

This End User License Agreement (this “**EULA**”) is entered by and between the purchaser and/or end user (“**Subscriber**,” “**You**,” or “**Your**”) of the Software (defined below), and Konnektive LLC (“**Konnektive**”), a Puerto Rico Limited Liability Company as of the date you accept or execute this EULA (the “**Effective Date**”). Both Konnektive and Subscriber may be referred to herein individually as a “Party” and/or collectively as the “**Parties**.” Capitalized terms used in this EULA, other than those capitalized for grammatical reasons, are defined in the Section in which they are first used as indicated by bold type. This English language version of this EULA is the controlling version regardless of any translation.

**IMPORTANT NOTE TO BE READ BEFORE ACCESSING OR USING THE SOFTWARE.** Konnektive licenses the accompanying Software (defined below) to you only upon the condition you accept all of the terms contained in this Agreement (defined below). Before you click indicating acceptance of the purchase of, and prior to using the Software, you should carefully read all the terms and conditions of this Agreement. By clicking “select plan,” “activate now,” “submit,” “order now,” or “purchase” to open an account with Konnektive, or any other application made available by Konnektive, by your use of the Software, or by executing this EULA and completing the Konnektive purchase order, you are consenting to be bound by and are becoming a party to the contract formed by this EULA, and the attached Exhibits, including the purchase order, all payment terms, policies, practices, rules, standards and guidelines (collectively, the “Policies”) related to the Software and/or Services (defined below) (this EULA and the Policies, collectively referred to as, the “Agreement”) and also will be acknowledging that you have the authority to enter into this Agreement and bind yourself or your company, as applicable. If you do not agree to all of the terms of this Agreement, Konnektive is unwilling to license the Software to you, in which event do not click acceptance of its terms and stop the account setup process or any use of the Software.

Each Party agrees that any of its representatives, employees, affiliates, members or any person or entity acting on its behalf with respect to the provision of or use of the Services shall be bound by, and shall abide by, the terms of this Agreement.

## 1. KONNEKTIVE OFFERINGS; REGISTRATION

**1.1. The Software and Services.** Konnektive owns, operates and provides access to a propriety customer relationship management and campaign management software system via the websites located at [www.Konnektive.com](http://www.Konnektive.com) and [www.funnelkonnekt.com](http://www.funnelkonnekt.com) (or such other address as Konnektive may notify Subscriber from time to time) or via an on-premise deployment model hosted on servers owned or contractually controlled by Subscriber (the “**Software**”). The Software and Subscriber Data (defined below) will be hosted on Konnektive servers. Konnektive will make the Software available to Subscriber on a limited basis, as set forth below, as part of a subscription service to be used by Subscriber for, among other things, campaign management and reporting, which includes features and functions such as customization/integration, user identification and password change management, data import/export, monitoring, technical support, maintenance, training, backup and recovery and change management, including associated materials and written documentation (the “**Subscription Services**” or “**Services**”). Konnektive’s Software and Subscription Services are collectively referred to as, the “**Konnektive Offerings.**”

**1.2. Account Creation.** In order to use the Software and exercise your Use Rights (defined below), you will need to register and create an account (an “**Account**”). As part of this registration process, Subscriber will identify administrative user names and passwords for Subscriber’s Account who will have the greater configuration and parameterization Use Rights that we grant to such category of users (“**Administrators**”). Subscriber shall be responsible for: (a) providing true, accurate, current and complete information in all material respects; (b) verifying the Administrators and updating such information on a regular basis; and (c) notifying Konnektive immediately of an unauthorized use of the Software of which Subscriber becomes aware. Konnektive reserves the right to refuse registration of or

cancel passwords it deems inappropriate.

**1.3 Support and Service Level Terms.** Subject to the terms hereof, Konnektive will: (a) provide Subscriber with reasonable technical support services in accordance with the terms set forth in Exhibit A, Paragraph 3; and (b) use commercially reasonable efforts to provide Subscriber Konnektive's Services and in accordance with the Service Level Agreement set forth in Section 16.

## **2. RIGHT TO USE.**

**2.1. Use Rights.** Subject to the terms and conditions of this Agreement and payment of all Fees (defined below), Konnektive hereby grants Subscriber during the Term (defined below), a limited, non-exclusive, non-transferable, non-sublicensable license with respect to the SaaS version of our Konnektive Offerings, to permit: (i) your Administrators to access the Konnektive Offerings and create and edit security profiles and configure Konnektive Offerings parameters for Business Users (defined below); (ii) your Business Users to access and perform the features and functions, and display the screens we make remotely available via the Internet or other means of connectivity for the purpose of entering and viewing data and creating, viewing and printing reports, all within the configurations and parameters set by your Administrators (the "**SaaS Subscription**").

The Use Rights are non-exclusive such that we may grant to others or reserve for our own use, rights that are the same as or similar to those we grant to you. All rights not expressly granted to you are reserved by Konnektive and its licensors. The Use Rights are personal to you and thus is non-transferable, non-assignable and non-sublicensable (unless expressly provided herein). As used herein: "Business Users" means those employees or independent contractors designated by your Administrators to have the limited Use Rights we grant to such category of users; and "**Authorized Users**" means Administrators and Business Users, collectively.

**2.2. Restrictions.** The Use Rights are the only acceptable use of the Konnektive Offerings. You, your Authorized Users, or any third party under your control are expressly prohibited from doing any of the following to the Konnektive Offerings, or using them for purposes of, or in connection with: (a) reverse engineering, making machine code human readable or creating derivative works or improvements; (b) scraping, crawling, downloading, screen-grabbing, or otherwise copying and/or transmitting them in any way we haven't specifically permitted; (c) commercially exploiting or providing them to third parties other than Authorized Users (whether by sublicense, sale or other means); (d) introducing, transmitting or storing malicious code; (e) interfering with their security or operation; (f) framing or mirroring them outside of your own intranets; (g) creating, benchmarking or gathering intelligence for a competitive offering; (h) removing, modifying or obscuring proprietary rights notices on them; (i) defaming or harassing; (j); infringing another party's intellectual property rights including failing to obtain permission to upload/transfer/display works of authorship; (k) intercepting or expropriating data; (l) spamming, spoofing or otherwise misrepresenting transmission sources or unsolicited telephone calls or facsimile transmissions; and/or (m) use of a single Account for multiple business entities. You must comply with all laws applicable to your use of the Konnektive Offerings including U.S. export control laws such as export to embargoed, prohibited or restricted countries or access by prohibited, denied and specially designated persons.

**2.3. Conditions.** You are responsible for the acts and omissions of all Authorized Users and any other person under your control that access and use the Konnektive Offerings. You acknowledge that the Software may contain features and functionality (including codes that act as keys to "lock" and "unlock" access to the Software) designed to render the Software technologically incapable of being used except as permitted by this Agreement. You must comply with all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Konnektive Offerings, including those related to data privacy, international communications and the transmission of technical or personal data. You also must notify us immediately of any unauthorized use of the Konnektive Offerings or any other known or suspected breach of security of the Konnektive Offerings or your Account.

**2.4. Use Rights Compliance.** Konnektive shall have the right to request from Subscriber its certification of compliance with the permitted number of Authorized Users (which are subject to Konnektive's sole discretion). Konnektive may terminate Subscriber's Account and refuse any and all current or future use of the Konnektive Offerings if any information provided by Subscriber is untrue, inaccurate, not current or incomplete in any material respect.

**2.5. Suspension Rights.** Without limiting Konnektive's rights under Section 5, Konnektive may suspend Subscriber's or any Authorized User's right to access or use any portion or all of the Konnektive Offerings if: (a) Konnektive determines that Subscriber or an Authorized User: (i) poses a security risk to or may materially harm the Konnektive Offerings or any third party; (ii) may adversely impact the services, systems, or content of any other Konnektive customer; or (iii) may subject Konnektive, its affiliates or any third party to liability; or (b) Konnektive is otherwise required by applicable law or regulation to do so. In the event of a suspension, Konnektive will, where not prohibited by applicable law or regulation and reasonable under the circumstances, provide Subscriber with prior notice of any such suspension and an opportunity to take steps to avoid any such suspension. Any suspension shall apply to the minimum necessary portion of the Konnektive Offerings and only be in effect for as long as reasonably necessary to address the issues giving rise to the suspension. Subscriber acknowledges that in the event of any such suspension, Subscriber will not have access to the Konnektive Offerings (or a portion thereof) and thus, may be unable to access any Subscriber Data that is stored within the Konnektive Offerings. Upon any suspension, Subscriber shall remain responsible for all Fees it has incurred through the date of suspension and for any Fees with respect to the Konnektive Offerings to which Subscriber continues to have access and charges for in-process tasks completed after the date of suspension. Konnektive's right to suspend is in addition to any right to terminate this Agreement (or portion thereof) pursuant to Section 10.

### **3. INTELLECTUAL PROPERTY AND DATA**

**3.1. Konnektive IPR.** As between you and Konnektive, all right, title and interest, including all intellectual property rights (including copyrights, trademarks and patents), proprietary rights (including trade secrets), and moral rights (including rights of authorship and modification) throughout the world ("**IPR**") in and to the Konnektive Offerings and Konnektive Data (defined below) and all of their derivative works and improvements, and any suggestions, recommendations or other feedback you provide regarding the Konnektive Offerings, are owned by Konnektive.

**3.2. Subscriber Data.** Konnektive claims no ownership over data and information that you or your Authorized Users input, upload or transfer in relation to, or which is collected from you, your devices or equipment by the Konnektive Offerings ("**Subscriber Data**") and you retain all rights that you already hold in Subscriber Data. Notwithstanding anything to the contrary, Konnektive and its affiliates have the right to retain, transfer, duplicate, analyze, modify and otherwise use Subscriber Data in an anonymized form that does not identify you or any individual. As between you and Konnektive, you have sole responsibility for: (i) obtaining all necessary consents and permissions and satisfying all requirements under applicable law necessary to permit our use of Subscriber Data, including any personally identifiable information ("**PII**") components thereof; and (ii) the accuracy, quality, integrity, legality, reliability, and appropriateness of Subscriber Data.

**3.3. Konnektive's Use of Subscriber Data.** Konnektive is provided a limited license to Subscriber Data for the sole and exclusive purpose of providing the Konnektive Offerings, including a license to collect, process, store, generate, and display Subscriber Data only to the extent necessary in providing the Konnektive Offerings. Konnektive shall: (a) keep and maintain Subscriber Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Agreement and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose Subscriber Data solely and exclusively for the purpose of providing the Konnektive Offerings, such use and disclosure being in accordance with this Agreement and applicable law; and, (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available Subscriber Data for Konnektive's own purposes or for the benefit of anyone other than Subscriber without Subscriber's prior written consent.

**3.4. Konnektive Data.** Subscriber Data specifically does not include any information and/or campaign methodologies generated by the Konnektive Offerings, regardless of whether or not the information or campaign methodology was generated as a result of Subscriber's use of the Konnektive Offerings. All data that is not Subscriber Data belongs to Konnektive ("**Konnektive Data**"). Konnektive grants Subscriber a limited, non-exclusive, non-transferable, non-sublicensable license during the Term to use Konnektive Data only as necessary to use the Konnektive Offerings.

### **4. CONFIDENTIALITY**

**4.1. Non-Disclosure Obligations.** Confidential Information (defined below) may be provided or disclosed by one party (the “**Disclosing Party**”) orally, in writing, or in graphical, machine-readable, or other form to the other party (the “**Receiving Party**”). The Receiving Party shall hold the Disclosing Party’s Confidential Information in strictest confidence and shall not make any use or disclosure of the Disclosing Party’s Confidential Information to any individual or entity during the Term and thereafter without the express written consent of the Disclosing Party in each instance, except to the Authorized Recipients (defined below) of the Receiving Party. The Receiving Party shall handle all Confidential Information received with the same degree of care as it uses to maintain the confidentiality of its own confidential information, which shall in no event be less than reasonable care. As between the Parties, all Confidential Information shall remain the sole and exclusive property of the Disclosing Party and other than the licenses expressly granted in the Agreement, no disclosure or permitted use of the Confidential Information under this Agreement shall be construed as the grant of any right, title, or interest, by license or otherwise, in or to such Confidential Information. The remedy at law for breach or threatened breach of this Section 4 may be inadequate, and in addition to any other remedy available, the non-breaching party shall be entitled to seek injunctive relief. Upon termination of the Agreement, the Receiving Party shall promptly return the Confidential Information to the Disclosing Party, including all copies thereof or, if requested to do so by the Disclosing Party, will destroy the Confidential Information and certify in writing to such destruction.

**4.2. Exceptions to Obligations.** The Receiving Party shall have no obligation under this Section 4 with respect to any Confidential Information disclosed to it which: (a) the Receiving Party can demonstrate was already known to it (without obligation of confidentiality) at the time of its receipt hereunder; (b) is or becomes generally available to the public other than by means of breach of this Agreement or any other agreement any party may have with the Disclosing Party; (c) is independently obtained from a third party (other than any Authorized Recipient) without obligation to maintain confidentiality and whose disclosure to the Receiving Party does not violate a duty of confidentiality; or (d) is independently developed by or on behalf of the Receiving Party without use of, reference to, or reliance on any Confidential Information of the Disclosing Party. The Receiving Party acknowledges that the privacy and data security laws in some jurisdictions may prohibit or render ineffective some or all of the foregoing exclusions. If the Receiving Party is required by a court, regulator, or other body of competent jurisdiction to disclose the Disclosing Party’s Confidential Information, the Receiving Party may disclose only so much of the Disclosing Party’s Confidential Information as is legally required, provided that, where practicable and permissible, the Receiving Party has given notice of such compelled disclosure to the Disclosing Party and has given the Disclosing Party a reasonable opportunity to object to such disclosure and has provided reasonable assistance in obtaining and enforcing a protective order or other appropriate means of safeguarding any Confidential Information so required to be disclosed.

**4.3. Certain Confidentiality Terms Defined.** As used herein: (a) “**Authorized Recipients**” means those employees, consultants, or agents of a Receiving Party and those third party suppliers of the Receiving Party to whom disclosure is necessary to receive the benefit contemplated under the Agreement or for performance under the Agreement, who are bound to duties of non-disclosure and restrictions on use of third parties’ confidential information at least as restrictive as those set forth in this Section 4; and (b) “**Confidential Information**” means information, data, or materials in either tangible or intangible form that are trade secrets of, or proprietary and confidential to, the Disclosing Party or its affiliates, or its or their clients or business partners, including as may be so designated by statute, regulation, or common law including by the form of the Uniform Trade Secrets Act and privacy laws adopted under applicable law, or which are marked as “Confidential” or which, by their nature and the context of their disclosure, should reasonably be known to be confidential.

## **5. FEES, TAXES AND PAYMENT**

**5.1. Fees, Taxes and Payment.** Fees for the Use Rights and Services (the “**Fees**”) shall be payable by Subscriber to Konnektive pursuant to **Exhibit A** and **Exhibit B** hereto which is incorporated into the Agreement by this reference. Such Fees shall be payable in United States dollars, in accordance with the terms of this Section 5 in effect at the time such Fees become due. Konnektive shall have the right to increase the Fees upon the anniversary of this Agreement not to exceed five percent (5%). Subscriber’s account will be debited with corresponding Fees, and Fees are calculated by the number of customers or transactions, whichever is greater and once Subscriber reaches a threshold, they may go back one level only when authorized by management of Konnektive. Subscriber agrees to not charge back any of the related Fees associated with its Account, and any chargebacks will result in Subscriber paying associated chargeback fees. Fees do not include applicable sales, use, value-added, withholding or excise taxes or government charges all of which are your responsibility and payable by you (excluding taxes on our income).

**5.2. Method of Payment.** Subscriber agrees and represents that all information Subscriber provides for the purpose of enrolling as a Subscriber, will be accurate, complete, and current. Subscriber expressly authorizes Konnektive to charge Subscriber's credit card, charge card, debit card, bank account direct debit, or PayPal account, for any and all applicable Fees associated with Subscriber's Account hereunder. If payment cannot be charged to Subscriber's credit/charge/debit card, for whatever reason, or if there is a chargeback for any reason, Konnektive reserves the right to either suspend or terminate your Use Rights and Account with Konnektive and the associated Konnektive Offerings until the payment is received. If Subscriber provides Konnektive with a credit card, charge card, or debit card that expires during the Term, Konnektive reserves the right to charge any renewal card issued to Subscriber as a replacement without any additional Subscriber consent and charges four percent (4%) for credit card processing fees pursuant to **Exhibit A** and **Exhibit B**.

**5.3. Billing.** Konnektive will bill its monthly licensing and any recurring Fees on date of enrollment and on the 1st or the 15th of each month. Your payment date will be determined by the date enrolled. If you signed up for the service between the 1st and the 14th, your payment date will be the 1st. If you signed up between the 15th and the last day of the month, your payment date will be the 15th. Any special programming requests shall be billed at the time an invoice is generated and submitted to the Subscriber. Transaction counts are calculated from the billing date to the day prior to the next billing period.

**5.4. Failure to Make Payment.** Fees shall be due as set forth in **Exhibit A** and **Exhibit B**. In the event of any failure by Subscriber to make payment, or upon any Subscriber chargeback, Konnektive may suspend performance and Subscriber will be responsible for all reasonable expenses (including reasonable attorneys' fees) incurred by Konnektive in collecting such amounts plus interest at the rate of the lesser of one and one-half percent (1.5%) per month or the highest rate permissible under applicable law for the actual number of days elapsed. Subscriber shall also be subject to the termination provisions contained in Section 10 below.

**5.5. No Refunds.** One hundred percent (100%) of all Fees due and paid are NON-REFUNDABLE.

## **6. MUTUAL REPRESENTATIONS AND WARRANTIES**

EACH PARTY REPRESENTS AND WARRANTS TO THE OTHER PARTY THAT: (A) IT HAS THE FULL CORPORATE RIGHT, POWER AND AUTHORITY TO ENTER INTO THE AGREEMENT, TO GRANT THE LICENSES GRANTED HEREUNDER AND TO PERFORM THE ACTS REQUIRED OF IT HEREUNDER; (B) THE EXECUTION OF THE AGREEMENT BY IT AND THE PERFORMANCE OF ITS OBLIGATIONS AND DUTIES HEREUNDER, DOES NOT AND WILL NOT VIOLATE ANY AGREEMENT TO WHICH IT IS A PARTY OR BY WHICH IT IS OTHERWISE BOUND; (C) WHEN EXECUTED AND DELIVERED, THE AGREEMENT WILL CONSTITUTE THE LEGAL, VALID AND BINDING OBLIGATION OF EACH PARTY, ENFORCEABLE AGAINST EACH PARTY IN ACCORDANCE WITH ITS TERMS; AND (D) THE INDIVIDUAL COMPLETING THE AGREEMENT HAS THE AUTHORITY TO LEGALLY BIND THE PARTY.

## **7. SUBSCRIBER'S REPRESENTATIONS AND WARRANTIES**

**7.1.** In addition to the mutual representations in Section 6 above, Subscriber represents and warrants that:

- (a) it will perform Subscriber's rights, duties and obligations under this Agreement;
- (b) at all times Subscriber will be in compliance with all applicable local, state, and federal laws, rules and regulations;
- (c) Subscriber's collection and use of Subscriber's customer's PII or technical data shall be in compliance with all applicable local, state, federal, national, and European Union laws, rules and regulations, pertaining in any way to the privacy, confidentiality, security, management, disclosure, reporting, and any other obligations related to the possession or use of any of your customer's PII or technical data, including the European Union General Data Protection Regulation ("**GDPR**"), the California Consumer Privacy Act ("**CCPA**"), the Controlling the Assault of Non-Solicited Pornography and Marketing Act ("**CAN-SPAM**"); the Telephone Consumer Protection Act ("**TCPA**"); and relevant rules and regulations, including and the Payment Card Industry Data Security Standards ("**PCI DSS**"), promulgated by the card brands (e.g., Visa, Mastercard, American Express, and Discover) and any other card brands that

process transaction's through the Software;

(d) Subscriber is not currently aware of or subject to any investigation or litigation, either by a government regulator or by a third party as a result of its business or business practices; and

(e) the information you provide to Konnektive is truthful, accurate, complete and not misleading in any material respect.

Failure to comply with terms of this Section 7 may result in the immediate termination of your Use Rights and Account.

## **8. DISCLAIMER OF WARRANTIES**

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT: (a) SUBSCRIBER EXPRESSLY AGREES THAT ITS USE OF THE KONNEKTIVE OFFERINGS IS AT SUBSCRIBER'S OWN RISK AND SUBSCRIBER IS SOLELY RESPONSIBLE FOR DETERMINING WHETHER THE KONNEKTIVE OFFERINGS MEET SUBSCRIBER'S REQUIREMENTS, AND (b) THE KONNEKTIVE OFFERINGS ARE AVAILABLE ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ACCURACY, OR IMPLIED WARRANTIES ARISING FROM COURSE OF PERFORMANCE OR COURSE OF CONDUCT. WE DISCLAIM ANY WARRANTY REGARDING THE AVAILABILITY, ACCURACY OR CONTENT OF THE KONNEKTIVE OFFERINGS, AND/OR INFORMATION, PRODUCTS OR SERVICES AVAILABLE THROUGH THE KONNEKTIVE OFFERINGS, OR ANY ECONOMIC BENEFIT YOU MAY GAIN FROM USE OF THE KONNEKTIVE OFFERINGS. SOME STATES DO NOT ALLOW EXCLUSION OF AN IMPLIED WARRANTY, SO THIS DISCLAIMER MAY NOT APPLY TO YOU. KONNEKTIVE MAKES NO GUARANTEES, REPRESENTATIONS OR WARRANTIES AS TO THE LEVEL OF LEADS OR SIGNUPS GENERATED THAT SUBSCRIBER CAN EXPECT BY ENTERING INTO THIS AGREEMENT AND SUBSCRIBING TO THE KONNEKTIVE OFFERINGS.

## **9. INDEMNIFICATION**

**9.1. Subscriber's Indemnification.** Subscriber shall: (a) defend Konnektive and its members, managers, officers, directors, employees, agents, representatives, licensors and permitted successors and assigns (the "Konnektive Indemnitees") from all third-party allegations, suits, claims, actions, or proceedings arising out of: (i) any breach by Subscriber of any representation, warranty or covenant contained herein; (ii) any alleged or actual violation by Subscriber of any applicable local, state or federal law, rule, or regulation, including the GDPR, CCPA, CAN-SPAM, and/or TCPA; (iii) any alleged or actual violation of card brand rules and regulations, including PCI DSS compliance; (iv) the misuse or unauthorized use of the Konnektive Offerings, including the assignment or transfer of the Use Rights to the Konnektive Offerings under this Agreement; (v) the content of any Subscriber Data; or (vi) any harm to Konnektive's reputation or professional standing as a result of actions or inactions taken by Subscriber; and (b) indemnify and hold harmless the Konnektive Indemnitees from any costs, damages, awards, fees (including attorney's fees), penalties, expenses, and other amounts incurred by, awarded against, or owed to a third party.

**9.2. Obligations of Konnektive Indemnitees.** The Konnektive Indemnitees shall notify Subscriber in writing of an event requiring defense or indemnification hereunder promptly upon becoming actually aware thereof; provided, however, that failure to notify Subscriber shall not relieve Subscriber of its obligations hereunder unless Subscriber is materially prejudiced by such failure. At the election of the Konnektive Indemnitees, Subscriber may be permitted to answer and defend, through counsel acceptable to the Konnektive Indemnitees, and the Konnektive Indemnitees must provide Subscriber with information and reasonable assistance at Subscriber's expense to help Subscriber to defend. Otherwise, Subscriber shall be required to pay promptly all attorney's fees, expenses, and costs incurred by the Konnektive Indemnitees in connection with such defense. In all events, Subscriber may not settle any matter on the Konnektive Indemnitees' behalf without obtaining the Konnektive Indemnitee's written permission, which permission will not be unreasonably withheld, conditioned or delayed.

## **10. TERM AND TERMINATION**

**10.1. Term.** The Agreement commences on the Effective Date and continues for ninety (90) days unless earlier terminated in

accordance herewith (the “**Initial Term**”). Thereafter, this Agreement shall auto renew for one (1) year periods (each, a “**Renewal Term**”) unless either Party provides the other Party with ninety (90) days advanced notice of termination (the Initial Term and all Renewal Terms, collectively, the “**Term**”).

**10.2. Termination.** If either Party materially breaches this Agreement, the non-breaching party may provide written notice specifying the nature of the breach. The breaching party shall have thirty (30) days to cure from receipt of notice. If not so cured, the non-breaching party may terminate this Agreement by providing a second written notice of immediate termination. Notwithstanding the foregoing, Konnektive may terminate this Agreement and the Use Rights immediately, if: (a) you, your Authorized Users or any other person under your control breaches any of the provisions of this Agreement or otherwise infringes on Konnektive’s IPR; or (b) Konnektive reasonably believes that your conduct may be harmful to its business, such as Subscriber failing to make payments due hereunder in a timely manner in accordance with the Agreement, Subscriber’s conduct may be harmful to other Konnektive customers and users, or if Konnektive becomes aware of any investigation or action taken by a regulatory agency or law enforcement against Subscriber. Additionally, this Agreement will automatically terminate upon: (i) any assignment or sublicense by you; (ii) any attempted assignment or sublicense by you; (iii) your insolvency; or (iv) any attempt by you to obtain protection from creditors or wind down operations, unless you have obtained Konnektive’s prior written consent for any of the aforementioned events.

**10.3. Konnektive's Right to Terminate - Non-Renewal.** Notwithstanding the foregoing, Konnektive may terminate the Agreement, in its sole and reasonable discretion, in advance of any renewal term by providing written notice to Subscriber of its intention not to renew pursuant to Section 10.1. Konnektive may terminate any Renewal Term upon at least sixty (60) days written notice to Subscriber prior to the end of the current Renewal Term.

**10.4. Effect of Termination.** Upon termination under Section 10.2 for Konnektive’s breach or Section 10.3, Subscriber will no longer be able to access its Account. However, at the written request of Subscriber, within thirty (30) days of termination, Subscriber Data may be transferred to a PCI Level 1 certified provider. Upon termination under Section 10.2 for Subscriber’s breach or if Konnektive exercises its right to terminate thereunder, Konnektive may choose, in its sole discretion, to exercise its rights under this Section 10.4 by giving Subscriber written notice of such election; provided that, notice by email to any address provided by Subscriber to Konnektive for billing matters will be acceptable written notice in addition to any other method allowed under Section 18 below. Regardless of which party terminates the Agreement, Subscriber will be responsible for all Fees incurred up to and through the date of termination. However, if Subscriber terminates the Agreement, payment obligations during the remainder of any unexpired Initial Term or Renewal Term will be immediately due in full. Upon any termination of the Agreement, Konnektive reserves the right to delete any and all information in Subscriber’s Account, at Konnektive’s discretion at any time after the date that is thirty (30) days after the termination of the Agreement; provided that if requested by Subscriber, Konnektive must return to Subscriber any such information during such thirty (30) day period in a form reasonably requested by Subscriber and at Subscriber’s expense.

**10.5. Survival.** The terms of Sections 3.3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 18, and 19 of this EULA shall survive the termination or expiration of the Agreement.

## **11. LIMITATION ON LIABILITY**

SUBSCRIBER ACKNOWLEDGES AND AGREES THAT KONNEKTIVE SHALL NOT BE LIABLE HEREUNDER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING ANY LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFIT OR REVENUE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), EVEN IF KONNEKTIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. KONNEKTIVE’S TOTAL CUMULATIVE LIABILITY HEREUNDER, REGARDLESS OF THE FORM OF ACTION, WILL NOT EXCEED AN AMOUNT EQUAL TO ALL AMOUNTS ACTUALLY RECEIVED BY KONNEKTIVE FROM SUBSCRIBER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE INCURRENCE OF ANY SUCH LIABILITY. THE ESSENTIAL PURPOSE OF THIS PROVISION IS TO LIMIT THE POTENTIAL LIABILITY OF KONNEKTIVE ARISING OUT OF THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS SET FORTH IN THIS SECTION 11 ARE REASONABLE AND ARE INTEGRAL TO THE AMOUNT OF CONSIDERATION LEVIED IN CONNECTION WITH SUBSCRIBER’S USE OF THE KONNEKTIVE OFFERINGS PROVIDED BY

KONNEKTIVE HEREUNDER, AND THAT, WERE KONNEKTIVE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN, SUCH CONSIDERATION WOULD OF NECESSITY BE SET SUBSTANTIALLY HIGHER.

## **12. NONTRANSFERABLE/NON-ASSIGNMENT**

Subscriber's Use Rights to the Konnektive Offerings is not transferable or assignable. Any username, password or right given to you to obtain information or documents is not transferable or assignable. Notwithstanding the foregoing, either Party may assign the Agreement, and any of its rights hereunder, in connection with the sale of all or substantially all of its assets or stock sale, merger or other corporate reorganization resulting in a change of control, with the prior written consent of the other Party, which should not be unreasonably withheld.

## **13. NON-COMPETE**

Subscriber agrees that during the Term and for two (2) years thereafter, Subscriber will not develop, reengineer Konnektive technology, offer, sell or distribute a competing technology to the Konnektive Offerings. A competing service is defined as a service that seeks to acquire Subscribers for the purpose of offering a customer relationship management or campaign management software system. Notwithstanding anything to the contrary in this Section 13, Subscriber shall be permitted to develop and utilize a service similar to the Subscription Services solely for use by Subscriber in connection with its own marketing activities, except where Subscriber may pirate, copy, or reengineer Konnektive technology, functionality or intellectual property. Subscriber understands that violation of this clause is grounds for immediate termination of the Agreement by Konnektive with no liability on the part of Konnektive and further Subscriber understands that Konnektive may seek equitable relief to stop the violation and competing activity as well as any other relief available under the law.

## **14. FORCE MAJEURE**

With the exception of Subscriber's contractual payment of Fees obligation, neither Party shall be liable for delays or failure to perform the Services or the Agreement due to causes beyond its reasonable control. Such delays include fire, explosion, flood or other natural catastrophe, governmental legislation, acts, orders or regulations, strikes or labor difficulties, to the extent not occasioned by the fault or negligence of the delayed Party. Any such excuse for delay shall last only as long as the event remains beyond the reasonable control of the delayed Party. However, the Party whose performance is so delayed shall use commercially reasonable, good faith efforts to minimize the effects of such delay and shall resume performance as soon as practicable.

## **15. MARKETING**

Subscriber grants to Konnektive a non-exclusive license to use, reproduce, publicly and digitally display and perform, transmit and broadcast Subscriber's name, logos, trademarks, trade names, service marks, URLs and slogans to advertise, market, promote and publicize the Konnektive Offerings, including the inclusion of Subscriber in Konnektive's marketing materials and on Konnektive's "Subscribers testimonial page."

## **16. SERVICE LEVEL AGREEMENT**

**16.1. Support.** Konnektive will supply advanced technical support, at Subscriber's expense, via phone and email as it pertains to the Subscription Services as defined in Exhibit A, Paragraph 3.

**16.2. Availability.** If you are licensing the Software under a SaaS Subscription deployment model and the Software experiences unscheduled monthly downtime of the backend services exceeding one hour twice during the Term, Konnektive will promptly credit Subscriber five percent (5%) of the next monthly fee. If there is unscheduled monthly downtime exceeding one hour three times during the term of this Agreement, Konnektive will promptly credit Subscriber an additional five percent (5%) of the next monthly fee.

**16.3. Backup and Recovery of Subscriber Data.** As a part of the SaaS Subscription deployment model, Konnektive is responsible for



maintaining a backup of Subscriber Data and for an orderly and timely recovery of such data in the event that the Konnektive Offerings may be interrupted. Konnektive shall maintain a contemporaneous backup of Subscriber Data that can be recovered within two (2) hours at any point in time. Additionally, Konnektive shall store a backup of Subscriber Data in an off-site facility no less than weekly, maintaining the security of Subscriber Data, the security requirements of which are further described herein. Any backups of Subscriber Data shall not be considered in calculating storage used by Subscriber.

**16.4. Loss of Data.** In the event of any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of Subscriber Data or the physical, technical, administrative, or organizational safeguards put in place by Konnektive that relate to the protection of the security, confidentiality, or integrity of Subscriber Data that is processed by Konnektive under a SaaS Subscription deployment model, Konnektive shall, as applicable: (a) notify Subscriber as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with Subscriber in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by Subscriber; (c) in the case of PII, at Subscriber's sole election, notify the affected individuals who comprise the PII as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence.

## **17. APPLICABLE LAW**

The validity, interpretation, construction, and performance of this Agreement shall be governed by and construed in accordance with the internal substantive laws of the Commonwealth of Puerto Rico, without giving effect to its principles of choice of law or conflicts of law thereunder. Any action or proceeding seeking to enforce any provision of or based on any right arising out of this Agreement, may be brought against either of the parties in the courts of the Commonwealth of Puerto Rico, San Juan, or, if it has or can acquire jurisdiction, in the United States District Court located in San Juan, Puerto Rico, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein.

Process in any action or proceeding referred to in the preceding sentence may be served on either party anywhere in the world. In the event it shall become necessary for either party to take action of any type whatsoever to enforce the terms of this Agreement, the prevailing party shall be entitled to recover all attorneys' fees, costs, and expenses, including all out of pocket expenses that are not taxable as costs, incurred in connection with any such action, including any investigations, demands, negotiations, mediation, arbitration, litigation, and appeals.

## **18. NOTICES**

All notices or other communications required or permitted to be given hereunder must be (as elected by the Party giving such notice): (a) personally delivered at the address set forth on your Account; (b) transmitted by postage prepaid mail to the address set forth on your Account; or (c) faxed to the Party at fax number set forth on your Account. Except as otherwise specified herein, all notices and other communications will be deemed to have been given on: (x) the date of receipt if delivered personally; (y) the date that is five (5) days after posting if transmitted by mail; or (z) the date of confirmation receipt if faxed. A Party may change its address for purposes of this Section 18 by written notice to the other Party in accordance with this Section.

## **19. MISCELLANEOUS**

Headings of Sections are for the convenience of reference only. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements or understandings between the Parties with respect to such subject matter. This Agreement may be modified by Konnektive from time to time at its sole discretion. Each updated or supplemented version shall supersede the prior version. No joint venture, partnership, employment, or agency relationship exists between you and Konnektive as a result of this Agreement or your use of the Konnektive Offerings. It is the express intent of the Parties that no Party is an employee of the other Party for any purpose but is an independent contractor for all purposes and in all situations. Each Party and its directors, officers, employees and agents may not represent that they are employees of the other Party, nor may they in any manner hold themselves out to be employees of the other Party. If any provision of the Agreement is being determined by a court

of competent jurisdiction to be invalid or unenforceable, such provision will, to such extent as it is determined to be invalid or unenforceable, be reformed without further action by the Parties to the extent necessary to make the provision valid and enforceable and no other provision will be affected or impaired thereby. This Agreement may be executed in separate counterparts (each of which is an original and all of which will be deemed one and the same instrument). Counterparts may be executed either in original or faxed form and the Parties adopt any signatures received by a receiving fax machine as original signatures of the Parties. The word "including" is exemplary meaning "including, without limitation" or "including, but not limited to" unless otherwise indicated. The words "shall," "will," and "must" are each intended to be obligatory and to require performance of the stated condition, etc., at the applicable time during the Term. The word "may" is permissive, imparting a right, but not an obligation, to perform the stated action.

**IN WITNESS WHEREOF**, the parties have executed the Agreement on the date set forth on the first page hereof.

Signed this date:

**KONNEKTIVE LLC**

\_\_\_\_\_  
*Company Name*

//



\_\_\_\_\_  
*Signed*

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

C/S/Z: \_\_\_\_\_

Country: \_\_\_\_\_

\_\_\_\_\_  
*Signed*

Name:

Matthew Martorano

Title:

CEO

Address:

2421 Calle Laurel

C/S/Z:

San Juan, PR 00913

Country:

United States of America

EXHIBIT A

**Standard License Fees**

**Konnektive Standard License Fees.** In consideration for payment of the Fees due and compliance with the Agreement, Konnektive shall provide you with access to the Konnektive Offerings, which include the features listed on the websites identified in Section 1.1. Upon the Parties' acceptance of this Agreement, the initial license and setup fees are due and are nonrefundable. The license and set-up fees are as follows:

Setup Fee: WAIVED

**Monthly License Fee(s)**

License fee per month: ..... \$ 500.00 plus \$.20 per transaction

API integration(s): ..... By Quote

Custom Development\*. Custom programming and development is billed by Konnektive to Subscriber at \$150.00 per hour, plus travel and related expenses, if necessary, with a 4-hour minimum. Any work requested by Subscriber will be subject to the hourly rate. All scope and quotes will have a \$200 deposit required prior to the quote being started or the API being looked at. Should Subscriber proceed with the quote, the \$200 deposit will apply to cost of development.

Support\*. Konnektive will provide incident-based help desk phone and email support for all technical issues/questions in connection with the Konnektive Offerings that arise during the Term. Administrative tasks to the Software or general configuration of the Konnektive Offerings in each case by Konnektive on behalf of Subscriber that are not tied directly to technical issues in connection with the Services will be billed to Subscriber at \$60/hour (1-hour minimum).

Implementation. Konnektive provides an implementation worksheet and a product set-up worksheet. Konnektive's setup responsibilities shall include; products, campaigns, and affiliates; merchant accounts, and decline salvage; SMTP email auto-responder; fulfillment house; user set-up; and any related plugins. It is the sole responsibility of the Subscriber to ensure a timely return of the documentation, and no work shall begin until all documentation is returned. Konnektive shall not be held responsible for delays in work, and a strict time record shall be maintained. It is important to note that a license for access to the Konnektive Offerings is issued immediately, and regardless of the status, all licensing fees shall become due and billable at the monthly anniversary of your enrollment. All licensing fees are paid prior to use, and such fees are not subject to refund, and once a threshold is reached, that is the license fee until the next level is attained.

*\* Hourly rates are subject to change, and any changes in fee shall be communicated in writing at least thirty (30) day prior to rate increases taking effect.*

**EXHIBIT B**  
**Optional Add-On Services**

Konnektive provides various add-on services, either provided internally or through third-party providers that the Subscriber can select from time to time. These services shall be billed to Subscriber's Account on file for the services activated and utilized by Subscriber. Such services are optional and shall include, but are not limited to:

**Platinum Dedicated Support:** ..... \$1,000.00 per month - for a dedicated account manager to assist with any configuration and system questions.

**AI A Carte Services:**

Fraud Manager – Kount Fraud Screening: ..... \$.10 per screening

Gateway Services: ..... \$.10 per transaction/\$5.00 per account

3D Secure – Visa/MasterCard Verification Services: ..... \$.15 per transaction

3D Secure 3rd party - Visa/MasterCard Verification Services: ..... \$.05 per transaction (for use with our technology, gateway integration, storage of the authentication and reporting)

Account Updater: ..... \$1.50 per updated account (plus any network fees)

Social Proof JS Plugin: ..... \$15.00 per website monthly

**Chargeback Services:**

**\$10 per Complete / retrieval management and \$5 per Partial chargeback**

Complete management includes matching and compiling chargeback/retrieval and order information, generating a comprehensive representment package and fighting the chargeback/retrieval, and performing any necessary order system actions such as blacklisting, marking as a chargeback and canceling future recurring billing. Partial management applies to chargebacks that are filtered out as not to be fought and the same matching, compiling and order system actions are performed other than filing of the representment package.

**\$10 per month per each merchant account**

Monitoring, reporting, analytics and notifications.

**\$40 per Ethoca Alert received**

Clients who select this option shall also execute the Additional Services Request Form as it pertains to Ethoca Alerts in order to utilize this service.

**\$40 per Verifi Alert received**

Clients who select this option shall also execute the Additional Services Request Form as it pertains to Verifi Alerts in order to utilize this service.

**\$30 per VMPI/Order Insight Case**

Clients who select this option shall also execute the VMPI/ORDER INSIGHT AMENDMENT as it pertains to VMPI/Order Insight Cases in order to utilize this service.

All fees due and payable will be billed to the Subscribers account on file. Any fees due shall follow the terms of Section 5 of the Agreement, and any unpaid portions will result in a suspension of all services until the account is brought current.

