

Aerospike Master License Agreement

PLEASE READ THIS MASTER LICENSE AGREEMENT CAREFULLY BEFORE USING THE SOFTWARE AND SERVICES OFFERED BY AEROSPIKE, INC. AND ITS SUBSIDIARIES, ("AEROSPIKE"). BY SIGNING AN AEROSPIKE ORDER FORM WHICH REFERENCES THIS AGREEMENT (AN "ORDER FORM") OR BY DOWNLOADING THE AEROSPIKE SOFTWARE ON A TRIAL OR EVALUATION BASIS (AN "EVALUATION"), YOU OR THE ENTITY THAT YOU REPRESENT ("LICENSEE") ARE UNCONDITIONALLY CONSENTING TO BE BOUND BY AND ARE BECOMING A PARTY TO THE MASTER LICENSE AGREEMENT CONSISTING OF THIS PARAGRAPH AND THE FOLLOWING TERMS (THE "AGREEMENT"). PROVISION OF THE PRODUCT IS CONDITIONED ON, AND LICENSEE'S INSTALLATION OR USE OF THE PRODUCT SHALL CONSTITUTE, LICENSEE'S ASSENT TO THE TERMS OF THIS AGREEMENT TO THE EXCLUSION OF ALL OTHER TERMS. IF THESE TERMS ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO SUCH TERMS. IN THE EVENT OF A CONFLICT BETWEEN THIS AGREEMENT AND THE ORDER FORM, THE ORDER FORM SHALL CONTROL.

1. **Grant of License and Restrictions.** Subject to the terms hereof and any applicable user/use limitations, Aerospike grants Licensee a personal, nonsublicensable, nonexclusive, right to use the licensed product set forth on the Order Form (or downloaded for an Evaluation) in object code form only (the "Product") subject to any limitations on the Order Form and only in accordance with Aerospike's applicable user documentation and price list. Except for one copy solely for back-up purposes, Licensee may possess only the number of copies of any Product as has been expressly authorized by Aerospike and may install and run the Product only on those Licensed Production Instances that have been expressly authorized by Aerospike on the Order Form or during registration for an Evaluation. A "Licensed

Production Instance” means a single instance of the Product running on an individual server cluster as may be further described and limited on the Order Form or during registration for an Evaluation or Development license. Licensee may make copies of the Product for any instance that is being used solely for development, testing, or temporary backup (i.e., hot failover) purposes. Further, a Product that you download for an Evaluation (an “Evaluation Product”) or Development (a Development Product) may be used only during the Evaluation or Development Term (defined below) and only for purposes of internal evaluation and or development and not for any production use. Aerospike retains ownership of all Products and any Deliverables defined in Section 3 and the rights therein and Licensee will maintain the copyright notice and any other notices that appear on the Product on any copies and any media. Licensee will not (and will not allow any third party to) (i) reverse engineer or attempt to discover any source code or underlying ideas or algorithms of any Product (except to the extent that applicable law prohibits reverse engineering restrictions), (ii) provide, lease, lend, disclose, use for timesharing or service bureau purposes, or otherwise use or allow others to use for the benefit of any third party, any Product (except as expressly and specifically authorized by Aerospike), (iii) possess or use any Product, or allow the transfer, transmission, export, or re-export of any Product or portion thereof in violation of any export control laws or regulations administered by the U.S. Commerce Department, U.S. Treasury Department’s Office of Foreign Assets Control, or any other government agency, (iv) disclose to any third party any benchmarking or comparative study involving any Product, (v) modify any Product, or (vi) run any production instance of an Enterprise Edition version of a Product with any Standard Edition and or Community Edition version of a Product. Prior to disposing of any media or apparatus containing any part of the Product, Licensee shall completely destroy any Product contained therein. All the limitations and restrictions on Products in this Agreement also apply to documentation.

2. **Support and Maintenance.** While all applicable fees have been timely paid for each license term, Aerospike will use reasonable commercial efforts to provide the support and maintenance services for that Product as and to the extent described in Aerospike’s then-current Support and Maintenance Terms found at <https://aerospike.com/forms/premium-support-terms/> for the support package selected by Licensee on the Order Form (“Support Services”). Licensee shall not use any Support Services for any unsupported application, including, without limitation, any open source or community edition of any Aerospike product, without paying Aerospike’s then-current Enterprise subscription fees. Aerospike shall be entitled to invoice Licensee (and Licensee shall pay) Aerospike’s then-current Enterprise subscription fees for every instance of any Aerospike product (including, without limitation, any open source or community edition thereof) in connection with which Licensee uses (or otherwise benefits from) any Support Services.

3. **Additional Services.** The parties may agree to have Aerospike perform certain additional services for Licensee (e.g., implementation, training, or installation services in connection with a Product, etc.) ("Additional Services"), by describing such Additional Services and any fees therefor on (i) an Order Form, or (ii) on a separate, mutually-executed Statement of Work which references this Agreement (each, an "SOW", which upon mutual execution, will be incorporated into and form a part of the Agreement). Upon payment of any applicable fees set forth in the applicable Order Form and/or SOW (which shall be paid in accordance with Section 4), Aerospike agrees to use reasonable commercial efforts to provide the Additional Services described therein for the term specified therein (if any). If Aerospike provides Additional Services beyond those agreed in an Order Form or SOW (including, without limitation, in excess of any hours estimate set forth therein), Licensee will pay Aerospike at its then-current hourly rates for professional services. Any deliverables provided, work product, or other intellectual property created or delivered under a Statement of Work or as part of Additional Services (the "Deliverables") shall be the property of Aerospike. Licensee will have a nonexclusive, nontransferable, royalty-free license to the Deliverables to the extent necessary to enable Licensee to fully use the Product and the Deliverable(s) provided under license by Aerospike. During the term of this Agreement, both Aerospike and Licensee agree to not directly or indirectly solicit the employees of the other party.
4. **Fees and Payment.** With the exception of the initial Evaluation Term, within thirty (30) days after first receipt of the Product or the date(s) otherwise expressly agreed by Aerospike, Licensee shall pay Aerospike's then current standard license/subscription fees for any authorized copies or uses of Product or such other fees as have been expressly agreed to by Aerospike on an Order Form ("Subscription Fees"); in the case of annual subscriptions, License Fees therefor will also be paid annually in advance. Licensee shall provide to Aerospike a copy of the diagnostic reports in Section 7 within one hundred and eighty (180) days prior to the expiration of the license period specified for the applicable Product set forth on an Order Form. In addition, without limiting Aerospike's remedies, if Licensee makes uses of any Product or Support Services that are not authorized hereunder (including without limitation, any use in excess of capacity limitations or for any instance other than the Licensed Production Instance(s) set forth on an Order Form), it will so report to Aerospike. Licensee will pay additional license and maintenance and support fees equal to Aerospike's then current standard fees for the license and maintenance and support of such additional uses (and annually, Aerospike will be entitled to audit or have audited all systems and records relevant to assure compliance with the foregoing; any audit showing material noncompliance will be at Licensee's expense). Licensee shall pay Aerospike the fees for any Additional Services as described in the applicable Order Form or SOW within thirty (30) days following receipt of invoice therefor. All payments shall be made in the currency of, and within the borders of the

United States. Any payments more than thirty (30) days overdue will bear a late payment fee of 1.5% per month, or, if lower, the maximum rate allowed by law. In addition, Licensee will pay all taxes, shipping, duties, withholdings, backup withholding and the like; when Aerospike has the legal obligation to pay or collect such taxes, the appropriate amount shall be paid by Licensee directly to Aerospike. Licensee will reimburse Aerospike for all reasonable travel and other related expenses incurred by Aerospike in its performance hereunder; provided, however, that such expenses shall have been pre-approved by Licensee.

5. **Termination; Breach.** All licenses will terminate thirty (30) days after notice of any breach by Licensee remaining uncured at the end of such notice period. A license will also terminate upon the expiration of any applicable license period specified for the applicable Product (which, for an Evaluation Product, will be a period of sixty (60) days from the date of download unless extended in a writing signed by both parties; such period, the "Evaluation Term"), subject to annual renewal in the case of an annual subscription license, only if and as set forth on the Order Form. Upon any termination, Licensee shall immediately cease all use of all affected Products and return or destroy all copies of all affected Products and all portions thereof and so certify to Aerospike. Except as otherwise expressly provided herein, the terms hereof shall survive any termination. Termination is not an exclusive remedy and all other remedies will be available whether or not termination occurs.
6. **Indemnification.** Aerospike shall defend, indemnify and hold Licensee harmless from liability to third parties resulting from infringement by a Product of any United States patent or any copyright or misappropriation of any trade secret, provided Aerospike is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement; Aerospike will not be responsible for any settlement it does not approve. The foregoing obligations do not apply with respect to a Product or portions or components thereof to the extent (i) not created by Aerospike, (ii) made in whole or in part in accordance to Licensee specifications, (iii) that are modified after delivery by Aerospike, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Licensee continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Licensee's use of such Product is not strictly in accordance herewith. Licensee will indemnify Aerospike from all damages, costs, settlements, attorneys' fees and expenses related to any claim of infringement or misappropriation excluded from Aerospike's indemnity obligation by the preceding sentence.
7. **Embedded Reporting/Compliance Routine; Data Access and Use; Feedback.** Licensee acknowledges that Products contain automated diagnostic routines that when initiated by the Licensee will automatically identify and analyze certain aspects of use and performance of Products and/or the systems on

which they are installed, as well as the operator and operating environment (including problems and issues that arise in connection therewith). Aerospike will be entitled to request that the Licensee initiate such diagnostic routines and deliver such to Aerospike on a quarterly basis upon reasonable notice to Licensee. Such reports will be deemed Proprietary Information. Provided it does not identify Licensee and is not identifiable to Licensee, Aerospike 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. Notwithstanding anything else, Licensee agrees that Aerospike may freely exploit and make available any and all feedback, suggestions, ideas, enhancement requests, recommendations or other information provided by Licensee any other party relating to the Products.

8. **Limited Warranty and Disclaimer.** Except in the case of Evaluation Products, Aerospike warrants for a period of ninety (90) days from delivery of a Product that such Product will materially conform to Aerospike's then current user documentation for such Product. This warranty covers only problems reported to Aerospike during the warranty period. ANY LIABILITY OF AEROSPIKE WITH RESPECT TO A PRODUCT OR THE PERFORMANCE THEREOF OR ANY SERVICES PROVIDED HEREUNDER UNDER THE WARRANTY SET FORTH IN THIS SECTION 7 SHALL BE LIMITED EXCLUSIVELY TO PRODUCT REPLACEMENT OR RE-PERFORMANCE OF SERVICES OR, IF REPLACEMENT OR RE-PERFORMANCE IS AN INADEQUATE REMEDY OR, IN AEROSPIKE'S OPINION, IMPRACTICAL, TO A REFUND OF AN APPROPRIATE PORTION OF THE REMAINING UNAMORTIZED APPLICABLE FEES PAID BY LICENSEE. EXCEPT FOR THE FOREGOING WARRANTY BY AEROSPIKE, ALL PRODUCTS AND SERVICES (INCLUDING, WITHOUT LIMITATION, EVALUATION PRODUCTS) ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND FROM ANYONE, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. FURTHER, AEROSPIKE DOES NOT WARRANT RESULTS OF USE OR THAT THE PRODUCTS ARE BUG FREE OR THAT THE PRODUCT'S USE WILL BE UNINTERRUPTED.
9. **Limitation of Liability.** NOTWITHSTANDING ANYTHING ELSE HEREIN OR OTHERWISE, AND EXCEPT FOR BODILY INJURY, NEITHER AEROSPIKE NOR ANY LICENSOR SHALL BE LIABLE OR OBLIGATED WITH RESPECT TO THE SUBJECT MATTER HEREOF OR UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY (I) FOR ANY AMOUNTS IN EXCESS IN THE AGGREGATE OF THE FEES PAID TO IT HEREUNDER WITH RESPECT TO THE APPLICABLE PRODUCT DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE CAUSE OF ACTION; (II) FOR ANY COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY, SERVICES OR RIGHTS; (III) FOR ANY LOST PROFITS OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR

CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER; (IV) FOR INTERRUPTION OF USE OR LOSS OR CORRUPTION OF DATA; OR (V) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL. THE PRODUCT IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE WHERE THE FAILURE OF THE PRODUCT COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SIGNIFICANT PHYSICAL OR ENVIRONMENTAL DAMAGE ("HIGH RISK ACTIVITIES"). USE OF THE PRODUCT IN HIGH RISK ACTIVITIES IS NOT AUTHORIZED. THE PARTIES AGREE THAT THIS SECTION 8 REPRESENTS A REASONABLE ALLOCATION OF RISK AND THAT AEROSPIKE WOULD NOT PROCEED IN THE ABSENCE OF SUCH ALLOCATION.

10. **Confidentiality:** Licensee understands that Company has disclosed or may disclose information relating to Company's technology or business, including, without limitation, the Products and any other software, documentation, updates, modifications, or new releases thereof and the existence, terms and conditions of this Agreement (hereinafter collectively referred to as "Proprietary Information"). Licensee agrees: (i) not to divulge to any third person any such Proprietary Information, (ii) to give access to such Proprietary Information solely to those employees with a need to have access thereto for purposes of this Agreement, and (iii) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that Licensee takes with its own proprietary information, but in no event will Licensee apply less than reasonable precautions to protect such Proprietary Information. Nothing in this Agreement will prevent Licensee from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that Licensee gives Company reasonable prior notice of such disclosure to contest such order.
11. **Miscellaneous.** Neither this Agreement nor the licenses granted hereunder are assignable or transferable (and any attempt to do so shall be void); provided that either party may assign and transfer the foregoing to a successor to all or substantially all of (i) in the case of Aerospike, Aerospike's Product business or assets or, (ii) in the case of Licensee, Licensee's business for which Products are licensed (but if the authorized use is not limited, the assignee is not licensed to expand use beyond Licensee's bona fide pre-assignment use plus reasonably expected growth assuming the assignment and related transactions had not occurred). The provisions hereof are for the benefit of the parties only and not for any other person or entity. Aerospike's obligations under Section 2 and Section 6 of this Agreement shall not apply in connection with any Evaluation Product. Any notice, report, approval, authorization, agreement or consent required or permitted hereunder shall be in writing; notices shall be sent to the addresses set forth on the Order Form (or provided by Licensee in connection with registering for an Evaluation), or to any updated address that a party may provide by written notice. No failure or delay in exercising any right hereunder will operate as a waiver thereof, nor

will any partial exercise of any right or power hereunder preclude further exercise. If any provision shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. This Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of the State of California and the United States without regard to conflicts of the laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act. Licensee acknowledges and agrees that due to the unique nature of Aerospike's Proprietary Information, there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach may allow Licensee or third parties to unfairly compete with Aerospike resulting in irreparable harm to Aerospike, and therefore, that upon any such breach or threat thereof, Aerospike shall be entitled to injunctions and other appropriate equitable relief without posting a bond in addition to whatever remedies it may have at law. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter hereof and any waivers or amendments shall be effective only if made in a writing executed by authorized representatives of both parties; however, any pre-printed or standard terms of any Licensee purchase order, confirmation, or similar form, even if signed by the parties after the effective date hereof, shall have no force or effect. The substantially prevailing party in any action to enforce this agreement will be entitled to recover its attorney's fees and costs in connection with such action.