

# Enterprise Terms

These Enterprise Terms are part of a legal agreement (the “Agreement”) between the person or entity agreeing to these terms (“Customer”) and DataStax, Inc. (“DataStax”), a Delaware corporation, and includes these Enterprise Terms, any terms expressly incorporated herein by reference, and any terms in a fully executed ordering document that incorporates these DataStax Enterprise Terms (an “Order Schedule”). This Agreement is effective as of the date the Order Schedule is fully executed (the “Effective Date”).

Customer may obtain Software, Support and/or other Services (collectively “Products”) from DataStax subject to the terms of this Agreement. “Software” means software, data and other materials made available to Customer by DataStax as specified in the applicable Order Schedule, including error corrections, modifications and updates to such items, and including the Documentation. “Software” does not include, and DataStax does not warrant or support, software obtained from any source other than DataStax. “Documentation” means the materials available at [www.docs.datastax.com](http://www.docs.datastax.com), as amended from time to time. “Support” means the services described in the DataStax Support Policy available at [www.datastax.com/support-policy](http://www.datastax.com/support-policy), as amended from time to time. “Services” means training, consulting or other services (other than Support) specified in an Order Schedule.

## 1. Subscriptions

**1.1. Subscription.** DataStax provides Support for and licensing of its Software as a combined subscription (a “Subscription”) for the time period specified in Customer’s Order Schedule (the “Subscription Period”).

**1.2. Subscription License.** If Customer has purchased a Subscription, then subject to the Agreement, DataStax grants Customer a worldwide, nonexclusive, nontransferable, nonsublicensable, terminable license to use the Software during the Subscription Period (a “Subscription License”) subject to any license parameters specified in the applicable Order Schedule.

**1.3. Support.** If Customer has purchased a Subscription, DataStax will provide Customer with Support of the Software during the Subscription Period. If Customer requires a purchase order to complete its purchase, then Support will not be provided until Customer delivers a conforming purchase order.

**1.4. Limited No-Fee License.** DataStax grants Customer a one time royalty-free, worldwide, nonexclusive, nontransferable, nonsublicensable and, terminable license to use the Software for a period of ninety (90) days (unless otherwise agreed to by DataStax in writing), solely for non-production purposes (a “No-Fee License”), without the right to Support.

#### **1.5. Increased Volume of Use.**

For increased use of the Software other than Authorized Bursting Use (as defined below), Customer may increase its use during the Subscription Period beyond the scope specified in the Order Schedule, provided that Customer promptly notifies DataStax of the additional use and pays the applicable Fees. The Order Schedule will specify the scope of the Subscription purchased by Customer, including as follows: (1) production or non-production use; (2) number of Nodes and Cores; and/or (3) other license parameters set forth in the applicable Order Schedule. “Node” means a Java Virtual Machine (a platform-independent execution environment that converts Java bytecode into machine language and executes it) that runs an instance of the Software. A “Core” means an independent, physical processing unit on a CPU responsible for executing programs.

**1.6 Bursting Use.** Customer may, upon submission of notice to [customercare@datastax.com](mailto:customercare@datastax.com), temporarily increase its use of the Software by 20% above the volume of use in its then-current Subscription for not more than two months for each 12 month period from the date of the notice (“Authorized Bursting Use”). If Customer increases its use beyond Authorized Bursting Use, it must notify DataStax and pay the applicable Fees.

**1.7 Purchases Through a Reseller.** If Customer purchases a Subscription from a reseller that has been authorized by DataStax then Customer will comply with the applicable product specific licensing terms at [www.datastax.com/terms/product-specific-license-terms](http://www.datastax.com/terms/product-specific-license-terms) .

**1.8. Inspection.** During the term of this Agreement and for one year thereafter, but no more than once in a 12 month period and on no less than 30 days’ notice, Customer shall permit DataStax or its designated agent to inspect Customer’s facilities and records to verify Customer’s compliance with the Agreement. DataStax at its option may require that an executive officer of Customer certify in writing to Customer’s compliance with this Agreement and disclose the scope of use of the Software by Customer including the project in which the Software is being used and any projected date for any applicable non-production projects to go into production.

## 2. Consulting Services

DataStax provides all Services according to the Service Terms at [www.datastax.com/service-terms](http://www.datastax.com/service-terms), as updated or amended from time to time.

## 3. Payment

**3.1. Fees.** Customer will pay all fees and any applicable Taxes (the “Fees”) as specified in the Order Schedule. If the due date is not otherwise specified in the Order Schedule, all Fees are due 30 days from the invoice date. All Subscription Fees are non-refundable. Unless otherwise specified in the Order Schedule, all Fees are in U.S. dollars and all dates are based on the location of the choice of law.

**3.2. Taxes.** Customer is responsible for any duties, customs fees, or taxes (other than DataStax’s income tax) associated with the purchase of the Products provided by DataStax, (including any related penalties or interest) (“Taxes”), and shall pay the listed fees without deduction for Taxes. If Customer is required by applicable law to withhold any amount from any payments specified in the Order Schedule, then Customer will pay DataStax the listed fees as if no withholding were required, and shall remit the withholding to the appropriate governmental authorities on behalf of DataStax, with a copy of the tax receipt or certificate forwarded to DataStax.

**3.3. Delinquencies.** Any late payments will accrue late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower.

## 4. Restrictions

All rights in the Software not expressly granted under this Agreement are reserved to DataStax or its licensors. Without limiting the foregoing (except to the extent such restriction is expressly prohibited by applicable law), Customer shall not, and shall not permit others under its control to: (1) copy, modify, create a derivative work of, reverse engineer, decompile, translate, disassemble, or otherwise attempt to extract the source code of the Software or any component thereof; (2) assign, sublicense, transfer, lease, rent or otherwise distribute or make available the Software to any third party; (3) use the Software for High Risk Activities or otherwise contrary to the Documentation; (4) use the Software for any unlawful purpose; (5) use the Software to create, deliver training on, improve (directly or indirectly) or offer a substantially similar product or service; or (5) use the included ODBC driver to connect to other distributions of the components of the Software. “High Risk Activities” means uses such as the operation of nuclear facilities, air traffic control, or life support systems, where the use or failure of the Software could lead to death, personal injury, or environmental damage. The

Software includes the third party software and material specified at [www.datastax.com/thirdpartysoftware](http://www.datastax.com/thirdpartysoftware) ("Third Party Software").

## 5. Proprietary Rights

**5.1. Software.** The Software is licensed, not sold. As between the parties, all intellectual property rights in the Software shall remain with DataStax or its licensors.

**5.2. Federal Agency Users.** The Software was developed solely at private expense and is commercial computer software and related documentation within the meaning of the applicable Federal Acquisition Regulation and agency supplements thereto.

**5.3. Feedback.** If Customer provides any suggestions or feedback regarding the Products, then DataStax may use that information without obligation to Customer, and Customer hereby irrevocably assigns to DataStax all right, title, and interest in that feedback or those suggestions.

## 6. Term & Termination

**6.1. Agreement Term.** This Agreement will begin on the Effective Date and continue until the later of the following: (1) the expiration or completion of all Subscription Periods or Service commitments under any open Order Schedules; or (2) the date on which the Agreement is terminated as specified herein.

**6.2. License Term.** Subject to Customer's payment of Fees, the Subscription License will continue for the Subscription Period, unless terminated earlier as set forth in this Agreement. A No-Fee License shall continue until terminated, in DataStax's sole discretion, on notice to Customer.

**6.3. Termination for Breach.** Either party may terminate this Agreement if the other party breaches any material term of this Agreement and fails to cure that breach within 30 days after receipt of written notice.

**6.4. Effect of Termination.** If the Agreement expires or is terminated, then: (1) the rights granted by one party to the other will immediately cease; (2) all Fees owed by Customer are immediately due upon receipt of the final invoice; (3) Customer will delete the Software; and (4) upon request, each party will use commercially reasonable efforts to return or destroy all Confidential Information of the other party.

## 7. Confidentiality

**7.1. Confidentiality Obligation.** During the term of this Agreement, both parties agree that: (1) Confidential Information will be used only in accordance with the terms and conditions of this Agreement; (2) each will use the same degree of care it uses to protect its own confidential information, but in no event less than reasonable care; and (3) the Confidential Information may be disclosed only to employees, agents and contractors with a need to know, and to its auditors and legal counsel, in each case, who are under a written obligation to keep such information confidential using standards of confidentiality not less restrictive than those required by this Agreement. DataStax may use Customer's data for internal business purposes only, including providing Support, and improving, testing and providing the Products. "Confidential Information" means any information designated as confidential orally or in writing by either party, or any information that the receiving party knows, or has reason to know, is confidential or proprietary based upon its treatment by the disclosing party.

**7.2. Exclusions.** This Agreement imposes no obligation with respect to information that: (1) is a part of or enters into the public domain; (2) was already in the recipient's possession prior to the date of disclosure other than by breach of this Agreement; (3) is rightfully received from a third party without any duty of confidentiality; or (4) is independently developed without reference to the Confidential Information of the disclosing party.

**7.3. Publicity.** Customer may state publicly that it is a user of the Products. Any identification or use of a party's brand, logo or trademark shall conform with the trademark use guidelines provided by one party to the other. Customer agrees to participate with DataStax in publicity events which include the items listed below:

- Use of Customer's logo on the DataStax website
- Conversations with analysts (subject to separate NDA)
- Providing a quote in a DataStax press release
- Full press release announcing Customer's engagement with DataStax
- Written success story/case study related to DataStax
- Video success story/case study related to DataStax
- Speaking at DataStax events and/or webinar
- Speak to press regarding DataStax

## 8. Warranties

**8.1. Services Warranty.** DataStax warrants that it will perform any Services with reasonable care and skill and consistent with standards generally observed for services of a substantially similar nature. If the Services fail to conform to the foregoing warranty, as Customer's sole and exclusive remedy for such failure, DataStax will promptly attempt to re-perform the applicable Service within 30 days or such longer period as agreed to by the parties in writing, or at DataStax's option refund any Fees Customer has previously paid for the applicable Service(s).

**8.2. Software Warranty.** DataStax warrants that, during the Subscription Period, the Software will perform in material conformance with its published Documentation. If the Software fails to conform to the foregoing warranty, as Customer's sole and exclusive remedy for such failure, DataStax will remedy such issues as provided in the DataStax Support Policy, or at DataStax's option and upon Customer's return of the Software to DataStax, refund the unused portion of any Fees paid for the Subscription. Under a No-Fee License, the Software is provided free of charge, and on that basis, to the fullest extent permitted by law, DataStax provides the Software "as-is" and without any warranties.

**8.3. Authority.** Each party warrants that it has full power and authority to enter into this Agreement.

**8.4. Harmful Code.** DataStax will use commercially reasonable efforts and commercially available technology to scan the Software made available to Customer for, and to remove from the then-current-version of the Software, any computer "viruses," "worms" and other malicious code.

**8.5.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER DATASTAX NOR ITS SUPPLIERS PROVIDES ANY OTHER WARRANTIES REGARDING THE PRODUCTS, AND TO THE FULLEST EXTENT PERMITTED BY LAW DISCLAIMS ALL OTHER WARRANTIES, TERMS AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, AND ANY WARRANTIES, TERMS AND CONDITIONS ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM DATASTAX OR ELSEWHERE WILL CREATE ANY WARRANTY, TERM OR CONDITION UNLESS EXPRESSLY STATED IN THIS AGREEMENT. THE PRODUCTS ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR HIGH RISK ACTIVITIES.

## 9. Indemnity

**9.1. Indemnity by DataStax.** DataStax shall defend or settle at its sole expense any claim brought against Customer, its directors, officers, or employees by a third party alleging that the Software as delivered by DataStax infringes or misappropriates any patent, copyright, or trade secret of a third party, and DataStax shall pay all damages finally awarded or costs of settlement of the claim provided that Customer: (1) provides DataStax prompt written notice of any claim; (2) gives DataStax sole control of the defense and settlement of the claim but may not settle any claim unless such settlement fully releases Customer from any liability; and (3) provides all reasonable assistance in connection with the claim.

**9.2. Injunctions.** If Customer's rights to use the Software are, or in DataStax's opinion could be, enjoined due to an indemnified claim, then DataStax may, at its sole option and expense: (1) procure for Customer the right to continue using the Software according to the terms of this Agreement, (2) modify the Software such that it operates with materially equivalent functionality without infringing or misappropriation, or (3) if neither of the foregoing options is commercially reasonable, terminate the Subscription and refund the unused portion of any Fees paid for the Subscription.

**9.3. Exclusions.** The indemnity provided by DataStax under this Agreement does not extend to claims arising from or relating to: (1) use of the Software under a No-Fee License; (2) modifications to the Software not provided by or approved in writing by DataStax; (3) use of the Software in combination with any data, software, or hardware not provided by DataStax to the extent the alleged infringement would not have occurred without the combination; (4) Third Party Software; or (5) allegedly infringing activities that continue after DataStax has informed Customer in writing of and made available to Customer at no additional charge a substantially similar version of the Software that would have avoided the alleged infringement.

**9.4. Remedy.** This section states Customer's sole and exclusive remedy with respect to claims of infringement of third party proprietary rights of any kind and is subject to the terms of the section titled "Limitation of Liability."

## 10. Limitation of Liability

To the fullest extent permitted by applicable law, in no event shall DataStax or its suppliers be liable for damages other than direct damages, including the cost of procurement of substitute goods or technology, loss of profits, or for any special, consequential, incidental, punitive or indirect damages on any theory of liability, whether in statute, contract, tort, strict liability, indemnity or otherwise, even if advised of the possibility of such damages. To the fullest extent permitted by applicable law, in no event shall the total liability of DataStax to Customer under this Agreement exceed the greater of the total amounts paid by Customer to DataStax during the 12 months prior to the date the claim arises, or ten thousand US dollars. The liability limitations in this paragraph (and otherwise in the Agreement) do not limit or exclude damages for bodily injury or death or other damages that under applicable law cannot lawfully be limited or excluded.

## 11. Insurance

During the term of this Agreement, DataStax will maintain at least the following levels of insurance coverage: (1) general commercial liability of \$1 million per occurrence, \$2 million aggregate for bodily injury and property damage; (2) automotive, hired and non-owned liability of \$1 million for bodily injury and property damage; (3) errors and

omissions of \$2 million per claim and aggregate limit; and (4) workers' compensation meeting statutory limits.

## 12. Miscellaneous

**12.1. Affiliates.** DataStax and Customer agree that Affiliates of Customer may acquire Products from DataStax or its Affiliates by entering an Order Schedule with DataStax (or a DataStax Affiliate) that incorporates the terms and conditions of this Agreement and sets forth the then-applicable pricing. The parties acknowledge that adjustments to the terms of this Agreement may be made in a particular Order Schedule (for example, to address disparate tax and/or legal regimes in other geographic regions). "Affiliate" means an entity that owns or controls, is owned or controlled by, or is under common control or ownership with a party, where "control" is the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.

**12.2. Assignment.** The Agreement may not be assigned by either party by operation of law or otherwise, without the prior written consent of the other party, which consent will not be unreasonably withheld. Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Schedules), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or the sale of all or substantially all of the assets of the business to which the Agreement relates. Any such assignment shall be effective upon payment of all amounts then due.

**12.3. Conflicting Terms.** If there is a conflict among the documents that make up this Agreement, the documents will control in the following order: the Order Schedule, these Enterprise Terms, and the terms located at any URL referenced in these Enterprise Terms.

**12.4. Entire Agreement.** This Agreement sets out all terms agreed between the parties and supersedes all other agreements between the parties relating to its subject matter. In entering into this Agreement, neither party has relied on, and neither party will have any right or remedy based on, any statement, representation or warranty (whether made negligently or innocently), except those expressly set out in this Agreement. The terms located at a URL referenced in this Agreement are hereby incorporated by this reference. After the Effective Date, DataStax may provide Customer with an updated URL in place of any URL in this Agreement. Customer agrees that its purchase of a Subscription is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by DataStax, including any roadmaps or target release dates, with respect to future functionality or features.



**12.5. Export Controls.** Customer agrees to comply with all export and re-export restrictions and regulations of the Department of Commerce and any other United States or foreign agencies and authorities in connection with Customer's use of the Products. In particular, but without limitation, the Software may not, in violation of any laws, be exported or re-exported: (1) into any U.S. embargoed country; or (2) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. Customer represents and warrants that Customer and its Affiliates are not located in, under the control of, or a national or resident of any such country or on any such list.

**12.6. Force Majeure.** Neither party will be liable for failure or delay in its performance under this Agreement to the extent caused by circumstances beyond its reasonable control. DataStax reserves the right to suspend Subscriptions or Services to comply with laws.

**12.7. Governing Law.** This Agreement is to be construed in accordance with and governed by the internal laws of the State of California without regard to its conflict of laws principles, and each party hereby consents to the jurisdiction of the federal or state courts of Santa Clara County, California, USA. Each party hereby waives any right to jury trial in any litigation in any way arising out of or related to this Agreement.

**12.8. Independent Contractors.** This Agreement will not be construed as creating an agency, partnership, joint venture or any other form of association, for tax purposes or otherwise, between the parties; the parties will at all times be and remain independent contractors.

**12.9. No Third-Party Beneficiaries.** This Agreement does not confer any benefits on any third party unless it expressly states that it does.

**12.10. Notices.** All notices must be in writing and addressed to the other party's legal department and primary point of contact. Notice will be treated as given on receipt, as verified by written or automated receipt or by electronic log (as applicable).

**12.11. Severability and Waiver.** In the event that any provision of this Agreement (or any portion hereof) is determined by a court of competent jurisdiction to be illegal, invalid or otherwise unenforceable, the provision (or portion) will be enforced to the extent possible consistent with the stated intention of the parties, or, if incapable of enforcement, will be deemed to be severed and deleted from this Agreement, while the remainder of this Agreement will continue in full force. The waiver by either party of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach.

**13. Survival.** The following sections will survive any expiration or termination of this Agreement: Payment, Restrictions, Proprietary Rights, Effect of Termination (Section 6.4), Confidentiality, Limitation of Liability, and Miscellaneous.

**14. Updates.** Except as expressly provided herein, no modification of this Agreement will be effective unless contained in writing and signed by an authorized representative of each party. DataStax may make changes to terms located at a URL referenced in this Agreement, including these Enterprise Terms (collectively, the “URL Terms”) from time to time. DataStax will post the amended terms and will update the “Last Updated Date” at the top. By continuing to access or use the Software after DataStax has provided Customer with such notice of a change, Customer is indicating that it agrees to be bound by the modified terms. If the change has a material adverse impact on Customer and Customer does not agree to the change, Customer must notify DataStax within 30 days of the applicable Last Updated Date. If Customer notifies DataStax as required, then Customer will remain governed by the terms in effect immediately prior to the change until the end of the then-current Subscription Period (or, in the case of Services, the completion of the applicable Services). If the Subscription Period is renewed, it will do so under the updated URL Terms.