

Kontera Plug-In License Agreement

This Kontera Plug-In License Agreement (“Agreement”) is a legal agreement between you (“Publisher”) and Kontera Technologies, Inc. (“Kontera”). YOU MUST READ AND AGREE TO THE TERMS OF THIS AGREEMENT BEFORE YOU CAN IMPLEMENT AND BEGIN USING THE KONTERA PLUG-IN. BY USING, REPRODUCING OR MODIFYING THE KONTERA PLUG-IN IN ANY WAY, YOU HEREBY AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, THEN YOU SHOULD NOT USE, REPRODUCE, MODIFY THE KONTERA PLUG-IN IN ANY WAY.

1. Definitions.

- 1.1. **“Kontera Plug-In”** means the plug-in that facilitates Publisher’s implementation of tags on the Publisher Webpages.
- 1.2. **“Publisher Web Pages”** means all of the web pages in the domain(s) owned or controlled by Publisher.

2. Kontera Plug-In License.

- 2.1. **Grant.** Subject to the terms and conditions of this Agreement, Kontera grants to Publisher a non-sublicensable, non-exclusive, non-transferable license to use, reproduce and modify the Kontera Plug-In but solely on the Publisher Web Pages.
- 2.2. **Restrictions and Ownership.** Publisher shall not: (i) use the Kontera Plug-In for the purposes of developing a product that will be owned by a third party or that would compete with Kontera’s products or services; (ii) sublicense, rent, lend, lease, permit third party access to, or use of, the Kontera Plug-In; (iii) copy, distribute, reproduce, sell, use or allow access to the Kontera Plug-In, except as explicitly permitted under this Agreement; or (iv) remove, obscure, or alter Kontera’s copyright notice, trademarks, or other proprietary rights notices affixed to or contained within the Kontera Plug-In. As between the parties, except for the explicit license granted herein, Kontera, or its licensors, shall retain all right, title and interest in and to the Kontera Plug-In. This is license, not a sale, so title to the Kontera Plug-In shall not pass to Publisher under any circumstances. Kontera does not grant to Publisher any license, express or implied, under the intellectual property of Kontera or its licensors except as expressly stated in this Agreement.

- 3. **Confidentiality.** “Confidential Information” means any information disclosed by Kontera to Publisher, either directly or indirectly in writing, orally or by inspection of tangible objects which is either (i) designated or marked as “Confidential” at the time of disclosure, or (ii) disclosed under circumstances reasonably indicating that such information is confidential. Without limiting the foregoing, the Kontera Plug-In, all information relating to the Kontera Plug-In, and the terms and conditions of this Agreement shall be deemed the Confidential Information of Kontera. During the term of this Agreement and for three (3) years following the expiration or termination of this Agreement, (A) Publisher agrees that it shall not use any Confidential Information other than as expressly permitted under the terms of this Agreement or as expressly authorized in writing by Kontera, (B) Publisher shall use the same degree of care to protect Confidential Information as it uses to protect its own most highly confidential information, but in no circumstances less than reasonable care, and (C) Publisher shall not disclose Confidential Information to any person or entity other than its officers, employees and consultants who need access to such Confidential Information in order to effect the intent of this Agreement and who have entered into written confidentiality agreements with it consistent with this Section 3.
- 4. **Term and Termination.** Unless earlier terminated as set forth herein, this Agreement is effective from the Effective Date through the first anniversary of the Effective Date. After such time, this Agreement will automatically renew for successive twelve (12) month terms unless either party notifies the other party that such party will not renew the Agreement within thirty (30) days of the end of the then-current term. Either party may terminate this Agreement for any reason or for no reason at any time upon thirty (30) days notice to the other party. The following sections will survive any expiration or termination of this Agreement: 2.2, 3, 4, 5, 6 and 7.
- 5. **Disclaimer of Warranties.** THE KONTERA PLUG IN IS PROVIDED “AS IS” AND WITHOUT REPRESENTATIONS, WARRANTIES OR CONDITIONS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OUT OF A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY,

FITNESS FOR ANY PARTICULAR PURPOSE OR USE, NONINFRINGEMENT, QUALITY, PRODUCTIVENESS OR CAPACITY, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. KONTERA, ITS SUPPLIERS, LICENSORS, AND PARTNERS DO NOT WARRANT THAT THE FUNCTIONS OF THE KONTERA PLUG-IN WILL BE CORRECT, UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE KONTERA PLUG-IN IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. KONTERA MAKES NO GUARANTEE REGARDING THE NUMBER, QUALITY, OR CONTENT OF ANY ADVERTISEMENTS OR THE TIMING OF DELIVERY OF SUCH ADVERTISEMENTS FOLLOWING USE OF THE KONTERA PLUG-IN. THE FOREGOING DISCLAIMER OF WARRANTY IS A FUNDAMENTAL PART OF THE BASIS OF KONTERA'S BARGAIN HEREUNDER, AND THAT KONTERA WOULD NOT ENTER INTO THIS AGREEMENT ABSENT SUCH DISCLAIMER.

6. **Limitation of Liability.** KONTERA SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR OTHER SIMILAR DAMAGES NOR FOR ANY LOSS OF PROFITS, LOSS OF REVENUES, LOSS OF SAVINGS, LOSS OF CLIENTELE, LOSS OF USE OR LOSS OR CORRUPTION OF DATA, WHETHER UNDER TORT, CONTRACT OR OTHER THEORIES OF RECOVERY, EVEN IF SUCH PARTY WAS OR SHOULD HAVE BEEN AWARE OR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND IN NO EVENT WILL EITHER PARTY'S LIABILITY ARISING OUT OF THIS AGREEMENT FROM ANY CAUSE OF ACTION WHATSOEVER WILL EXCEED THE AGGREGATE AMOUNTS ACTUALLY PAID UNDER THIS AGREEMENT BY KONTERA TO PUBLISHER DURING THE THREE (3) MONTHS PRIOR TO THE DATE THE CAUSE OF ACTION AROSE.
7. **Miscellaneous.** This Agreement is the entire agreement between the parties on the subject matter hereof. No amendment or modification hereof will be valid or binding upon the parties unless made in writing and signed by the duly authorized representatives of both parties. The relationship of the parties hereunder is that of independent contractors, and this Agreement will not be construed to imply that either party is the agent, employee, or joint venturer of the other. In the event that any provision of this Agreement is held to be unenforceable, the Agreement will continue in full force and effect without such provision and will be interpreted to reflect the original intent of the parties. This Agreement will be governed by the law of the State of California, without regard to its conflict of laws principles. The parties consent to the personal and exclusive jurisdiction of courts located in San Francisco, California. Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other, except that either party may assign any of its rights and obligations under this Agreement without consent of the other party in connection with any merger, consolidation, reorganization, sale of all or substantially all of its assets related to this Agreement or other similar transaction. This Agreement shall inure to the benefit of and shall be binding on each party's permitted assignees, transferees and successors. Waiver by either party of a breach of any provision of this Agreement or the failure by either party to exercise any right hereunder will not operate or be construed to be a waiver of any subsequent breach of any right or as a waiver of any other right. Except for the payment of fees hereunder, nonperformance of either party will be excused to the extent that performance is rendered impossible by strike, fire, flood, earthquake, governmental acts or orders or restrictions, or any other reason when failure to perform is beyond the reasonable control of the nonperforming party.