CAPELLA MASTER SERVICE AGREEMENT

This Capella Master Service Agreement and the addenda incorporated by reference herein are entered into with effect as of _____ (the **"Effective Date"**) by and between _____, a_____ corporation (**"Customer"**), having its principal place of business at _____ and Couchbase, Inc., a Delaware corporation (**"Couchbase"**), having its principal place of business at 3250 Olcott Street, Santa Clara, CA 95054.

1. Definitions.

Capitalized terms used herein shall have the following definitions:

"**Affiliate**" means any entity which controls, is controlled by, or is under common control with a party, where "control" means direct or indirect ownership or control of more than 50% of the voting interest in the subject entity.

"**Authorized Users**" means Customer's users to whom Customer grants access to the Cloud Service (including Customer's personnel using the Cloud Service on Customer's behalf).

"**Cloud Service**" means the Couchbase Capella database-as-a-service and related cloud service functionalities and offerings.

"**Clusters**" mean any database deployments in the Cloud Service.

"**Cloud Control Plane**" means the user interface of the Cloud Service.

"**Cloud Environment**" means the infrastructure-as-a-service cloud environment provided by a third-party cloud service provider in which the Cloud Service may be deployed by Customer.

"**Couchbase Privacy Policy**" means the Couchbase Privacy Policy available at https://www.couchbase.com/privacy-policy (or any successor location), as updated from time to time.

"**Customer**" means the entity that the user represents or, if that does not apply, the user individually.

"**Customer Content**" means all content or data provided by or on behalf of Customer or Authorized Users in the Cloud Service.

"**DPA**" means Couchbase's Data Processing Addendum available at https://www.couchbase.com/capelladpa09262022 (or any successor location), as updated from time to time.

"**Documentation**" means technical documentation provided by Couchbase related to the Cloud Service.

"**Fees**" means the fees and charges (i) specified on the applicable Order for the Cloud Service and/or Professional Services, (ii) accrued through Customer's metered usage of the Cloud Service, or (iii) otherwise payable to Couchbase under this Agreement.

"**Order**" means a transaction document (such as an order form or statement of work) identifying Customer's entitlements for the Cloud Service and/or Professional Services, along with applicable Fees and term(s), signed by both parties or accepted by Customer through an authorized third-party platform.

The term "**including**" means including but not limited to.

2. Scope.

The terms of this Capella Master Service Agreement, the addenda incorporated by reference herein, any Orders hereunder, and the DPA (collectively, the "**Agreement**") govern Customer's access to and use of the Cloud Service. In the event of any conflict between these terms, an Order, and/or the DPA, the following order of precedence will apply (in descending order): (1) the DPA with respect to the processing of personal data, (2) the Order (subject to the terms of Section 12.3 below), and (3) these terms, only to the extent of such conflict.

3. Access and Use of the Cloud Service.

3.1. Subject to Customer's compliance with this Agreement, Couchbase grants to Customer and Customer's Authorized Users a limited, non-exclusive, revocable, non-transferable, non-sublicensable and non-assignable right to use the Cloud Service and the Documentation within the service plan purchased solely for the internal use of Customer and, to the extent expressly authorized by Couchbase in writing, Customer's Affiliate(s), provided Customer shall remain fully responsible for its Affiliates' compliance with this Agreement. Couchbase may provide upgrades, patches, enhancements, updates, or fixes for the Cloud Service and the Documentation, all of which shall be subject to this Agreement.

3.2. Use of the Cloud Service requires Customer and/or each Authorized User to create a user account and provide a username, password, and/or other account credentials ("**Registration Information**"). By providing Registration Information, Customer and any Authorized Users consent to receive email communications from Couchbase. Customer shall notify Couchbase immediately of any unauthorized use. Couchbase reserves the right, but is not required, to reset or terminate any Registration Information if Couchbase suspects unauthorized access or use. Customer is responsible for the use of the Cloud Service by Authorized Users and any other person(s) to whom Customer has given access to the Cloud Service, even if Customer did not authorize such use.

3.3. Couchbase may enable Customer to access and use (i) certain third-party products or services (e.g., a third-party service that integrates with the Cloud Service) ("**Third-Party Services**"); or (ii) complementary products and functionalities developed by Couchbase, which may be subject to additional terms, including those available at https://www.couchbase.com/supplemental-terms (or any successor location), as updated from time to time, which are incorporated by reference herein. Third-Party Services may be subject to third-party licenses provided by such third party or executed between Customer and such third party (in each case, a "**Third-Party License**"). Couchbase does not own, control, or license Third-Party Services. Customer acknowledges and agrees that (a) Customer shall be solely responsible for (I) its compliance with any such Third-Party License and (II) the confidentiality, security, and integrity of any data Customer transfers to a Third-Party Service; and (b) Couchbase shall have no responsibility or liability whatsoever related to or arising out of any Third-Party Service, including for its installation, operation, support, or loss or compromise of data.

4. **Customer Restrictions.** Except as otherwise expressly permitted in this Agreement, Customer shall not, shall not attempt to, and shall not permit any party (including any Authorized User) to: (i) access or use the Cloud Service and/or Documentation in any manner except as expressly permitted in this Agreement; (ii) sell, resell, transfer, sublicense or otherwise make available any part of the Cloud Service and/or Documentation to any third party, provided that Customer may use the Cloud Service in connection with an application Customer offers to its own end users if such end users cannot access the Cloud Service directly; (iii) circumvent, interfere with, abuse, penetration test, or endanger the operation or security of the Cloud Service; (iv) access or use the Cloud Service and/or Documentation for the purposes of publicly benchmarking or publishing competitive analysis of the Cloud Service, or for developing, providing, or supporting products or services competitive to Couchbase; (v) alter, translate, reverse engineer, decompile, or prepare any derivative work from or of the Cloud Service or Documentation, or otherwise attempt to derive or determine the source code, other proprietary information, or trade secrets from the Cloud Service or Documentation except where such restriction is prohibited; (vi) remove or otherwise alter any Couchbase proprietary notices, trademarks, warranties, or disclaimers; or (vii) access or use the Cloud Service or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any applicable law or the rights of any person or entity.

5. **Customer Obligations.** Customer agrees that to use the Cloud Service, Customer is responsible for: (i) selecting a Cloud Environment; (ii) protecting the confidentiality and security of all Registration Information, including by properly configuring any Third-Party Services; (iii) implementing and maintaining appropriate technical and security measures to protect Customer Content against accidental or unlawful destruction, loss, alteration, disclosure, or access; (iv) not interfering with and, if necessary, enabling Cloud Service updates to ensure Customer uses a current version of the Cloud Service; (v) implementing and maintaining appropriate configurations of the Cloud Service, including to enable the backup services and disaster recovery features; (vi) properly securing and maintaining any Customer system connected to the Cloud Service (including through the regular rotation of access keys and other industry-standard steps to preclude unauthorized access); (vii) any application or service that Customer makes available to its end users that interfaces with the Cloud Service; and (viii) notifying Couchbase immediately if Customer believes there has been unauthorized access to or use of the Cloud Service.

6. **Security**. Couchbase will implement and maintain appropriate technical and organizational security measures. Current technical and organizational security measures are described at Annex B of the DPA.

7. **Customer Content.**
7.1. Customer grants to Couchbase a limited, non-exclusive, royalty-free, worldwide right and license to use, display, host, copy, process, archive, and transmit any and all Customer Content or other data provided by Customer in connection with Support ("**Support Content**," together with Customer Content, "**Service Content**") to provide and improve the Cloud Service in accordance with this Agreement. Customer represents and warrants and shall ensure that it has the right to provide such right and license and that neither the Service Content itself nor its use by Couchbase for purposes under this Agreement shall violate any applicable law or otherwise violate any third party rights, including intellectual property rights and privacy rights.

7.2. Customer represents and warrants that it shall not transmit to Couchbase: (i) protected health information as defined under the Health Insurance Portability and Accountability Act or similar laws unless Customer and Couchbase have entered into an appropriate Business Associate Agreement ("**BAA**"), in which case such BAA is hereby incorporated by reference; or (ii) data that require additional security measures not provided for under this Agreement until the Parties have executed an applicable agreement providing for such measures. If any such Service Content is inadvertently transmitted to Couchbase, Customer acknowledges and agrees that it shall cooperate with Couchbase to securely delete such Service Content.

7.3. With respect to any Personal Data (as defined in the DPA) processed by Couchbase in connection with providing the Cloud Service, Couchbase shall comply with the DPA. Couchbase may collect certain registration and usage data about Customer's (and Authorized Users') use of the Cloud Service. With respect to any Personal Data obtained by Couchbase as a controller, Couchbase shall comply with the Couchbase Privacy Policy.

8. Professional Services.

8.1. Couchbase may provide consulting services (which may result in reports, recommendations, or other deliverables) and training as expressly identified in an Order (collectively, "**Professional Services**"). Couchbase will render Professional Services on a commercially reasonable basis in a professional and workmanlike manner in accordance with the terms and conditions of this Agreement and the applicable Order. Couchbase may provide Professional Services using qualified subcontractors.

8.2. Unless explicitly set forth in an Order, any Professional Services purchased under this Agreement will expire upon the end of the applicable period set forth in an Order up to and inclusive of any expiration date or after twelve (12) months if no expiration date is specified (in each case, the "**Services Expiration Date**"). Any unused Professional Services after such Services Expiration Date will expire without refund of any prepaid Fees. Customer will pay Couchbase's reasonable travel and incidental expenses incurred in conducting (in relation to the Professional Services or otherwise) on-site activities at Customer's site.

9. Support and Service Levels. Except for any Preview (defined below) or as otherwise set forth in this Agreement, Couchbase will (i) provide Customer with the technical support described at https://www.couchbase.com/support-policy/cloud, as updated from time to time ("**Support**"), per the service plan selected by Customer through the Cloud Control Plane or in an Order and paid for by Customer, and (ii) use commercially reasonable efforts to meet or exceed the service levels for Customer's service plan set forth in the service level agreement available at https://www.couchbase.com/CapellaSLA, as updated from time to time ("**Service Level Agreement**"). For prepaid Credits (as defined in the description of fees and charges), associated Support expires at the earlier of the consumption or expiration of the prepaid Credits. For On-Demand Credits, Support is available for so long as Customer pays for the On-Demand Credits and expires upon consumption of the On-Demand Credits. In connection with Support, Couchbase may receive performance and operational data regarding technical operations of the Cloud Service. Couchbase will only use such data to provide the Cloud Service and Support, and in aggregate form to improve the Cloud Service.

10. Previews and Free Offerings. Customer may participate in or otherwise receive access to certain preview, test, alpha, beta, free, or trial versions of the Cloud Service (each, a "**Preview**") in Customer's sole discretion, subject to the restrictions generally applicable to the Cloud Service and any additional requirements set forth by Couchbase. Customer shall not, and shall not permit any third party to, use any Preview for any purpose other than to evaluate the Preview functionality or provide feedback, and shall not use a Preview for any data subject to any compliance or legal requirements. Any Preview is provided without Support or any servicing obligations, and may contain bugs and other functional issues. ANY PREVIEWS ARE PROVIDED AS-IS AND WITHOUT ANY WARRANTY OR INDEMNITY. Couchbase and its Affiliates and licensors will not be liable for any harm or damages related to Previews, including if Couchbase terminates Customer's access to or use of any Preview. Any non-public information regarding a Preview is the Confidential Information of Couchbase. Couchbase may discontinue any Preview at any time in its sole discretion and is under no obligation to make Previews generally available or maintain Customer's access to any Preview.

11. Proprietary Rights.

11.1. Couchbase and its licensors retain all right, title, and interest in and to the Cloud Service (including any and all improvements, enhancements or modifications thereto), the Documentation, and Professional Services (including associated deliverables), including all intellectual property rights therein, and nothing in this Agreement will be construed as conferring by implication, acquiescence, estoppel, or otherwise, any license or other right upon Customer.

11.2. Any third-party open-source software components included in the Cloud Service will be governed by the terms of the applicable open-source license conditions and/or copyright notices that can be found in the relevant licenses file, Documentation, or materials related to the Cloud Service.

11.3. Except as expressly stated in Section 7, Customer retains all right, title, and interest in and to the Customer Content, including all intellectual property rights therein.

11.4. Couchbase may use any data, feedback, or information that Customer makes available to Couchbase or that Couchbase derives or generates from Customer's use (including usage data in anonymized and aggregated form) of

the Cloud Service or the Documentation but excluding Customer Content ("**Feedback**") without obligation to Customer and Customer hereby irrevocably assigns to Couchbase all right, title, and interest in and to the Feedback.

11.5. If Customer is the United States Government or any contractor thereof, all licenses granted hereunder are subject to the following: (i) for acquisition by or on behalf of civil agencies, as necessary to obtain protection as "commercial computer software" and related documentation in accordance with the terms of this Agreement and as specified in Subpart 12.1212 of the Federal Acquisition Regulation (FAR), 48 C.F.R.12.1212, and its successors; and (ii) for acquisition by or on behalf of the Department of Defense (DOD) and any agencies or units thereof, as necessary to obtain protection as "commercial computer software" and related documentation in accordance with the terms of this Agreement and as specified in Subparts 227.7202-1 and 227.7202-3 of the DOD FAR Supplement, 48 C.F.R.227.7202-1 and 227.7202-3, and its successors, Manufacturer is Couchbase, Inc.

12. Fees, Payment Terms and Taxes.

12.1. **Fees.** Customer may select a service plan for the Cloud Service via an Order, by issuing a purchase order ("**PO**") compliant with Section 12.3, or other methods made available by Couchbase and will pay Couchbase applicable Fees in accordance with this Section 12 and the description of fees and charges available at https://www.couchbase.com/CapellaServiceFees (or any successor location), as updated from time to time, which is incorporated by reference herein.

12.2. **Calculation of Fees**. Couchbase calculates and invoices Fees based on: (i) Customer's metered use of the Cloud Service as described on the Cloud Service site Customer uses; (ii) as agreed between Couchbase and Customer in an Order; or (iii) as applicable, Couchbase's then-current list prices. Couchbase reserves the right to increase its fees and charges for On-Demand Credits with at least thirty (30) days' prior notice provided electronically through the Cloud Service or comparable means. Customer shall be responsible for and pay any Fees arising out of any usage of On-Demand Credits under its accounts as set forth in this Agreement.

12.3. **Ordering via PO.** If Customer sends Couchbase a PO in lieu of executing an Order, the PO will be deemed an offer which Couchbase may accept. In such a case, only the commercial details listed on the PO will be considered part of the contract created (exclusive of any pre-printed terms on the PO). Any other terms on the PO which either (i) conflict with the terms of this Agreement, or (ii) are not agreed under this Agreement, will be void and without effect, even if Couchbase signs the PO. All accepted POs will automatically be governed by this Agreement (even if the PO does not explicitly reference this Agreement). It is expressly agreed that this Section 12 will apply to any PO sent by Customer and accepted by Couchbase. At a minimum, the PO shall state the number of prepaid Credits purchased along with the Couchbase SKU number(s), the term (start and end dates) for each entitlement, the service plan tier purchased, and applicable Fees.

12.4. **Payment Terms.** Unless otherwise agreed between Customer and Couchbase, all payments of Fees under this Agreement shall be in the currency stated in the Order and paid using one of the payment methods supported by Couchbase. Couchbase may issue invoices to Customer via email or through the Cloud Control Plane. Unless otherwise stated in the applicable Order, Customer shall pay for all invoices issued by Couchbase to Customer under this Agreement within thirty (30) days of the date of the invoice, even if such invoice does not provide a Customer purchase order number. Except as otherwise agreed between the parties in writing, Couchbase will invoice Customer upon the execution of an applicable Order. For invoiced amounts, late payments may, in Couchbase's discretion, bear interest at the lesser of one and one half percent (1½%) per month or the maximum rate allowed by applicable law, and Customer shall reimburse Couchbase for all reasonable costs and expenses (including attorneys' fees) incurred in collecting any overdue amounts. All amounts paid and payable by Customer under this Agreement are non-cancelable and non-refundable, and shall be paid to Couchbase without any setoff, counterclaim, or deduction. If Customer purchases licenses or services related to the Cloud Service through an approved third-party partner, then the applicable agreement with that third-party will govern with respect to Customer for the appropriate payment terms, provided that such third-party agreement shall not override or attempt to override the payment terms in place between Couchbase and such approved third-party partner. All other terms and restrictions with respect to the use of the Cloud Service shall continue to apply to Customer.

12.5. **Taxes**. All Fees payable by Customer are exclusive of applicable taxes and duties (such as, without limitation, VAT, Service Tax, GST, excise taxes, sales and transactions taxes, and gross receipts tax (collectively, the "**Transaction Taxes**")). If applicable, Couchbase may charge, and Customer shall pay, all Transaction Taxes that Couchbase is legally obligated or authorized to collect from Customer. Customer will provide such information to Couchbase as reasonably required to determine whether Couchbase is obligated to collect Transaction Taxes from Customer. Couchbase will not collect, and Customer will not pay any Transaction Taxes for which Customer furnishes a properly completed exemption certificate or a direct payment permit certificate for which Couchbase may claim an available

exemption from such Transaction Taxes. All payments made by Customer to Couchbase under this Agreement will be made free and clear of any deduction or withholding, as may be required by law. If any such deduction or withholding (including but not limited to cross-border withholding taxes) is required on any payment, Customer will pay such additional amounts as are necessary so that the net amount received by Couchbase is equal to the amount then due and payable under this Agreement. Couchbase will provide Customer with such tax forms as are reasonably requested to reduce withholding or deduction for taxes in respect of payments made under this Agreement.

13. Confidentiality.

13.1. Customer and Couchbase will maintain the confidentiality of the other party's Confidential Information. "**Confidential Information**" means any proprietary information disclosed by one party ("**Disclosing Party**") to the other party ("**Receiving Party**") during, or prior to entering into, this Agreement that Receiving Party should know is confidential or proprietary based on the nature of the information and circumstances surrounding the disclosure, including non-public technical information, business information (including pricing), roadmaps, benchmarks, security measures, and reports. Confidential Information does not include information that (i) is or becomes generally known to the public through no fault of or breach of this Agreement by the Receiving Party; (ii) is rightfully known by the Receiving Party at the time of disclosure without an obligation of confidentiality to the Disclosing Party; (iii) is independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information; (iv) the Receiving Party rightfully obtains from a third party without restriction on use or disclosure; or (v) is usage data derived by Couchbase from Customer's use of the Cloud Service provided that such data is anonymized and aggregated.

13.2. The Receiving Party agrees not to use Disclosing Party's Confidential Information for any purpose except as necessary to fulfill its obligations and exercise its rights under this Agreement. The Receiving Party will protect the secrecy of and prevent disclosure and unauthorized use of such Confidential Information using the same degree of care that it takes to protect its own confidential information and in no event will use less than reasonable care.

13.3. Upon termination of this Agreement, the Receiving Party will, at the Disclosing Party's option, promptly return or destroy (and provide written certification of such destruction) the Disclosing Party's Confidential Information. A party may disclose the other party's Confidential Information only to the extent required by law or regulation.

14. DISCLAIMER OF WARRANTY. THE CLOUD SERVICE, DOCUMENTATION AND ANY PROFESSIONAL SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, INCLUDING THAT THE CLOUD SERVICE, DOCUMENTATION OR PROFESSIONAL SERVICES PROVIDED WILL MEET CUSTOMER'S REQUIREMENTS, WILL BE UNINTERRUPTED, ERROR-FREE, SECURE, ACCURATE, COMPLETE, OR FREE OF HARMFUL CODE, THAT DEFECTS WILL BE CORRECTED, OR THAT ANY INFORMATION OR ADVICE GIVEN BY COUCHBASE OR ANY OF ITS AFFILIATES OR LICENSORS (COLLECTIVELY, THE "COUCHBASE PARTIES") WILL CREATE ANY WARRANTY. THE COUCHBASE PARTIES (i) DO NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THE CLOUD SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES, (ii) ARE NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS, AND (iii) ARE NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION, OR SECURITY OF THE CLOUD SERVICE THAT ARISE FROM CUSTOMER'S ACTIONS OR OMISSIONS (INCLUDING CUSTOMER'S CONFIGURATION OF THE CLOUD SERVICE IN A MANNER OTHER THAN THROUGH THE CLOUD CONTROL PLANE) OR ANY THIRD-PARTY CONTENT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE COUCHBASE PARTIES HEREBY DISCLAIM ALL WARRANTIES, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, QUIET ENJOYMENT, AVAILABILITY, NON-INFRINGEMENT, AND TITLE, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE. CUSTOMER ACKNOWLEDGES THAT THE CLOUD SERVICE IS NOT SPECIFICALLY DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN THE PLANNING, CONSTRUCTION, MAINTENANCE, CONTROL, OR OPERATION OF NUCLEAR FACILITIES, AIRCRAFT COMMUNICATION, NAVIGATION, OR CONTROL SYSTEMS, WEAPONS SYSTEMS, DIRECT LIFE SUPPORT SYSTEMS, OR SIMILAR SYSTEMS THAT COULD LEAD TO DEATH, PERSONAL INJURY, OR SIGNIFICANT PHYSICAL DAMAGE.

15. Indemnification.

15.1. **Couchbase Indemnification**. Couchbase will indemnify and defend Customer from and against any damages finally awarded against Customer in connection with any third-party claim that the non-open source components of the Cloud Service, Documentation, or Professional Services infringe or misappropriate such third party's intellectual property rights; provided that: (i) Customer promptly notifies Couchbase of the claim; (ii) Customer gives Couchbase all

necessary information regarding the claim and reasonably cooperates with Couchbase; (iii) Customer allows Couchbase exclusive control of the defense and all related settlement negotiations; (iv) Customer does not admit fault or liability with respect to this Agreement, Customer's actions or those of Couchbase; and (v) Customer agrees any damage award does not include any Fees owed to Couchbase.

15.2. **Customer Indemnification**. Customer will indemnify and defend the Couchbase Parties from and against any claims, proceedings, liabilities, costs or damages arising out of or in connection with any third-party claim concerning: (i) Customer's or any Authorized User's use of or access to the Cloud Service, Support, or Cloud Environment other than as permitted by this Agreement; (ii) violation of third party rights (including without limitation any intellectual property rights) arising out of or relating to Service Content; and (iii) breach of this Agreement or applicable law by Customer or an Authorized User. Couchbase will: (a) promptly notify Customer of the relevant claim; (b) give Customer all necessary information regarding the claim and reasonably cooperate with Customer; (c) allow Customer exclusive control of the defense and all related settlement negotiations, provided that Couchbase may participate in the defense and related settlement negotiations with counsel of its own choosing; and (d) not admit fault or liability on behalf of Customer.

15.3. **Enjoinment**. Without limiting the foregoing, and notwithstanding anything to the contrary in this Agreement, if use of the Cloud Service, Documentation, or Professional Services is enjoined, or Couchbase determines that such use may be enjoined, Couchbase will, at its sole option and expense: (i) procure for Customer the right to continue using the affected portion of the Cloud Service, Documentation, or Professional Services; (ii) replace or modify the affected portion of the Cloud Service, Documentation, or Professional Services that infringe so that they do not infringe; or (iii) if either option (i) or (ii) is not commercially feasible in Couchbase's reasonable opinion, as applicable, terminate the affected portions of the Cloud Service and Professional Services and in the case of such termination refund Customer a pro-rata amount of the Fees for the affected portions of the Cloud Service or Professional Services.

15.4. **Exclusions.** Under no circumstance will Couchbase incur any liability: (i) arising out of Customer's failure to use the Cloud Service in accordance with this Agreement; (ii) arising out of modifications made by Customer or a third party to the Cloud Service; (iii) attributable to any third-party open source software components; (iv) arising out of the use, operation or combination of the Cloud Service with software, services, technology, content, data, equipment or materials not provided by Couchbase; or (v) arising out of Customer's continuation of the allegedly infringing activity after being notified of the alleged infringement claim.

15.5. **Exclusive Remedy**. The terms of this Section 15 constitute the entire liability of Couchbase and Customer's sole and exclusive remedy under this Agreement with respect to this Section 15.

16. **LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL: (i) THE COUCHBASE PARTIES BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, LOSS OF GOODWILL, OR BUSINESS INTERRUPTION ARISING OUT OF OR RELATED TO THIS AGREEMENT, CUSTOMER'S USE OF OR INABILITY TO USE THE CLOUD SERVICE, DOCUMENTATION, OR THE PROFESSIONAL SERVICES IN ACCORDANCE WITH AND SUBJECT TO THIS AGREEMENT; AND (ii) THE COUCHBASE PARTIES' AGGREGATE LIABILITY TO CUSTOMER FOR ALL LOSSES, CLAIMS AND DAMAGES EXCEED THE TOTAL AMOUNT OF FEES PAID OR PAYABLE BY CUSTOMER FOR THE CLOUD SERVICE UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT FIRST GIVING RISE TO THE LIABILITY. All limitations and exclusions of liability in this Agreement will apply even if the above stated remedies fail of their essential purpose and regardless of the form or source of claim or loss, whether the claim or loss was foreseeable, and whether the Couchbase Parties have been advised of the possibility of the claim or loss.

17. **Term and Termination.**

17.1. **Term**. The term of this Agreement will commence on the Effective Date and continue until terminated in accordance with this Agreement.

17.2. **Termination**. Subject to Couchbase's rights under Section 17.4 below, either party may terminate an Order or this Agreement if the other party materially breaches its obligations hereunder and such breach remains uncured for thirty (30) days following written notice of the breach ("**Cure Period**"), provided that Customer must exercise such termination right within thirty (30) days of the end of the Cure Period. Customer's obligation to make a payment of any outstanding, unpaid fees shall survive termination of an Order or this Agreement. This Agreement will automatically terminate without notice to Customer ninety (90) days after the expiration of the last to expire Order in effect hereunder.

17.3.**Suspension of Cloud Service**. Notwithstanding anything in this Agreement to the contrary, Couchbase may suspend or terminate access to the Cloud Service: (i) immediately without notice if necessary to preserve Couchbase's rights or Couchbase reasonably determines that Customer or any Authorized User of the Cloud Service threatens the security, integrity or availability of the Cloud Service or otherwise breaches applicable laws or regulations; (ii) immediately without notice if Service Content or Customer's use of the Cloud Service exposes Couchbase or its partners to third-party liability and, in such case, Couchbase may delete any Service Content (including back up data) relating to such account after providing reasonable notice; or (iii) on written notice if Customer fails to comply with Section 12 (Fees, Payment Terms and Taxes). Additionally, Couchbase may suspend Cloud Service access for any modifications or other scheduled maintenance. If commercially feasible, Couchbase will provide advance notice of any such suspension and limit any suspension to the minimum extent and duration required. Customer will remain responsible for all Fees and charges Customer has incurred up to and during any period of suspension of the Cloud Service and will not be entitled to any credit or refund. Couchbase will use commercially reasonable efforts to restore Customer's access to the Cloud Service promptly following resolution of the cause of Customer's suspension.

17.4.**Effect of Termination**. Upon termination or expiration of all active Orders (including termination under Section 17.3) or this Agreement, Customer shall (i) immediately delete all Clusters and discontinue all use of the Cloud Service; (ii) delete all Customer account information and Authorized User accounts; and (iii) immediately pay any outstanding Fees. Couchbase shall have no obligation to store (and may irretrievably destroy) Service Content (including backup data) after termination or expiration of the relevant Order or this Agreement. The following Sections will survive termination or expiration of this Agreement: 4, 7.2, 9, 10, 11 to 18 (inclusive) and all others that by their sense and context are intended to survive the execution, delivery, performance, termination, or expiration of this Agreement.

18. **General.**
18.1.**Export Compliance.** Customer understands that the Cloud Service and related technology and services are subject to export control laws and regulations of the United States and other jurisdictions. Couchbase and Customer each represent that it is not named on any U.S. government denied-party list. Customer shall comply with all applicable international and domestic export and economic sanctions laws or regulations that apply to Customer, the Cloud Service and any related technology or services. In furtherance of this obligation, Customer shall ensure that: (i) Customer's Authorized Users do not use the Cloud Service or related technology or services in violation of any export restriction or embargo issued by the United States; and (ii) it does not provide access to the Cloud Service or related technology or services to: (a) persons on the U.S. Department of Commerce's Denied Persons List or Entity List, or the U.S. Treasury Department's list of Specially Designated Nationals; (b) military or military intelligence end-users or for military or military intelligence end-use; or (c) parties engaged in activities directly or indirectly related to the proliferation of weapons of mass destruction.

18.2.**Force Majeure.** Neither party will be liable for any delay or failure in performance (except for any payment obligations by Customer) due to causes beyond its reasonable control.

18.3.**Publicity.** Customer agrees that Couchbase may include the Customer's name and logo in client lists and marketing materials that Couchbase may publish for promotional purposes from time to time and grants Couchbase a limited license to its trademark solely for this purpose, provided that Couchbase complies with Customer's branding guidelines. These marketing materials may include, but are not limited to, case studies, video testimonials, press releases, analyst reports, and other materials promoting the fact that Customer has a relationship with Couchbase.

18.4.**Assignment.** Customer may not assign this Agreement, in whole or in part, by operation of law or otherwise, without Couchbase's prior written consent. Any attempt to assign this Agreement without such consent will be null and of no effect. Subject to the previous sentence, this Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

18.5.**Severability and Waiver.** If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of this Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect. The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. All waivers must be in writing and signed by both parties.

18.6.**Notices**. Any notice or communication provided by Couchbase under this Agreement may be provided by posting a notice on the Couchbase website, mail to Customer's address specified above, or via email to the relevant address associated with Customer's Cloud Service account. Any notice or communication provided by Customer under this Agreement shall be provided to Couchbase by certified mail, return receipt requested, to Couchbase Inc., Attn: Legal Department, 3250 Olcott Street, Santa Clara, CA 95054, United States.

18.7. **Governing Law and Venue.** This Agreement is governed by the laws of the State of California, USA, excluding its conflicts of law rules. The parties expressly agree that the UN Convention for the International Sale of Goods will not apply. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in Santa Clara County, California and the parties hereby irrevocably consent to personal jurisdiction and venue therein.

18.8. **Entire Agreement and Amendments.** This Agreement constitutes the entire agreement and supersedes all prior or contemporaneous oral or written agreements regarding its subject matter, including any agreement on confidentiality previously executed by the parties. Furthermore, no additional or conflicting terms stated on any other document will have any force or effect and are hereby rejected unless expressly agreed upon by the parties' duly authorized representatives in writing.

18.9. **No Prejudice**. Except as expressly stated in this Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

18.10. **Relationship of the Parties.** The parties to this Agreement are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other party or incur obligations on the other party's behalf without the other party's prior written consent.

18.11. **Future Functionalities.** Customer has not relied on the availability of any future version of the Cloud Service or any future product in making its decision to enter into this Agreement or any Order.

The parties to the Agreement, by their signatures below, acknowledge that they have read and agree to be bound by the terms and conditions of the Agreement.

Customer: **Couchbase:**

  By: _____   **By:** _____

  Name: _____   **Name:** _____

  Title: _____   **Title:** _____

  Date: _____   **Date:** _____