If you choose to host the Customer Content with a different provider you are solely and fully responsible for migration of the Customer Content to the new provider.

b. Kinsta has no obligation to monitor, validate, correct, or update Customer Content in any way. Kinsta may, in its sole discretion, alter, remove, or refuse to display any Customer Content that is in violation of these Terms.

C. **Our Limited Rights**. In order to provide the Services, Kinsta must access and use the Customer Content in a variety of ways on your behalf. **For the sole and limited purpose of providing you the Services**, you hereby grant to Kinsta a non-exclusive, transferable, sublicensable, worldwide, royalty-free right to access, use, copy, modify, publicly display, publicly perform, reproduce, translate, create derivative works from, and distribute Customer Content.

5. Acceptable Use Policy and Protection of the Services

A. **Prohibited Customer Content**. You represent, warrant, and agree that Customer Content shall not (i) infringe, misappropriate, or violate any patent, copyright, trademark, trade secret, confidentiality, moral, or privacy right, or any other proprietary or intellectual property right; (ii) be defamatory, fraudulent, false, misleading, or deceptive; (iii) constitute, consist of, or enable spam, phishing attempts, “chain letters”, “pyramid schemes”, or other Malicious Activity (defined below); (iv) be pornographic, sexually obscene, sexually exploitative of children, or otherwise sexually explicit; or (v) promote terrorism, violence, discrimination, bigotry, racism, hatred, harassment, prostitution, human trafficking, or harm against any individual or group. Whether Customer Content is in violation of these Terms shall be determined in Kinsta’s reasonable discretion. It is our policy in appropriate circumstances to terminate the Accounts of repeat infringers in accordance with the U.S. Digital Millennium Copyright Act.

B. **Be Decent.** Treat Kinsta and its personnel with decency, professionalism, and respect. We will do the same for you.

C. **Compliance with Laws.** You agree to use our Services in compliance with applicable local, state, national, and international laws and regulations, including, but not limited to, laws regarding fraud, anti-corruption, trade sanctions and export-control, intellectual property, and data privacy. You agree to cooperate with Kinsta, including the provision of information reasonably requested by Kinsta, to ensure Kinsta’s compliance with applicable laws in connection with your use of the Services.

D. **Malicious Activity.** You agree not to engage in, attempt to engage in, or encourage or assist others to engage in any Malicious Activity while accessing or using the Services. "**Malicious Activity**" means any of the following alone or in combination: (i) use, display, mirror, or frame the Services or any individual element within the Services; (ii) access or tamper with non-public areas of the Services; (iii) test the vulnerability of any Kinsta system or breach any security or authentication measures; (iv) circumvent any measure implemented by Kinsta or any third party to secure the Services; (v) copy, modify, decompile, disassemble, reverse engineer, tamper with, or attempt to derive the source code of any part of the Services; (vi) interrupt, damage, destroy, or limit the functionality of the Services; or (vii) host, upload, or in any way transmit malware, viruses, or any other malicious code or activity.
    a. Customers shall cooperate with Kinsta to promptly isolate, mitigate, and eliminate any Malicious Activity and take appropriate corrective action.
    b. If Malicious Activity is determined by Kinsta to have occurred unintentionally as part of a website migration performed by the Customer, the Customer shall be afforded the opportunity to promptly eliminate the Malicious Activity. If the Customer fails to promptly eliminate the Malicious Activity as directed by Kinsta, then Kinsta will eliminate the Malicious Activity for a fee pursuant to our malware removal policies.
E. **Resource Limitations.** You shall ensure that your Hosting Plan resources and quotas are accurately measured and maintained, such as visits, disk space, CDN, and bandwidth. Do not overburden the Services or any CPUs, servers, or other resources used in connection with the Services. Without limiting the foregoing, you shall not use the Services to provide open proxies, for Internet Relay Chat (irc), for cryptocurrency mining activity, or for any other activity for which the Services are not promoted on our website.
F. **Testing of Customer Applications**. Customers may perform limited security and penetration testing of their Customer Applications (a "**Customer Test**") conditioned on compliance with the Agreement, our instructions, and the following:
    a. Load testing in any form is prohibited.
    b. Customers shall provide notice of the schedule and scope of the Customer Test to security@kinsta.com seven (7) days prior to commencing the Customer Test.

Your notification is for our monitoring and record keeping purposes only, and we will not reply.

c. Without limiting any other provisions in these Terms, Customer Tests shall not impact or affect any Kinsta or third-party system other than your Customer Applications. For illustrative purposes only:
    i. Do not test the vulnerability of MyKinsta, kinsta.com, DevKinsta, or another customer's websites or applications.
    ii. Do not attempt to breach the MyKinsta login system, version control system authentication integration, security measures on the kinsta.com signup pages, etc.
    iii. Do not attempt to circumvent or bypass Cloudflare or the reCAPTCHA service, etc.
d. Kinsta has no obligation to support, assist, or advise you in connection with a Customer Test. Kinsta will not disable or diminish our security measures to allow a Customer Test.
e. The results of a Customer Test shall be promptly disclosed to security@kinsta.com and shall be Kinsta's Confidential Information. Kinsta has no obligation to take any remedial action in connection with a Customer Test.

G. **Protection of the Services**. Without limiting our rights in Section 8:
    a. Kinsta may immediately suspend all or part of Customer's use of the Services and take any other reasonable action to protect the Services if (i) Customer fails to correct a violation of this Section 5 within twenty-four (24) hours of Kinsta's request to correct the violation, (ii) Kinsta reasonably believes that your use of the Services harms or will harm the Services, our infrastructure, systems, or networks, or our other customers, (iii) Kinsta reasonably believes there is an unauthorized third-party access to the Services, or (iv) Kinsta reasonably believes that your use of the the Services causes or will cause Kinsta to violate applicable law.
    b. Kinsta will use its commercially reasonable efforts to (i) notify Customer of the basis for the suspension or other action taken pursuant to this Section and (ii) promptly end any such suspension or other action when the circumstances giving rise to the suspension or other action have been resolved.

6. Kinsta's Property and Your Rights

A. **Kinsta Owns the Services**. All rights, title, and interest in the Services are solely and exclusively owned by or licensed to Kinsta, including any and all software, servers, artwork, graphics, images, website templates and widgets, literary work, source and object code, computer code (including html), applications, audio, music, video and other media, designs, animations, interfaces, documentation, derivatives and versions thereof, the look, feel, and arrangement of the Services, methods, products, algorithms, data, logs, interactive features and objects, advertising and acquisition tools and methods, inventions, trade secrets, logos, domains, customized URLs, trademarks, service marks, trade names and other proprietary identifiers, whether or not registered and/or capable of being registered, and any derivations thereof.

B. **Your Limited Rights**. Subject to your compliance with the Agreement, you are granted a limited, non-exclusive, non-transferable, non-sublicensable, fully revocable right to access and use the Services for the sole purpose of creating, managing, and operating your Customer Applications. You shall not rent, lease, license, sell, distribute, or otherwise transfer the Services to third parties, except as permitted by the Agreement or otherwise authorized by Kinsta in writing. No licenses or rights are granted to you by implication or otherwise under any intellectual property rights owned or controlled by Kinsta or its licensors, except for the rights expressly granted in this Section. Upon termination of the Agreement or your Account, you shall no longer have any right to the Services, and you must immediately cease use of the Services and destroy all copies in your possession.

C. **Customer Recommendations**. Separate and apart from Customer Content, we welcome questions, comments, suggestions, and ideas about Kinsta and our Services ("**Recommendations**"). If you provide a Recommendation, you agree that it is non-confidential and shall become the sole property of Kinsta. Kinsta shall own exclusive rights to, including all intellectual property rights, and shall be entitled to the unrestricted use of Recommendations, along with any changes, modifications, or upgrades we make to the Services based on the Recommendation. You agree that Kinsta is not obligated to provide acknowledgment or compensation to you in exchange for Recommendations.

7. Third-Party Services

The Services may display, permit access to or use of, install, or incorporate third-party content, promotions, websites, apps, software, services, and resources (collectively "**Third-Party Services**") that are not under Kinsta's control. You acknowledge that any Third-Party Services that you use in connection with the Services are not controlled by Kinsta, and you take sole responsibility and assume all risk arising from your interaction with or use of any Third-Party Services. You are responsible for reading, understanding, and complying with the license, terms and conditions, and privacy policy that applies to your use of any Third-Party Services.

8. Termination

A. **Your Breach**. If you are in breach of the Agreement, Kinsta may immediately terminate or suspend the Agreement and your Account. Upon any such termination or suspension, you are not permitted to register for another Account or access the Services without our prior written permission.

B. **For Convenience**. Kinsta may terminate your Account and the Agreement for convenience after we provide you fourteen (14) days prior written notice. You may schedule a termination of your Account and the Agreement within MyKinsta at any time, which will take effect at the end of your then-current subscription period.

C. **Modification or End of Services**. We may in our sole discretion modify or discontinue, temporarily or permanently, all or any portion of our Services. Kinsta will use its commercially reasonable efforts to provide prior notice of any such modification or discontinuance which impacts Customer's Account and refund your prepaid Fees for any discontinued Services.

D. **Survival**. Any provision of these Terms that contemplates performance or observance subsequent to termination or expiration of the Agreement or your Account (including, without limitation, provisions related to confidentiality, limitation of liability, indemnification, and dispute resolution) survive termination or expiration and continue in full force and effect.

9. DISCLAIMERS

A. **Security**. Kinsta implements commercially reasonable security measures to help protect the Services from threats, including the measures set forth in our DPA. However, Kinsta cannot guarantee that our security measures will be error-free, that Customer Applications will always be secure, or that unauthorized third parties will never be able to defeat our security measures or those of our third-party service providers.

B. **Legal Disclaimer**. EXCEPT AS OTHERWISE SET FORTH IN THESE TERMS, ALL SERVICES ARE PROVIDED "AS IS" AND “AS AVAILABLE” AND KINSTA HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, KINSTA MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL (A) MEET CUSTOMER’S OR ANY OTHER PERSON'S REQUIREMENTS; (B) OPERATE WITHOUT INTERRUPTION; (C) ACHIEVE ANY INTENDED RESULT; (D) BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES; OR (E) BE SECURE, ACCURATE, COMPLETE, FREE OF MALICIOUS ACTIVITY OR HARMFUL CODE, OR ERROR FREE.

10. LIMITATION OF LIABILITY

A. **No Indirect Damages**. EXCEPT FOR LIABILITY ARISING FROM WILLFUL OR CRIMINAL MISCONDUCT, NEITHER PARTY, ITS OWNERS, EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, CONTRACTORS, AFFILIATES, SUPPLIERS, OR LICENSORS, NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICES WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, REVENUE, SAVINGS, OR GOODWILL, ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT

(INCLUDING ALL LEVELS OF NEGLIGENCE), OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT THE PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF A LIMITED REMEDY SET FORTH IN THE AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

B. **Kinsta's Liability Cap**. IN NO EVENT WILL KINSTA'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SERVICES EXCEED (A) THE AGGREGATE AMOUNT OF FEES PAID OR OWED BY YOU TO KINSTA DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE CLAIM, OR (B) ONE HUNDRED DOLLARS ($100.00), WHICHEVER IS GREATER.

C. THE EXCLUSIONS AND LIMITATIONS OF LIABILITY AND DAMAGES SET FORTH IN THIS SECTION 10 ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN KINSTA AND YOU. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INDIRECT DAMAGES. ACCORDINGLY, THE LIMITATIONS OF SECTIONS 9 AND 10 WILL APPLY TO YOU TO THE FULLEST EXTENT PERMITTED BY LAW.

11. Indemnity

A. **Customer Indemnification**. You agree to defend, indemnify, and hold harmless Kinsta (and each of our owners, officers, directors, employees, agents, contractors, licensors, and affiliates) (collectively the "**Kinsta Indemnitees**") from and against any and all losses, costs, expenses, damages, injuries, and/or liability of any kind, including attorney's fees, that a Kinsta Indemnitee may incur or suffer as a result of any claims, suits, proceedings, or investigations asserted or commenced by any third party, which arise out of or are in any way connected with (a) your access to or use of our Services; (b) Customer Content (including Customer Applications); (c) your breach or alleged breach of the Agreement; or (d) your violation of any law or the rights of a third party. We reserve the right, in our sole discretion, to control any action or proceeding, including selection of counsel, and determine whether we wish to settle it, and if so, on what terms, in which event you will cooperate with us in asserting any available defenses.

B. **Kinsta IP Infringement Indemnification**. Kinsta will defend and indemnify you against any third-party claims to the extent arising from allegations that your use of the Services infringes the third-party's intellectual property rights, unless such alleged infringement arises from (a) your use of the Services in breach of this Agreement, (b) a combination of the Services with other technology or materials not provided by Kinsta, unless such combination is required to use the Services, or (c) any Services provided to Customer free of charge (including Beta Services). If Kinsta reasonably believes the Services might infringe a third party's intellectual property rights, then Kinsta may, at its sole option and expense (i) procure the right for Customer to continue using the Services; (ii) modify the Services to make them non-infringing without materially reducing their functionality; or (iii) replace the Services with a non-infringing, functionally equivalent alternative. If Kinsta does not believe the remedies above are commercially reasonable, then Kinsta may suspend or terminate Customer's use of the impacted Services, subject to a pro rata refund of prepaid Fees for the suspended or terminated Services. Without limiting either party's termination rights, this Section states the Customer's sole and exclusive remedy under the Agreement for any third-party allegations of intellectual property rights infringement covered by this Section.

12. Dispute Resolution

A. PLEASE READ THIS SECTION CAREFULLY BECAUSE IT REQUIRES YOU TO ARBITRATE CERTAIN DISPUTES WITH KINSTA AND IT LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF.

B. **Informal Resolution**. We want to address your concerns without resorting to a formal legal case. Before filing a formal legal claim against Kinsta, please contact us at legal@kinsta.com. We'll try to resolve the dispute and address your concerns. If a dispute is not resolved within 15 days after submission, you or Kinsta may bring a formal proceeding as set forth in this Section 12.

C. **Mandatory Arbitration**. Any dispute, controversy, or claim arising out of or relating to the Services or the Agreement, or the breach thereof, shall be exclusively settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof; provided, however, that you and

Kinsta are not required to arbitrate any dispute in which either party seeks equitable or injunctive relief for the alleged unlawful use of copyrights, trademarks, trade names, logos, trade secrets, patents, or any other Confidential Information or intellectual property.

D. **Exclusive Jurisdiction and Venue**. You and Kinsta agree that arbitration will occur exclusively in the City of Wilmington, State of Delaware, and that arbitration will be conducted confidentially by a single arbitrator. If for any reason this agreement to arbitrate does not apply to the dispute, you and Kinsta agree that any judicial proceeding, including any appeal of an arbitration award, will be brought exclusively in the federal or state courts located in the City of Wilmington, State of Delaware. Both you and Kinsta exclusively consent to venue and personal jurisdiction in the City of Wilmington, State of Delaware.
E. **Choice of Law**. The Agreement and the resolution of any disputes shall be governed by and construed in accordance with the laws of the State of Delaware, USA without regard to its conflict of laws principles.
F. **Waivers.** BOTH KINSTA AND YOU WAIVE THE RIGHT TO A JURY TRIAL. WHETHER THE DISPUTE IS HEARD IN ARBITRATION OR IN COURT, YOU WAIVE ANY RIGHT TO COMMENCE A CLASS ACTION, CLASS ARBITRATION, OR OTHER REPRESENTATIVE ACTION OR PROCEEDING.

13. Publicity

During the term of this Agreement, you grant Kinsta a limited, non-exclusive, and royalty-free license to use your name, logos, and related trademarks on our website or in other marketing communications for the sole purpose of referencing you as a Kinsta customer. You may revoke the rights granted to us in this Section 13 at any time by emailing PublicityMarketing@Kinsta.com.

14. Confidentiality

A. Each party (as the "**Discloser**") may disclose or make available to the other party (as the "**Recipient**") information that is confidential, sensitive, or proprietary in nature ("**Confidential Information**"). Confidential Information does not include information

which: (a) is known to the Recipient, as evidenced by its written records, prior to receipt thereof; (b) is disclosed to the Recipient by a third party, and that third party is free of any confidentiality agreement with the Discloser and has a legal right to make such disclosure; (c) is or becomes part of the public domain other than through an act or omission of Recipient; (d) is independently developed by or for the Recipient as evidenced by its written records, without use of any Confidential Information of the Discloser; or (e) is expressly labeled by the Discloser as not confidential.

B. The Recipient shall: (a) protect and safeguard the confidentiality of the Discloser's Confidential Information with at least the same degree of care as the Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (b) not use the Discloser's Confidential Information for any purpose other than to exercise its rights or perform its obligations under the Agreement; and (c) not disclose any such Confidential Information to any person or entity, except to the Recipient's affiliates, employees, contractors, representatives, and authorized third parties ("**Representatives**") who need to know the Confidential Information in order for the Recipient to exercise its rights or perform its obligations under the Agreement or as required by law or legal process. For the avoidance of doubt, Kinsta may process and share personal data in accordance with our Privacy Policy. The Recipient shall be responsible for any breach of this confidentiality provision caused by any of its Representatives.

C. Upon the Discloser's request, Recipient shall take reasonable steps to destroy or erase any Confidential Information it holds, except the Recipient may retain copies of Confidential Information (in accordance with this Agreement): (a) that are securely stored in archival or computer back-up systems, (b) to meet legal or regulatory obligations, or (c) in accordance with bona fide record retention policies.

15. Beta Services

We may confidentially make features and tools available which are in beta or pre-release phase ("**Beta Services**"). KINSTA IS NOT RESPONSIBLE FOR ANY DAMAGES CAUSED BY YOUR USE OF BETA SERVICES. The SLA does not apply to Beta Services. All information related to the Beta Services is Kinsta's Confidential Information, and you agree to provide us feedback on the Beta Services. Notwithstanding any other

provision in the Agreement, Kinsta may terminate your Beta Services without notice at any time for any lawful reason.

16. Miscellaneous

The Agreement constitutes the entire understanding and agreement between Customer and Kinsta and supersedes all prior and contemporaneous understandings and agreements, both verbal and written, between Customer and Kinsta regarding its collective subject matter. The terms and conditions of the Agreement shall supersede any conflicting, additional, or different terms and conditions contained on or incorporated in any purchase order, communication, or other document issued by the Customer. Our failure or delay in exercising any right, power, or privilege under the Agreement shall not operate as a waiver thereof. The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of any other provision of the Agreement, all of which shall remain in full force and effect.