

# **DREMIO SOFTWARE LICENSE EVALUATION AGREEMENT**

IMPORTANT – PLEASE READ CAREFULLY THE TERMS OF THIS DREMIO SOFTWARE LICENSE EVALUATION AGREEMENT (“AGREEMENT”). THIS AGREEMENT IS A LEGAL AGREEMENT BETWEEN DREMIO CORPORATION (“DREMIO”) AND YOU OR THE ENTITY THAT YOU REPRESENT (YOU OR ANY SUCH ENTITY, “LICENSEE”). BY CLICKING ON THE “YES” OR THE “I AGREE” BUTTON, OR BY OTHERWISE USING OR ACCESSING THE DREMIO SOFTWARE (1) YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THIS AGREEMENT AND (2) YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT AND TO BIND LICENSEE TO THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL TERMS AND CONDITIONS OF THIS AGREEMENT, OR IF YOU DO NOT HAVE SUCH AUTHORITY, DO NOT ACCESS OR USE THE DREMIO SOFTWARE IN ANY WAY. In such case, you will have no right to use the Software. Dremio, with its principal place of business located at 883 N Shoreline Blvd, Suite C100, Mountain View, CA 94043, is willing to grant access to the Software on the condition that you accept all the terms of this Agreement. This Agreement begins on the date you click on the “YES” or the “I AGREE” button, or the date you otherwise use or access the Software (the “Effective Date”).

## **1. APPLICABILITY OF AGREEMENT.**

The terms of this Agreement shall apply to the Software licensed by Licensee solely for evaluation non-production purposes and to any Services provided by Dremio in its sole discretion under this Agreement.

## **2. DEFINITIONS.**

2.1 “Evaluation Term” shall mean the period commencing upon Licensee’s first download of the Software and terminating two (2) months thereafter, unless earlier terminated as set forth in Section 7. Dremio may extend such Evaluation Term by providing written notice to Licensee (email is acceptable). Licensee shall be authorized to use or access the Software pursuant to the terms set forth in this Agreement solely during the Evaluation Term. 2.2 “Maintenance Services” shall mean the services provided by Dremio pursuant to its then-current Maintenance and Support Services Policy. Dremio may, in its sole discretion, provide Maintenance Services to Licensee. Dremio is not obligated to provide maintenance or support or any other professional services under this Agreement. 2.3 A “Node” shall mean a physical or virtual machine that has up to 128 GB of RAM allocated to the Software. If more than 128 GB of RAM is allocated to the Software, the number of Nodes will increase proportionally (e.g. Licensee will purchase two (2) Nodes if Licensee allocates 256 GB of RAM to the Software). 2.4 “Services” shall mean any services provided by Dremio under this Agreement, including Maintenance Services. 2.5 “Software” shall mean the Dremio Enterprise version of the Dremio software products.

2.6 “Third Party Programs” shall mean any third party programs or materials that Dremio may supply, in its sole discretion, under this Agreement.

### **3. LICENSE AND RESTRICTIONS.**

Subject to the terms and conditions of this Agreement, Dremio hereby grants Licensee the following limited, nonexclusive, non-sublicensable and non-transferable license, solely for its own internal evaluation and solely for non-production purposes: (i) to use and display the Software on the number of Nodes specified by Dremio subject to all of the terms of this Agreement; (ii) to use the Documentation solely for purposes of installing or operating the Software; (iii) to use any materials provided by Dremio in the course of performing Services solely for the purpose of using the Software in accordance with this Agreement; (iv) to use the Third Party Programs only in combination with the Software and solely for purposes of installing or operating the Software; and (v) to copy the Software, Third Party Programs and Documentation as reasonably necessary to support the number of licensed Nodes. With respect to any and all copies of the Software, Third Party Programs and Documentation, Licensee shall ensure that each copy contains all titles, trademarks, and copyright and restricted rights notices, and that all such copies shall be subject to the terms and conditions of this Agreement. Licensee will comply with all applicable local, state, national and foreign laws, treaties, regulations, guidelines and conventions in connection with its use of the Software. The rights granted in this Section 3 are subject to Licensee’s agreement that it shall not: (a) use the Third Party Programs as stand-alone applications; (b) reverse engineer, disassemble, decompile, or otherwise attempt to derive the source code of the Software or Third Party Programs; (c) sublicense or use the Software or Third Party Programs for commercial time-sharing, rental, outsourcing, or service bureau use; or (d) publish or otherwise disclose the results of benchmark tests of the Software to third parties without Dremio’s prior written consent. In the event Licensee violates the terms set forth in this Section 3 and fails promptly to cure such breach following receipt of written notice from Dremio, Dremio shall have the right immediately to terminate the license granted to Licensee under this Agreement.

### **4. INTELLECTUAL PROPERTY RIGHTS.**

Dremio and its licensors reserve all rights not expressly granted to Licensee in this Agreement. Without limiting the generality of the foregoing, Licensee acknowledges and agrees that: (i) except for the licenses specifically granted to Licensee under this Agreement, Dremio and its suppliers retain all rights, title and interest in and to the Software, Third Party Programs, Documentation and all materials developed by Dremio in the course of performing Services, and Licensee does not acquire any right, title, or interest in or to the Software, Third Party Programs, Documentation or materials developed by Dremio under this Agreement other than the licenses set forth herein; (ii) any configuration or deployment of the Software or Third Party Programs shall not affect or diminish Dremio’s or its suppliers’ rights, title, and interest in and to the Software or Third Party Programs; and (iii) nothing in this Agreement shall limit in any way Dremio’s right to develop, use, license, create derivative works of, or otherwise exploit the Software or Third Party Programs, or to permit third parties to do so.

### **5. USAGE REVIEW.**

Dremio or its designated agent may audit Licensee's use of the Software, upon notice to Licensee, for purposes of ensuring compliance with this Agreement, provided that Dremio provides a request for such audit in writing at least ten (10) days prior to such audit. Licensee agrees to cooperate with any such audit, which shall be conducted during Licensee's regular business hours. Provided it does not identify Licensee, Dremio will be free to use for development, diagnostic and corrective purposes any data and information it so collects relating to diagnosis, problems, systems, performance, use or functionality, and may allow others to do so.

## **6. OPEN SOURCE SOFTWARE.**

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## **7. TERM AND TERMINATION.**

This Agreement will terminate automatically in the event of any breach or default by Licensee or upon expiration of the Evaluation Term. Further, Dremio may terminate this Agreement for convenience upon ten (10) days' written notice to Licensee. Upon any termination of this Agreement, all rights granted to Licensee under this Agreement will terminate, and Licensee must cease using the Software and return or destroy all copies of the Software, and so certify to Dremio. The parties' rights and obligations under Sections 3, 4, 6, 7, 8, 9, 10 and 11 shall survive termination of this Agreement.

## **8. DISCLAIMERS.**

THE SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. DREMIO AND ITS LICENSORS HEREBY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT AND QUALITY OF SERVICE, WHETHER SUCH WARRANTY IS ALLEGED TO ARISE BY OPERATION OF LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE OR BY COURSE OF DEALING. LICENSEE ASSUMES THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE SOFTWARE.

## **9. LIMITATION OF LIABILITY.**

IN NO EVENT SHALL DREMIO OR ITS SUPPLIERS BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF BUSINESS, LOSS OF GOODWILL, LOSS OF OR DAMAGE TO REPUTATION, LOSS OF MANAGEMENT TIME, LOSS OF OR DAMAGE TO LICENSEE MATERIALS, LOSS OF SAVINGS OR ANY CLAIM BASED

UPON A THIRD PARTY CLAIM, OR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED, UNDER ANY CAUSE OF ACTION AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER UNDER BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTY, STRICT LIABILITY OR OTHERWISE, OR WHETHER ARISING OUT OF THE USE OF OR INABILITY TO USE SOFTWARE OR OTHERWISE AND EVEN IF DREMIO OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL DREMIO'S OR ITS SUPPLIERS' AGGREGATE LIABILITY FOR DAMAGES HEREUNDER EXCEED \$100.

## **10. CONFIDENTIALITY.**

10.1 Confidential Information. Each party may have access to information that is confidential to the other party ("Confidential Information"). Confidential Information shall include any information that is clearly identified verbally or in writing at the time of disclosure as confidential as well as any information that, based on the nature of the information or the circumstances under which it was disclosed, a reasonable person would believe to be confidential. Confidential Information includes all information received from third parties that either party is obligated to treat as confidential.

10.2 Obligations. The parties agree not to make each other's Confidential Information available in any form to any third party or to use each other's Confidential Information for any purpose other than in the performance of this Agreement. The parties agree to hold each other's Confidential Information in confidence and to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in breach of this Agreement. Each party acknowledges and agrees that, due to the unique nature of Confidential Information, there can be no adequate remedy at law for breach of this Section 12 or Section 3 hereunder, and that such breach would cause irreparable harm to the non-breaching party; therefore, the non-breaching party shall be entitled to seek immediate injunctive relief, in addition to whatever remedies it might have at law or under this Agreement.

10.3 Exceptions. A party's obligations with respect to Confidential Information shall not apply to information that (i) is or becomes a part of the public domain through no act or omission of the other party; (ii) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (iv) is independently developed by the other party without use of or reference to the other party's Confidential Information. In addition, if Licensee recommends to Dremio additional features, functionality, or performance that Licensee believes will improve the Software and Dremio subsequently incorporates into the Software, then with respect to such recommendations, Licensee hereby (a) grants Dremio a worldwide, non-exclusive, royalty-free, perpetual and irrevocable right and license to use and incorporate such recommendations into the Software, and (b) acknowledges that the Software incorporating such new features, functionality, or performance shall be the sole and exclusive property of Dremio and all such recommendations shall be free from any confidentiality restrictions that might otherwise be imposed upon Dremio pursuant to this Section 12.

10.4 Disclosure Required by Law. Further, this Section 10 will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required by law or valid order of a court or other governmental authority; provided, however, that a party who has

been subpoenaed or otherwise compelled by a valid law or court order to disclose Confidential Information (the “responding party”) shall first have given sufficient and prompt written notice to the other party of the receipt of any subpoena or other request for such disclosure and shall have made a reasonable effort to obtain a protective order requiring that the Confidential Information so disclosed be used only for the purposes for which the order was issued.

10.5 Remedies. Each party acknowledges that (a) all Confidential Information disclosed by the other party is owned solely by the disclosing party (or its suppliers or licensors), (b) such Confidential Information is unique and valuable to the disclosing party, and (c) the unauthorized disclosure or use of such Confidential Information would cause irreparable harm and significant injury to the disclosing party, for which monetary damages alone would not be an adequate remedy. Accordingly, each party agrees that in the event of a breach or threatened breach of this Section 12, the disclosing party shall be entitled to seek specific performance and injunctive or other equitable relief as a remedy for such breach or anticipated breach without the necessity of posting a bond. Any such relief shall be in addition to, and not in lieu of any other remedies available to the disclosing party, including but not limited to monetary damages.

## **11. MISCELLANEOUS.**

Neither party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party. This Agreement and all matters arising out of or relating to this Agreement shall be governed by the laws of the State of California, excluding conflict of law provisions. The federal or state courts located in Santa Clara County, California, shall have exclusive jurisdiction to hear any dispute under this Agreement and both parties hereby consent to exclusive personal jurisdiction in such courts. Licensee agrees to comply fully with all relevant export laws and regulations, including but not limited to the U.S. Export Administration Regulations (collectively, “Export Controls”). Without limiting the generality of the foregoing, Licensee expressly agrees that it shall not, and shall cause its representatives to agree not to, export, directly or indirectly, re-export, divert, or transfer the Software, Documentation, Third Party Programs, or any direct product thereof to any destination, company or person restricted or prohibited by Export Controls. This Agreement, together with the attached exhibits that are incorporated by reference, constitutes the entire agreement of the parties and supersedes all prior or contemporaneous communications, understandings and agreements relating to the subject matter hereof, whether oral or written. No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment manually signed by authorized representatives of Dremio and Licensee. If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired by such holding and the parties shall negotiate in good faith a substitute, valid and enforceable provision which most nearly effects the parties’ intent in entering into this Agreement. Except as otherwise expressly provided herein, each right, power or remedy of a party under this Agreement shall be cumulative and in addition to every other right, power or remedy available to such party, whether under the Agreement, at law, in equity or otherwise. Waiver of any provision under this Agreement shall not be deemed a future waiver of that or any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement. All notices given pursuant to this Agreement shall be in writing and may be hand

delivered, or shall be deemed received within five (5) business days after mailing if sent by registered or certified mail, return receipt requested. Notices shall be sent to the signatory of this Agreement at the address first set forth above or to such other person or address as either party may specify in writing to the other party from time to time. Dremio is an independent contractor; nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the parties. This Agreement and any Order Form or Statement of Work entered into by the parties may be executed in two or more counterparts, all of which, taken together, shall be regarded as one and the same instrument. In addition, the exchange of a fully executed Agreement (in counterparts or otherwise) by facsimile shall be sufficient to bind the parties to the terms and conditions of this Agreement.