

# Kong, Inc.

Kong, Inc.  
150 Spear Street Suite 1600  
San Francisco, CA 94105  
Federal Employer I.D. Number: 98-0629818

## Kong, Inc. Transportation Benefit Plan

### Plan Document

Amended and Restated December 31, 2022

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## Introduction

The company amends and restates this Plan as of December 31, 2022 with an original effective date of January 01, 2022. Its purpose is to provide benefits for those Employees who shall qualify hereunder and their Dependents and beneficiaries. The concept of this Plan is to allow Employees to elect between cash compensation and certain nontaxable benefit options, as they desire. The Plan shall be known as the Kong, Inc. Transportation Benefit Plan(the "Plan").

It is intended that this Plan comply with the requirements of Internal Revenue Code Section 132(f).

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## I. ARTICLE - Definitions

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01. **"Administrator"** means the Employer, unless another person or entity has been designated by the Employer, pursuant to the Article titled: "Administration", to administer the Plan on behalf of the Employer. If the Employer is the Administrator, the Employer may appoint any person(s), including but not limited to one or more Employees of the Employer, to perform the duties of the Administrator. Any person so appointed shall signify acceptance by filing written acceptance with the Employer. Upon the resignation or removal of any individual performing the duties of the Administrator, the Employer may designate a successor.
02. **"Benefit"** "Benefit" or "Benefit Options" means any of the optional benefit choices available to an Employee as outlined in the Article titled: "Benefits and Elections".
03. **"Commuter Highway Vehicle"** means any highway vehicle:
  1. that has a seating capacity of at least six adults (not including the driver), and
  2. where at least 80% of the mileage use thereof is reasonably expected to be:
    1. for purposes of transporting Employees in connection with travel between their residences and their places of Employment, and
    2. for trips during which the number of Employees transported for such purposes is, on average, at least half of the adult seating capacity of such vehicle (not including the driver).
04. **"Commuter Highway Vehicle Expenses"** means expenses incurred for transportation in a "commuter highway vehicle" where such transportation is in connection with travel between the Employee's residence and place of Employment.
05. **"Code"** means the Internal Revenue Code of 1986, as amended from time to time.
06. **"Compensation"** means the wages or salary paid to an Employee by the Employer.
07. **"Coverage Period"** means the monthly, quarterly, semi-annual, annual, or other period, designated on the Salary Reduction Agreement, during which a Salary Reduction Agreement is in effect.
08. **"Effective Date"** means the effective date of the plan which is January 01, 2022.
09. **"Eligible Employee"** means any Employee who meets the eligibility requirements set forth in the Article titled: "Participation". An individual shall not be an "Eligible Employee" if such individual is not reported on the payroll records of the Employer as a common law employee. In particular, it is expressly intended that individuals not treated as common law employees by the Employer on its payroll records are not "Eligible Employees" and are excluded from Plan participation even if a court or administrative agency determines that such individuals are common law employees and not independent contractors.
10. **"Eligible Transportation Expenses"** means those qualified expenses incurred by an Eligible Employee to purchase Transit Pass Expenses or Commuter Vehicle Expenses or Qualified Parking Expenses incurred for purposes of transportation between the Employee's residence and place of Employment.
11. **"Employee"** shall mean any individual who is employed by the Employer as a common-law employee as shown on applicable payroll records
12. **"Employer"** means Kong, Inc. or any successor that shall maintain this Plan; and any predecessor that has maintained this Plan. In addition, where appropriate, the term Employer shall include any Participating or Adopting Employer.
13. **"Plan"** means the Employer's Tax-Free Transportation Plan as set forth in its entirety in this document and as may be amended from time to time.
14. **"Plan Year"** means the 12-month period beginning January 01 and ending December 31. The

Plan Year shall be the coverage period for the Benefits provided under this Plan. In the event an Employee commences participation after the first day of a Plan Year, then the initial coverage period shall be that portion of the Plan Year commencing on such Employee's date of participation and ending on the last day of such Plan Year.

15. **"Qualified Parking Expenses"** means the following parking expenses, unless such expenses are incurred for any parking on or near property used by the Employee for residential purposes:
  1. expenses incurred by an Employee to park his or her car on or near the business premises of the Employer; or
  2. expenses incurred by an Employee to park his or her car on or near a location from which the Employee commutes to work:
    1. By mass transit facilities, whether or not publicly owned;
    2. By using the services of any person in the business of transporting persons for compensation or hire, if such transportation is provided in a Commuter Highway Vehicle;
    3. By Commuter Highway Vehicle; or
    4. By carpool (i.e., two or more individuals who commute together in a motor vehicle on a regular basis).
16. **"Regulations"** means either temporary, proposed or final regulations, as applicable, issued from the Department of Treasury, as well as any guidance or interpretations issued in connection therewith.
17. **"Run Out Period"** means the set number of days after the plan year ends that allows you to submit claims for eligible transportation or parking expenses incurred during the Coverage Period.
18. **"Salary Reduction Agreement"** means the contributions made by the Employer on behalf of Participants in accordance with the Section titled: "Election of Benefits". These contributions shall be allocated to the funds or accounts established for cost of applicable Benefits provided under the Plan pursuant to the Participants' elections made under the Article titled: "Benefits and Elections".
19. **"Transit Pass"** means any pass, token, fare- card, voucher, or similar item entitling a person to transportation (incl. transportation at a reduced price) where such transportation is:
  1. Provided by any mass transit facilities, whether or not publicly owned; or
  2. Provided by any person in the business of transporting persons for compensation or hire and such transportation is provided in a vehicle with a seating capacity of at least six adults (excluding the driver).

Transit Passes also include, but are not limited to, Smart Card(s), terminal-restricted debit cards and other debit cards where the use of the cards has been electronically restricted to the purchase of fare media for the appropriate transit system.
20. **"Transit Pass Expense"** means expenses incurred for any Transit Pass

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## II. ARTICLE - Participation

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### 01. **Eligibility**

An Employee is eligible to participate in this Plan if the individual:

1. is an Eligible Employee as defined in the Article titled:"Definitions"
2. is regularly scheduled to work 30 or more hours per week

### 02. **Rehire**

If an Employee terminates his or her Employment for any reason, including (but not limited to) disability, retirement, layoff, discharge, or voluntary resignation, and then is rehired, the Employee must complete any applicable waiting period established by the Employer before again becoming eligible to participate in the Plan.

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### III. ARTICLE - BENEFITS AND ELECTIONS

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#### 01. **Election of Benefits**

Eligible Employees may enter into a Salary Reduction Agreement with the Employer whereby the Employee agrees to reduce his or her future Compensation by the amount of his or her anticipated Eligible Transportation Expenses for the upcoming Coverage Period. The amount elected for reduction will be divided by the remaining payroll periods in the Coverage Period. The resulting per-payroll-period reduction amount will be deducted on a pre-tax basis from the Employee's Compensation each payroll period until such time as the Employee changes his or her election.

#### 02. **Transportation Benefit Plan Account**

This Transportation Benefit Plan is intended to qualify as a "qualified transportation fringe benefit" under Code Section 132(f) and shall be interpreted in a manner consistent with such Code section. Subject to the provisions of this subsection titled: "Special Rules for Transit Passes" hereunder.

1. **Monthly Limitation for Qualified Parking Expenses:** Notwithstanding any provision contained in this Transportation Benefit Plan to the contrary, the maximum amount that may be allocated for Qualified Parking Expenses for any month within the Plan Year is \$300.00;
2. **Monthly Limitation for Transit Pass Expenses and Commuter Highway Vehicle Expenses:** Notwithstanding any provision contained in this Transportation Benefit Plan to the contrary, the maximum amount that may be allocated for Transit Pass Expenses and Commuter Highway Vehicle Expenses for any month within the Plan Year is \$300.00.
3. **Special Rules for Transit Passes:** A cash reimbursement may not be provided for an employee's mass transit expenses if Transit Passes, vouchers, debit cards or smart cards (or similar items that may be exchanged only for Transit Passes), are readily available to the Employer for direct distribution to Employees. A voucher (or similar item) is readily available if (1) the Employer can obtain the voucher on terms that are no less favorable than the terms available to an Employee directly, and (2) the Employer does not incur a significant administrative cost in obtaining the voucher. An administrative cost will be determined to be "significant" if the Plan Administrator (in its sole discretion) determines that the average administrative cost incurred by the Employer (excluding delivery charges of \$15 or less) is more than one percent (1.0%) of the average monthly value of the vouchers for a particular transit system (i.e., train, bus, subway, etc.).

#### 03. **Time Period for Making, Modifying, or Revoking a Salary Reduction Agreement.**

A Salary Reduction Agreement must be made before the earlier of (1) the Coverage Period to which it relates; and (2) the receipt of Eligible Transportation Expense benefits to which it relates. Any change to a Salary Reduction Agreement shall be effective for the first pay period after the Employer processes the change.

#### 04. **Forfeitures**

Any amount in the Participant's account that has not been used for reimbursement of Eligible Transportation or Parking Expenses incurred prior to the end of the Coverage Period and 0 day Run-out Period, will be carried over to the next plan year.

#### 05. **Termination of Employment**

The Employee's Salary Reduction Agreement shall terminate upon termination of Employment. All requests for expenses incurred prior to your termination date must be submitted within 0 days from the last day of employment. Any funds remaining in the Employee's account after a 0 day run-out period will be forfeited and credited to the benefit plan surplus.

#### 06. **Debit Card**

Participants may, subject to a procedure established by the Administrator and applied in a uniform nondiscriminatory manner, use debit card and/or Smart Card(s) ("cards") provided by the Administrator and the Plan for payment of Eligible Transportation and/or Parking Expenses.

1. **Card only for Eligible Transportation Expenses.** Each Participant issued a card shall certify that such card shall only be used for Eligible Transportation Expenses.
2. **Card issuance.** Such card shall be issued upon the Participant's Effective Date of Participation and reissued at times provided by the administrator, as long as the Participant remains a Participant in the Transportation Benefit Plan.
3. **Maximum dollar amount available.** The dollar amount of coverage available on the card shall be the balance in the Participant's account at the time of any transaction.

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## **IV. ARTICLE - ADMINISTRATION**

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### **01. Plan Administrator**

The Plan Administrator of the Plan shall be the individual(s) or corporation appointed by the Employer to carry out the administration of the Plan. In the event the Plan Administrator has not been appointed, or resigns from an appointment, the Employer shall be deemed to be the Plan Administrator until some other Plan Administrator is appointed.

### **02. Powers and Duties of the Plan Administrator**

The Plan Administrator shall have exclusive responsibility for, and all powers necessary or desirable to carry out, the administration of the Plan, and without limitation on the foregoing, shall have complete discretionary power and authority to:

1. adopt any rules and regulations it deems desirable for the conduct of its affairs and the administration of the Plan;
2. take any action it deems necessary or appropriate to comply with any requirements of applicable law with respect to notice and disclosure and the preparation and filing of reports and forms, if necessary;
3. construe and interpret the Plan and make determinations (including factual determinations) under the provisions of the Plan with respect to all rights, benefits, duties and entitlements, including, but not limited to, eligibility for benefits, amounts of benefits payable, and all other matters pertaining to the operation and administration of the Plan, all of which determinations are to be made in the Plan Administrator's sole discretion;
4. appoint or employ persons to assist in the administration of the Plan; and
5. make any equitable adjustments to correct any error or omission discovered in the administration of the Plan.

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## **V. ARTICLE - AMENDMENT AND TERMINATION**

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01. The Employer may at any time (1) amend the Plan in any manner it deems advisable, (2) terminate or limit the Plan, or (3) terminate or limit the participation in the Plan by any Employer, effective as of the date specified in the instrument of amendment or termination, without the consent of any other Employer, Eligible Employee or participating Employee. Such amendment, termination or limitation may be retroactive to the extent deemed appropriate by the Employer and may be made in contemplation of, or with specific reference to, a particular transaction, job elimination, reduction in force, or similar event.

The Chief Executive Officer of the Employer (or his or her designee) shall be authorized to adopt on behalf of the Employer all amendments to the Plan. Amendments shall be adopted in writing and signed by the Employer's Chief Executive Officer and shall be effective without further action of the Employer or its Board of Directors.



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## VI. ARTICLE - MISCELLANEOUS

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### 01. **Right to Assets**

Neither the establishment of the Plan nor the payment of benefits under the Plan shall be construed as giving any legal or equitable right to any Eligible Employee, former Eligible Employee or participating Employee against the Employer, any Employer or their officers or employees except as expressly provided herein, and all rights under any Plan shall be satisfied, if at all, only out of the general assets of the Employer.

### 02. **No Inducement, Contract or Guarantee of Employment**

The Plan does not constitute inducement or consideration for the employment of any Eligible Employee, nor is it a contract between any Employer and Eligible Employee. Participation in the Plan shall not give any Eligible Employee any right to continued employment with his or her Employer, and the Employer retains the right to hire and discharge any Eligible Employee at any time, with or without cause, as if the Plan had never been adopted.

### 03. **Governing Law**

The Plan shall be governed, construed, administered and regulated in all respects under the laws of California (without regard to its choice of law provisions), except to the extent preempted by federal law.

### 04. **Construction**

The Plan's headings and subheadings have been inserted for convenience of reference only and must be ignored in any construction of the provisions. If a provision of this Plan is illegal or invalid, that illegality or invalidity does not affect other provisions. Any term with an initial capital not expected by capitalization rules is a defined term according to Article II.

### 05. **Taxability of Benefits**

The Employer makes no guarantee as to the excludability of benefits under this Plan for federal, state, or local income tax purposes, and it shall be the Employee's sole responsibility to determine and pay any taxes due as a result of the payment of benefits hereunder.

# Execution Agreement

**IN WITNESS WHEREOF**, Kong, Inc. has caused its authorized officer to execute this amended and restated Plan document as of \_\_\_\_\_, the same to be effective **December 31, 2022**, unless otherwise indicated herein.

Kong, Inc.

By:

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Name:

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Title:

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# CERTIFICATE OF RESOLUTION

The undersigned authorized representative of **Kong, Inc.** (the Employer) hereby certifies that the following resolutions were duly adopted by the governing body of the Employer on \_\_\_\_\_, and that such resolutions have not been modified or rescinded as of the date hereof:

**RESOLVED**, that the form of amended and restated Welfare Benefit Plan, effective December 31, 2022, presented to this meeting (and a copy of which is attached hereto) is hereby approved and adopted, and that the proper agents of the Employer are hereby authorized and directed to execute and deliver to the Administrator of said Plan one or more counterparts of the Plan.

**RESOLVED**, that the Administrator shall be instructed to take such actions that the Administrator deems necessary and proper in order to implement the Plan, and to set up adequate accounting and administrative procedures for the provision of benefits under the Plan.

**RESOLVED**, that the proper agents of the Employer shall act as soon as possible to notify the employees of the Employer of the adoption of the Plan and to deliver to each employee a copy of the Summary Plan Description of the Plan, which Summary Plan Description is attached hereto and is hereby approved.

The undersigned further certifies that attached hereto as Exhibits, are true copies of Kong, Inc.'s Benefit Plan Document and Summary Plan Description approved and adopted at this meeting.

Kong, Inc.

By: \_\_\_\_\_

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

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